



All India Federation of Tax Practitioners

Price ₹ 5/-  
(For Members only)

# AIFTP TIMES

Volume 2 - No. 12 • November, 2011

FORTHCOMING PROGRAMMES		
Date & Month	Programme	Place
4th November, 2011	Extraordinary General Body Meeting of AIFTP (SZ)	Hyderabad
5th November, 2011	Extraordinary General Body Meeting of AIFTP (EZ)	Kolkata
11th November, 2011	Celebration of Foundation Day	Delhi
11th November, 2011	National Executive Committee Meeting	Delhi
12th & 13th November, 2011	Two Day National Tax Conference	Delhi
16th to 22nd November, 2011	AOTCA International Tax Conference	Indonesia
24th November, 2011	Extraordinary General Body Meeting of AIFTP (CZ)	Jodhpur
25th November, 2011	Extraordinary General Body Meeting of AIFTP (WZ)	Mumbai
25th November, 2011	Extraordinary General Body Meeting of AIFTP (NZ)	New Delhi
26th November, 2011	Full Day Seminar for Basic Course on Taxation of Non-Residents and Application of Tax Treaty	Mumbai
9th December, 2011	National Executive Committee Meeting and EGM	Ranchi
10th & 11th December, 2011	Two Days National Tax Convention	Ranchi
17th December, 2011	One Day National Seminar on Taxation	Trivandrum

## FEDERATION NEWS

J. K. Ranka, Secretary General

### FULL DAY SEMINAR FOR BASIC COURSE ON TAXATION OF NON-RESIDENTS AND APPLICATION OF TAX TREATY

Organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (WESTERN ZONE)**

on Saturday, 26th November, 2011

from 9.00 a.m. to 5.30 p.m.

at M. C. Ghia Hall, Kalaghoda, Mumbai.

**Delegate Fees:** ₹ 1,100/- for Members and ₹ 1,300/- for Non-members  
(including seminar material, tea, snacks & lunch)

Cheque/Draft may be drawn in favour of "All India Federation of Tax Practitioners – Western Zone", payable at Mumbai. Outstation members are requested to send DD only.

**Note:-** Detailed programme has been published in earlier months of AIFTP Times.

**H. N. Motiwalla**  
Chairman, AIFTP (WZ)

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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**35TH FOUNDATION DAY CELEBRATION  
&  
NATIONAL TAX CONFERENCE - 2011**

**From 11th to 13th November, 2011  
at Sri Sathya Sai International Centre, Opp Sai Temple, Lodhi Road, New Delhi**

**Theme : A Vibrant India - Through Tax Reforms**

**PROGRAMME**

**Friday, 11th November, 2011**

04:00 PM to 05:00 PM	Registration & Tea
05:00 PM to 07:00 PM	Inaugural Session: Inauguration by : Hon'ble Mr. Salman Khurshid, Union Minister for Law & Justice Presided by : Hon'ble Mr. Justice T. S. Thakur Judge, Supreme Court of India Guests of Honour : Mr. Goolam E. Vahanvati, Attorney General of India Mr. P. H. Parekh, President, SCBA National President : Mr. M. L. Patodi, Advocate, Kota Imm. Past President : Mr. Bharat Ji Agrawal, Sr. Advocate, Allahabad Felicitations of Past Presidents & other dignitaries
07:00 PM to 07:30 PM	Tea
07:30 PM to 08:30 PM	National Executive Meeting & Kavi Sammelan
08:30 PM onwards	Dinner

**Saturday, 12th November, 2011**

09:00 AM to 10:00 AM	Breakfast
10:00 AM to 11:30 AM	<b>1st Technical Session :</b> <b>"Beyond the Statute - Constitutional Remedies"</b> Chairman : Hon'ble Mr. Justice Rajeev Shakti, Judge, Delhi High Court Co-Chairman : Shri N. M. Ranka, Sr. Advocate and Past President, AIFTP, Jaipur Upcoming Speaker : Shri Rahul Aggarwal, Advocate, Allahabad Speaker : Mr. Gopal Subramaniam, Sr. Advocate, Former Solicitor General of India
11:30 AM to 11:45 AM	Tea
11:45 AM to 01:15 PM	<b>2nd Technical Session</b> <b>"Resolving Conflicts with respect to Works Contracts - Under VAT &amp; Service Tax"</b> Chairman : Hon'ble Mr. Justice A. K. Sikri, Judge, Delhi High Court Co-Chairman : Shri P. S. Sarin, Advocate, Delhi Upcoming Speaker : Mr. Ruchir Bhatia, Advocate, Delhi Speaker : Mr. R. M. Ramani, Sr. Advocate, Chennai
01:15 PM to 02:15 PM	Lunch
02:15 PM to 03:45 PM	<b>3rd Technical Session</b> <b>"Back Assessments - Reassessment &amp; TDS Assessment u/s 201(3)"</b> Chairman : Hon'ble Mr. Justice Valmiki Mehta, Judge, Delhi High Court

