

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 6 – No. 6 • June 2015

FORTHCOMING PROGRAMMES	Date & Month	Programme	Place
	9-5-2015 to 4-7-2015	Workshop on MVAT Act, Service Tax & Allied Laws	Mumbai
	13-6-2015	National Executive Committee Meeting	Bengaluru
	13, 14-6-2015	National Tax Conference (SZ)	Bengaluru
	11-7-2015	ITAT Bar Associations' Co-ordination Committee Meeting	Ahmedabad
	11-7-2015	National Executive Committee Meeting	Ahmedabad
	11, 12-7-2015	National Tax Conference (WZ)	Ahmedabad
	7, 8-8-2015	Two Day Seminar on Real Estate Development	Mumbai

AIFTP JOURNAL SUBSCRIPTION 2015-16

Dear Members,

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and it is also a source of information for updating our subscribers with the latest developments on Direct and Indirect Taxes.

The unique feature of our Journal is that every quarter, we publish the gist of important case laws reported in more than 30 tax magazines. We publish opinions of eminent professionals, thought provoking speeches of Hon'ble Judges of Apex Court and High Courts, important articles on Direct and Indirect Taxes, articles on Wealth Management and answers by eminent professionals on various controversial issues. We are sure that in the era of information technology, our journal would definitely help you to update your knowledge on latest case laws and development of law.

Please note that AIFTP Journal subscription for the year 1st April, 2015 to 31st March, 2016 was due for payment on 31st April, 2015. However, the due date is extended upto 30th June, 2015. Members who have not paid subscription is requested to make the payment on or before 30-6-2015.

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JANAK VAGHANI

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3. An early payment of the subscription would be highly appreciated.
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FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

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Workshop on MVAT Act, Service Tax & Allied Laws

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)
Jointly with
BCAS, CTC, MCTC, STPAM & WIRC OF ICAI

The “Workshop on MVAT Act, Service Tax & Allied Laws” jointly with BCAS, CTC, MCTC, STPAM and WIRC of ICAI which has commenced on 18th April, 2015 & which will end on 11th July, 2015.

The object of Workshop is to share the essence of professional experience and expertise of the faculties which they have gained over the years. Here, the Delegates will get an opportunity to gain knowledge and wisdom by interacting with seniors.

The topics selected for Workshop are Issue Based and will cover MVAT Act, 2002, CST Act, 1956, Service tax provisions and introduction to GST. These topics are of immense importance and will be of enormous help and use to Professionals practicing in Indirect Taxes.

The Scheduled List containing the dates, topics, and names of faculties is given herein below (Subject to confirmation and availability). “Jugalbandi Lectures” have been arranged on topics where both VAT & Service Tax provisions are applicable.

You are requested to enrol at the earliest to enable us to make proper arrangement.

Vipul Joshi
Chairman, AIFTP (WZ)

Pravin R. Shah
Secretary, AIFTP (WZ)

Timing	For Single Lecture – 2.30 pm to 5.30 pm & Jugalbandi lecture – 2.00 pm to 5.30 pm	
Venue	STPAM Library Hall, 1st Floor, R.No. 104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010.	
(Saturdays) Date	Subject	Speaker
6-6-2015	Issues in Interest, Penalties and Show Cause Notices under MVAT and CST Acts.	Shri Ashvin Acharya, Adv.
	Issues in Interest, Penalties and Show Cause Notices under Service Tax.	CA. Jayesh Gogri
13-6-2015	Issues in Definition of Services, Exempt & Declared Services.	CA. Sunil Gabhawalla
	Issues in Valuation of Services, Abatement & Reverse Charge Mechanism.	CA. Ashit Shah
20-6-2015	Issues in Refunds, Audits, Assessments under MVAT and CST Acts.	Shri C B Thakar, Advocate
27-6-2015	Issues in CENVAT Credit Rules under Service Tax	CA. Naresh Sheth
4-7-2015	Constitutional amendments & Overview of GST Act	Eminent Speaker
	Interstate Transactions under GST	Eminent Speaker
11-7-2015	Issues in Place of Provision of Service Rules, 2012	CA. Girish Raman
	Issues in Point of Taxation Rules, 2011	CA. Rajiv Luthia

Congratulations

Hearty Congratulations