	Co-Chairman	: Shri S. K. Poddar, Advocate, Ranchi
	Upcoming Speaker	: Mr. Deepak Jain, Advocate, Kolkata
	Speaker	: Mr. M.S. Syali, Sr. Advocate, Delhi
03:45 PM to 04:00 PM	Tea	
04:00 PM to 05:30 PM	<b>4th Technical Session</b>	
	<b>"Controversial Issues – Exemption of Subsequent Sales u/s 6(2) of Central Sales Tax Act"</b>	
	Chairman	: Hon'ble Mr Justice V. K. Jain, Judge, Delhi High Court
	Co-Chairman	: Shri P. C. Joshi, Advocate and Past President, AIFTP, Mumbai
	Upcoming Speaker	: Mr. Anuj Bansal, Advocate, Delhi
	Speaker	: Mr. Bharat Ji Agrawal, Sr. Advocate and Past President, AIFTP, Allahabad
05:30 PM to 06:00 PM	Tea	
06:00 PM to 08:00 PM	Cultural Programme	
08:00 PM onwards	Dinner	

**Sunday, 13th November, 2011**

09:00 AM to 10:00 AM	Breakfast	
10:00 AM to 11:45 AM	<b>5th Technical Session</b>	
	<b>"Intricate Issues – Real Estate Transactions &amp; Section 50C of Income-tax Act"</b>	
	Chairman	: Hon'ble Mr. Justice Manmohan, Judge, Delhi High Court
	Co-Chairman	: Dr. K. Shivaram, Advocate and Past President, AIFTP, Mumbai
	Upcoming Speaker	: Mr. Punit Rai, Advocate, Delhi
	Speaker	: Dr. Girish Ahuja, CA, Delhi
11:45 AM to 12:00 Noon	Tea	
12:00 Noon to 01:30 PM	<b>Valedictory Session</b>	
	<b>"Fighting Corruption – A time for Self Retrospection"</b>	
	Chief Guest	: Hon'ble Mr. Justice Kailash Gambhir, Judge, Delhi High Court
	Guests of Honour	: Hon'ble Mr. R. V. Easwar, Judge, Delhi High Court Mr. Harish Salve, Former Solicitor General of India
	Conference Chairman	: Mr R. K. Batra, Advocate, Delhi
1:30 PM onwards	Lunch	

**Delegate Fee (Kindly ✓) :**

Members : ₹ 1,500/- • Spouse : ₹ 1,000/- • Corporate Member : ₹ 3,000/-

**Convention Secretariat** : 2nd Floor, Vyapar Bhawan, Indraprastha Estate, New Delhi – 110 002  
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## 16TH NATIONAL CONVENTION 2011 AT RANCHI

Organized by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)**

Jointly with

**JHARKHAND INCOME TAX BAR ASSOCIATION, RANCHI**  
**JHARKHAND COMMERCIAL TAXES BAR ASSOCIATION, RANCHI**  
**RANCHI BRANCH OF CIRC OF ICAI**

on

9th, 10th & 11th December, 2011

at

Hotel Radisson Blu, Main Road, Ranchi, Jharkhand

**Theme : Professional's Role in Emerging Tax Laws**

### PROGRAMME

#### Friday, 9th December, 2011

Venue : Hotel Capitol Hill, Main Road, Ranchi

3.30 p.m. onwards : National Executive Committee Meeting 2010 and 2011  
Extraordinary General Meeting 2011  
Election of National Executive & Office Bearers 2012 and 2013  
National Executive Committee Meeting 2012 and 2013  
Followed by Dinner.

#### Saturday, 10th December, 2011

Venue : Hotel Radisson Blu, Main Road, Ranchi

8.30 a.m. – 10.00 a.m. : Registration & Breakfast  
9.45 a.m. – 11.30 a.m. : Inauguration of Convention  
12.00 Noon – 1.30 p.m. : 1st Technical Session  
1.30 p.m. – 2.30 p.m. : Lunch Break  
2.30 p.m. – 4.00 p.m. : 2nd Technical Session  
4.00 p.m. – 4.20 p.m. : Tea Break  
4.20 p.m. – 6.00 p.m. : 3rd Technical Session  
7.30 p.m. onwards : Dinner at Ranchi Club

#### Sunday, 11th December, 2011

10.00 a.m. – 12.00 Noon : 4th Technical Session  
12.00 Noon – 1.30 p.m. : 5th Technical Session  
1.30 p.m. – 2.30 p.m. : Lunch Break  
2.30 p.m. – 5.00 p.m. : Brain Trust & Valedictory High Tea

Payment Details: Member : ₹ 2,000.00  
Spouse : ₹ 1,000.00  
Corporate Member : ₹ 3,000.00  
Student/Professional : ₹ 1,000.00 (Professional whose practice below 5 years)

**(Note : 10 per cent discount on Registration before 31-10-2011)**  
**Registration fee includes Kit, 2 Breakfasts, 2 Lunches and 1 Dinner)**

**Cheque/Draft may be drawn in favour of "AIFTP (EZ) Convention 2011" payable at Ranchi.**

#### Correspondence address:

**S. K. Poddar**, Chairman, Hardutt Rai Lane, Upper Bazar, Ranchi – 834 001  
Tel.: 06512202787 / 2212477 • Mobile : 09431115265 • E-mail: sheojipoddar@rediffmail.com

#### Contact Members:

**Narayan P. Jain**, Chairman, AIFTP (EZ) • **C. K. Chatterjee**, Secretary, AIFTP (EZ)  
**Sajjan Kumar Sultania**, Treasurer, AIFTP (EZ)

**Note: List of Hotels near the venue and Contact Members details are available in our website; i.e., [www.aiftponline.org](http://www.aiftponline.org)**

**NOTICE OF EXTRAORDINARY GENERAL BODY MEETING  
 OF THE FEDERATION TO BE HELD ON 9-12-2011 AT RANCHI**

September 7, 2011

Dear Members,

An Extraordinary General Body Meeting as provided in Rule 10 of the Rules & Regulations of the Federation will be held on Friday, 9th December, 2011 at Hotel Capitol Hill, Main Road, Ranchi at 4.00 p.m. to transact the following agenda as prescribed in Rule 8.

**A G E N D A**

1. To confirm the proceedings of the previous EGM held on 18th December, 2009.
2. To elect 40 members to the Executive Committee for the term 1-1-2012 to 31-12-2013 in accordance with Rule 7(3).
3. To consider report of the Executive Committee for the period 1-1-2010 to 9-12-2011.
4. To consider suggestions from the members in respect of rendering better service to the members and for overall progress of the AIFTP.
5. To receive the report of the Chief Election Officer.
6. To transact any other business that may be raised with the permission of the chair.

For All India Federation of Tax Practitioners

**J. K. Ranka**  
*Secretary General*

**Notes:**

1. Constitution, rules and regulations and specimen nomination form is printed in the May 2002 issue of the Journal and also available in our website i.e., [www.aiftponline.org](http://www.aiftponline.org). Members are requested to read the same before filing the nomination.
2. Nominations are hereby invited for the membership of National Executive Committee from all eligible members in terms of Rules 10(1) and 14 subject to numerical limit as provided in Rule 7(3) for each Zone.
3. Nomination form duly proposed and seconded must reach the registered office of the Federation on or before 7th December, 2011 (Wednesday) before 6.00 p.m. or may be personally tendered to Chief Election Officer Shri P. C. Joshi at Ranchi before 12.00 noon on 9th December, 2011.
4. Candidate may withdraw the nomination on or before 9th December, 2011 (Friday) before actual commencement of Election process.
5. As per clause 10(3) of the constitution of the Federation, the Chairman of the respective zone shall be ex-officio member of the Executive Committee hence Chairman elect is not required to file the nomination for the National Executive Committee. A special request is hereby made to all the zones to hold the election of respective zone on or before 26th November, 2011 and convey the result to head office through e-mail followed by dispatch through speed post at the earliest.
6. As per the membership of respective zones as on 15th September, 2011 maximum number of candidates who can be elected as per rule 7(3) of the constitution are as under:-

<b>Zones</b>	<b>Maximum to be elected</b>	<b>Members as on 7-9-2011</b>
Western	13	1,636
Eastern	08	953
Southern	06	772
Central	06	747
Northern	07	851
Total	40	4,959

7. As per Rule 10, clause 6 of the constitution of the Federation, a member who is more than 5 years in practice and who has been a member of the Federation for at least two years can only file the nomination.

8. At the meeting held on 1-10-2005 at Mumbai it was decided unanimously that notice for Extraordinary General Meeting be published in the journal of the AIFTP or AIFTP Times as contemplated under rule 9 clause 3. Hence, no separate notice will be issued.
9. The National Executive Committee Meeting will be held once in three months at different places in the country, along with two days' Conference. The Executive Committee Members have to bear personally the expenses of travelling, stay and delegate fees of the Conference and also devote time for the welfare of the Federation. Persons of integrity and who can afford to spend time and money for the welfare of the profession are only requested to file the nomination.
10. The National Executive at its first meeting after election shall elect from amongst its members the following office bearers for two calendar years. (Rule 10 Clause 4 read with clause 6).
  1. **One President**
  2. **One Deputy President**
  3. **Five Vice Presidents (one from each zone)**
  4. **One Secretary General**
  5. **One Hon. Treasurer and**
  6. **Five Hon. Joint Secretaries (one from each zone)**
11. For further clarification the members may contact the Secretary General, Chairman of respective zone or Registered Office.
12. Nomination form are also available in our website. i.e. [www.aiftponline.org](http://www.aiftponline.org).
13. At the last National Executive Committee Meeting held at Mumbai on 17th June, 2011, Shri P. C. Joshi was appointed as the Chief Election Officer.
14. The Nomination Forms would be scrutinized by the aforesaid officer and conduct the election if warranted at Ranchi at the time of EGM.

**Note: All Zonal Chairmen are requested to hold the election of respective zones before 26th November, 2011.**

## **NOTICE OF EXTRAORDINARY GENERAL MEETING OF AIFTP (WESTERN ZONE)**

Dear Members,

An Extraordinary General Meeting of the AIFTP (Western Zone) will be held on Friday, 25th November, 2011 at 6.00 p.m. at 215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020 to transact the following:-

### **A G E N D A**

1. To approve the minutes of the AGM held on 28th June, 2011.
2. To announce the names of 11 members elected to the Managing Committee of the Western Zone for the term 1-1-2012 to 31-12-2013.
3. To receive suggestions from the members to increase the membership and better services to the members.
4. To do any other matter with the permission of chair.

For All India Federation of Tax Practitioners (Western Zone)

**Chirag S. Parekh & Avinash Lalwani**

*Hon. Jt. Secretaries*

12-10-2011

### **NOTES**

1. Members are requested to send the nomination forms duly proposed and seconded on or before Tuesday, 15th November, 2011 before 6.00 p.m. at the Federation's Office stated above. The last date for withdrawal of nomination is on or before Thursday, 24th November, 2011.
2. Only members of two years standing of the Zone are eligible to file the nomination.
3. As per the resolution passed at the AGM held on 1st October, 2005 at Mumbai the notice published in the AIFTP Times may be treated as notice and hence, no separate notice will be issued to member.
4. Election will be held, if necessary, from 4.00 p.m. to 6.00 p.m. on Friday, 25th November, 2011 at 215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020.
5. For further details please contact the office bearers or the office of the Federation at Rewa Chambers.
6. The nomination form has been hosted on our website i.e. [www.aiftponline.org](http://www.aiftponline.org). Members are requested to download the same or collect hard copy from Federation's office.

## **NOTICE OF EXTRAORDINARY GENERAL MEETING OF AIFTP (CENTRAL ZONE)**

Notice is hereby given that the Extraordinary General Meeting of the Members of CZ of AIFTP will be held at Hotel Mapple Abhay Days, Paota, Jodhpur on Thursday, the 24th November, 2011 at 1.00 p.m. sharp.

### **A G E N D A**

1. Approve the minutes of AGM held on 30th June, 2011.
2. Announce the name of 20 members elected to the Managing Committee of the Central Zone for the term 1-1-2011 to 31-12-2013. And thereafter to elect office bearers for the term 2012 & 2013 amongst the elected members. And particulars of posts of Office Bearers:-
  1. Chairman..... 1 (One Post)
  2. Vice Chairman..... 3 (Three Posts)
  3. Secretary..... 1 (One Post)
  4. Treasurer..... 1 (One Post)
  5. Jt. Secretary..... 1 (One Post)
3. Receive suggestions from the members to increase the membership and better services to the members.
4. Felicitations of Member who has made valuable contribution in the success of Conference in Zone during the year 2010 & 2011, increase in number of members & activity in zone.
5. To transact any other business with the permission of Chair.

### **Notes:**

1. Members are requested to send the nomination forms duly proposed and seconded on or before 16th November, 2011 to AIFTP Central Zone Office, at 57-58, Manji Ka Hatha, Paota, Jodhpur – 342 010. Tel. (O) 0291 3267194, 2555842, E-mail: chopraassoc@gmail.com. The last date for withdrawal of nomination is on or before Monday, 21st November 2011.
2. Members present in the General Body Meeting shall elect 20 Members. The elected Members will then elect office bearers as noted above amongst themselves.
3. As per the resolution passed at the AGM held on 30th June, 2011 at Mumbai the notice published in the AIFTP Times may be treated as notice and hence, no separate notice will be issued to member.
4. The nomination form has been hosted on our website i.e., [www.aiftp.org.in.com](http://www.aiftp.org.in.com). Members are requested to download the same or collect hard copy from Federation's Office.

24th October, 2011

**D.C. Mali**  
*Secretary [CZ], Jodhpur*

## **NOTICE OF EXTRAORDINARY GENERAL MEETING OF AIFTP (EASTERN ZONE)**

Notice is hereby given to all members of East Zone that an extra ordinary general body meeting of the All India Federation of Tax Practitioners (E.Z.) will be held on Saturday, the 5th day of November, 2011 at Conference Room of Calcutta Chamber of Commerce, 18/H, Park Street, Kolkata – 700 071 at 3-30 P.M. to transact the following Agenda:-

1. To elect the Members of Managing Committee of East Zone for the term 2012-13.
2. To elect the Officer Bearers for the term 2012-13.
3. The Members interested to join as Members of the Managing Committee for the term 2012-13 are requested to file their nomination on or before 2nd November, 2011 before the Secretary (E.Z.) and/or Chairman (E.Z.). The Nomination Form may kindly be downloaded from our Website – [www.aiftpeast.org](http://www.aiftpeast.org).
4. Date of scrutiny of Nomination Paper on 3rd November, 2011.
5. Any member willing to withdraw his Nomination Paper should withdraw it before 4th November, 2011.
6. Total 35 members will be elected to the Managing Committee.
7. Mr. R.D. Sharma is appointed as Election Officer.

17-10-2011

**C. K. Chatterjee**  
*Zonal Secretary [EZ]*

## NOTICE OF EXTRAORDINARY GENERAL MEETING OF AIFTP (NORTHERN ZONE)

The Extraordinary General Meeting of the All India Federation of Tax Practitioners (Northern Zone) will be held on Friday, 25th November, 2011 at 4:30 p.m. at Sales Tax Bar Association, IInd Floor, Department of Trade & Taxes Building, IP Marg, New Delhi.

The agenda of the meeting will be as follows :-

1. Election of the Managing Committee for the years 2012 and 2013 for the following :
  - i) Zonal Chairman 1 (One) Post
  - ii) Zonal Vice Chairman 1 (One) Post
  - iii) Zonal Secretary 1 (One) Post
  - iv) Zonal Treasurer 1 (One) Post
  - v) Zonal Jt. Secretaries 2 (Two) Posts
  - vi) Managing Committee Members 15 (Fifteen)
2. Shri Suresh Agrawal, Advocate will be the Election Officer. His Address is – C/o Sales Tax Bar Association, IInd Floor, Department of Trade & Taxes Building, IP Marg, New Delhi.

### PROGRAMME

21-11-2011 : Last date for receipt of Nomination Paper by Election Officer.

22-11-2011 : Scrutiny of Nomination Paper by Election Officer at Sales Tax Bar Association at 3 PM

23-11-2011 : Last date for the withdrawal of Nomination Paper.

25-11-2011 : Election.

3. It will be greatly appreciated if members from different regions of Northern Zone come forward for serving on the Managing Committee.
4. This is issued with the approval of the Chairman of the Northern Zone.

**D. K. Gandhi & Sanjay Sharma**  
Hon. Secretaries

Date : 24-10-2011

**The nomination form has been hosted on our website; [www.aiftponline.org](http://www.aiftponline.org)**

## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Bihar Income Tax Bar Association.

**President** : Shri Krishna Nandan Prasad  
**Vice Presidents** : Shri Nitish Prasad Sinha, Shri Kamleshwar Prasad Srivastava,  
Shri Desh Bandhu Gupta  
**Treasurer** : Shri Jagadish Kumar  
**General Secretary** : Shri Ajay Kumar Rastogi  
**Jt. Secretaries** : Shri Rajeshkumar Varma, Shri Dwijendra Nath Chaturvedi,  
Shri Sanjeev Anwar  
**Asst. Secretaries** : Shri Kamlesh Kumar Saha, Shri Ashish Prasad, Shri Satyendra Kumar Roy

Hearty Congratulations to the newly elected office bearers of The Gujarat Sales Tax Bar Association for the year 2011-12.

**President** : Shri Nigam K. Shah  
**Vice President** : Shri Sanjay R. Sheth  
**Hon. Secretaries** : CA Priyam R. Shah & Shri Pankaj R. Patel  
**Hon. Treasurer** : Shri Jayesh J. Shah

Hearty Congratulations to the newly elected office bearers of Bhavnagar Income Tax Bar Association for the period 2011-14.

**President** : Bharat L. Sheth  
**Vice President** : Ashwi L. Patel  
**Secretaries** : Hitesh N. Rajyaguru & Bharat J. Dave  
**Treasurer** : Paresh K. Bhatt

**We wish them all the success.**



**DIRECT TAXES**

**Ajay R. Singh, Paras Savla, Rahul Hakani & Renu Choudhari**  
Advocates, KSA Legal

**HIGH COURTS**

**1. S. 271(1)(c) : Penalty – Inaccurate Particulars of Income – No penalty without AO's finding on "Inaccurate Particulars"**

Where there is no finding by the Assessing Officer that the assessee furnished inaccurate particulars and that its explanation was not *bona fide*, the imposition of penalty u/s 271(1)(c) was a "complete non-starter". A mere erroneous claim made by an assessee, though under a *bona fide* belief that, it was a claim which was maintainable in law cannot lead to an imposition of penalty. The claim for deduction was made in a bona fide manner and the information with respect to the claims was provided in the return and documents appended thereto. Accordingly, there is no furnishing of "inaccurate particulars". Making of an incorrect claim for expenditure does not constitute furnishing of inaccurate particulars of income.

*CIT vs. Mahanagar Telephone Nigam Ltd. (High Court) (Delhi) (www.itatonline.org)*

**2. S. 45 : Capital gain – Investment in shares – High volume & short holding period – Shares gain to be considered STCG**

In the instant case the Tribunal recorded the finding that in a number of cases the assessee had held the LTCG shares for more than 10 years and that the purchase and sale of shares within a period of one year had been offered as STCG. The same was accepted in the preceding assessment year. It was held that it is open to an assessee to trade in the shares and also to invest in shares. When shares are held as investment, the income arising on sale of those shares is assessable as LTCG/STCG. Accordingly, the decision of the Tribunal in holding that the income arising on sale of shares held as investment were liable to be assessed as LTCG/STCG cannot be faulted.

*CIT vs. Naishadh V. Vachharajani (High Court) (Bombay) (www.itatonline.org)*

**3. S. 147 : Reassessment : Assessing Officer raised specific & pointed queries in S. 143(3) assessment – Assessing Officer cannot be said to have formed any opinion if explicit opinion not recorded**

The question of change of opinion arises when the Assessing Officer forms an opinion and decides not to make an addition and holds that the assessee is correct. Here, though the Assessing Officer had asked specific and pointed queries there was no discussion, ground or reason why addition was not made inspite of the assessee's failure to furnish confirmation and details to that extent. The argument that when the assessment order does not record any explicit opinion on the aspects now sought to be examined, it must be presumed that

those aspects were present to the mind of the Assessing Officer and had been held in favour of the assessee is too far-fetched a proposition to merit acceptance.

The term "failure" on the part of the assessee is not restricted only to the income-tax return but extends also to the assessment proceedings. If the assessee does not disclose or furnish to the AO complete and correct information and details it is required and under an obligation to disclose, there is a failure on its part.

*Dalmia Pvt. Ltd. vs. CIT (High Court) (Delhi) (www.itatonline.org)*

**4. S. 275(1)(a) : Penalty – Bar of limitation on imposition – Limitation period not curbed by proviso**

The period of six months provided for imposition of penalty under section 275(1)(a) starts running after the successive appeals from an assessment order have been finally decided by the CIT(A) or the ITAT. The proviso to section 275(1)(a) extends the period for imposing penalty from six months to one year of the receipt of the CIT(A)'s order after 1-6-2003. The proviso carves out an exception from the main section inasmuch as in cases where no appeal is filed before the ITAT the AO must impose penalty within a period of one year of the date of receipt of the CIT(A)'s order. A proviso is merely a subsidiary to the main section and must be construed harmoniously with the main provision. The proviso to section 275(1)(a) does not nullify the availability to the AO of the period of limitation of six months from the end of the month when the order of the ITAT is received.

*CIT vs. Mohir Investment & Trading Co. (High Court) (Delhi) (www.itatonline.org)*

**TRIBUNALS**

**5. S. 14A : Business expenditure – Exempted income – No nexus between investment in tax-free securities & borrowed funds – No disallowance to made – S. 14A cannot exceed exempt income**

In A.Y. 2007-08, the assessee received dividend of in respect of investment in shares made in earlier years. No investments were made during the year. It was claimed that the investment in the earlier years was made out of reserves & surplus and that there was no expenditure incurred during the year to earn the dividend. The AO held that as in the earlier years, the assessee had borrowed funds, section 14A applied. It was held that if there is no nexus between borrowed funds and investments made in purchase of shares, disallowance under section 14A is not warranted.

*ACIT vs. Punjab State Co-op & Mktg. (ITAT) (Chandigarh) (www.itatonline.org)*

**6. S. 92C : Avoidance of tax – Transfer Pricing & Sale of IPRs – Important Principles of Law explained**

There is nothing in section 92CA that requires the Assessing Officer to first form a "considered opinion" before making a reference to the TPO. It is sufficient if he forms a *prima facie* opinion that it is necessary and expedient to make such a reference. The making of the reference is a step in the collection of material for making the assessment and does not visit the assessee with civil consequences. There is a safeguard of seeking prior approval of the CIT. Moreover, by virtue of CBDT's Instruction No. 3 of 2003 dated 20-5-2003 it is mandatory for the Assessing Officer to refer cases with aggregate value of international transactions more than ₹ 5 crores to the TPO (Sony India 288 ITR 52 (Delhi) & Ranbaxy Laboratories 299 ITR 175 (AT) (Delhi) followed). The argument that the "Excess Earning Method" adopted by the TPO is not a prescribed method is not acceptable. A sale of IPR is not a routine transaction involving regular purchase and sale. There are no comparables available. The "Excess Earning Method" is an established method of valuation which is upheld by the U.S Courts in the context of software products. The "Excess Earning Method" method supplements the CUP method and is used to arrive at the CUP price i.e. the price at which the assessee would have sold in an uncontrolled condition (method explained, Intel Asia Electronics Inc followed). *Tally Solutions Pvt. Ltd. vs. Dy. CIT (ITAT) (Bengaluru)* ([www.itatonline.org](http://www.itatonline.org))

**7. S. 145 : Method of Accounting – Despite section 209(3) of the Company's Act, company can follow cash system for tax purposes**

Though as per section 209(3) of the Company's Act, a company is obliged to follow the mercantile system and that its "regular method" for purposes of section 145. It was held that the assessee has regularly employed the cash system of accounting in recording its day-to-day business transactions. It is not a case where the assessee has been maintaining its accounts of day-to-day business under the mercantile system of accounting and thereafter prepares accounts in accordance with cash system of accounting for income tax purposes. Section 209(3) of the Companies Act, 1956 does not override section 145 of the Income-tax Act. There was also no valid basis for the Assessing Officer action in rejecting the books of account and system of accounting followed by the assessee. Further, since the department has accepted the assessee's system for the past several years, the principles of consistency apply and there should be finality and certainty in litigation in the absence of fresh facts to show that the assessee's system of accounting is arbitrary or perverse (*Amarpali Mercantile 45 ITD 386 (Delhi) distinguished, Chennai Finance 81 ITD 7 (Hyd.) followed*).

*Dy. CIT vs. Stup Consultants Pvt. Ltd. (ITAT) (Mum.)* ([www.itatonline.org](http://www.itatonline.org))



## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Tax Practitioners' Association, Indore for the year 2011-13.

<b>President</b>	:	CA S. N. Goyal
<b>Vice President</b>	:	Shri Suresh N. Ramnani
<b>Secretary</b>	:	CA. Hitesh J. Mehta
<b>Secretary – Comm. Tax</b>	:	CA. Shailendra Porwal
<b>Joint Secretary</b>	:	Shri R. S. Goyal
<b>Treasurer</b>	:	Advocate Rajesh Joshi

### APPEAL TO MEMBERS

Dear Members,

The journal has become monthly from January, 2002. We desire that the journal should become self-sufficient. Hence, we request you to send us advertisements for the journal. The rates of advertisement are as under:

1. Quarter Page	₹	600/-
2. Ordinary Half Page	₹	1,000/-
3. Ordinary Full Page	₹	2,000/-
4. Second and Third Cover Page	₹	2,500/-
5. Fourth Cover Page – Three fourth page (in four colour)	₹	3,500/-

**J. K. RANKA**

The rate will be up to October, 2011

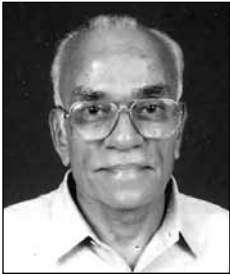
Secretary General

### Membership of AIFTP as on 20-10-2011

#### Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	726	22	3	751
Eastern	2	932	33	3	970
Northern	0	836	17	0	853
Southern	0	758	13	3	774
Western	3	1590	32	14	1639
<b>Total</b>	<b>5</b>	<b>4842</b>	<b>117</b>	<b>23</b>	<b>4987</b>

## PERPETUAL PROXIMITY



With heavy heart I pen down the news about sad demise of our Founder President **Shri. Narendrabhai C. Mehta** on 30th October, 2011. He had several health problems since Past couple of years but since last three / four months he was completely unaware about the surroundings and at times unable to respond. Born on 26th February, 1924 he left behind apart from his family, large number of professionals as his student in law. Right from college days he was influenced by the Gandhian principles and the philosophy in various fields.

Shri N. C. Mehta was the President of the Sales Tax Practitioners' Association during the initial period of its establishment during the period 1959 to 1961. He was instrumental to draft the aims and objects of the said Association. He was the first editor of the Sales Tax Review which he started in the

beginning in cyclostyled form. He was also a regular column writer to the then Popular Gujarati Weekly 'Vyapar' as well as 'Economic Times'. He was also a regular Article contributor to the monthly magazines like Sales Tax Review, Sales Tax Journal and other similar magazines published from various parts of the country.

In each of his article, he shared his expertise knowledge and long experience as a professional in the true sense. He used to put up his case before the tribunal in great details supported by statements meticulously prepared by his office under his guidance. As a young student of law I used to watch his method of presentation before the tribunal, of first marshalling the facts and then applying the ratio of applicable precedents and the provisions of law. His manner of presentation had everlasting effect on juniors like me. I still cherish those days when he used to argue the matter for hours together fearlessly without any hesitation with the sole object of attaining justice for his client.

As a tribute to such a modest human being a book, containing all his Articles would soon be released. The book would contain many thought provoking articles as a source of education, revelation and inspiration to all of us. He used to be firm about his views on the complexity created by law makers in the name of achieving simplicity. He also commented on judgments as and when he found them to be of controversial nature for the purpose of guiding the others who may have been affected by such pronouncements.

With a view to create a common platform for all classes of practitioners on all India basis, he took active interest in formation of All India Federation of Tax Practitioners and nurtured it by heading the Federation during the long period from 1976 to 1983. Even thereafter he used to attend conferences all over the country so as to give benefit of his knowledge to younger generation. As a member of the Sales Tax Advisory Committee constituted by the State of Maharashtra he suggested quite many useful amendments in the law under consideration.

His book in Gujarati on the provisions of Bombay Sales Tax Act, 1953 and the Central Sales Tax Act, 1956 are still being preserved and referred to by many readers, in the library at various places. His views on the multifaceted dragon of corruption were too well known. In fact when Shri. Heble was the Commissioner, a hue and cry was created by his comments on corruption in the column "current notes" that lead to the Commissioner naming all tax consultants as hirelings of tax evaders. Ultimately the then Finance Minister Shri. S. K. Wankhede had to intervene in the matter.

The Place wherefrom one comes is unknown, the place for which one leaves is certainly unknowable. The mystery as regards heaven or hell, which is dignifiedly referred to as the Divine Abode, does persist but no human being encompassed with worldly cobweb and playing eternal juvenile, would ever think of the day; whether ready to depart or seeking extension on medical ground, on earth, would be able to save egocentric physical existence for a moment. If this eternal truth is imbibed, whichever the faith one belongs, would think of harmonious living before departure for perpetual proximity.

To such a great personality we all salute with reverence and a prayer to God Almighty to bestow eternal peace to the departed soul and enough strength to his family to withstand the great loss. We all should take the incident as part of our life remembering that one day each one of us has to merge into destiny's dwelling dust and ash never to return but leaving behind the fragrance of good work accomplished during the life time.

— P. C. Joshi, Past President

**ONE DAY NATIONAL SEMINAR ON TAXATION**

A full day seminar on Taxation is organised by All India Federation of Tax Practitioners – Southern Zone jointly with Institute of Chartered Accountants of India (Trivandrum Branch) on Saturday, 17th December, 2011 at Hotel SP Grand Days, Panavila, Trivandrum from 8.30 a.m. to 5.30 p.m. The theme of the conference is "**Emerging Trends in Taxation**".

Topics and Speakers are as under:-

Topics	Speaker
Real Estate – Recent Development in Direct Taxes	CA Ramnath, Coimbatore
Transfer Pricing Regulations – Basic Law & Issues	CA P. V. S. S. Prasad, Hyderabad
Service Tax – Issues in Compliance in Point to Taxation Rules	CA Veeramani, Kochi
Business Deductions – Income Tax – Recent Developments	CA K. C. Devdas, Hyderabad

**For Further details, please contact:-**

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CA A. Retnakumar, Vice Chairman, AIFTP (SZ) – 09447153745  
CA Santhosh Cherian, Chairman, Trivandrum Branch of ICAI – 09846106228



## Obituary

One of our respected and senior member of AIFTP, **Shri Mahendra H. Gami**, whose soul has left for heavenly abode on 22nd August, 2011 at the age of 83 years at Mumbai. He was Past Editor-in-Chief of AIFTP Journal for the year 2003 to 2005 and he was also the Past President of The Sales Tax Tribunal Bar Association.

We pray almighty to grant eternal peace to the departed soul and strength and courage to his family to bear this great loss.

*Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.*

**Associate Editors of AIFTP Times : Mr. Kishor Vanjara & Mr. Deepak R. Shah**

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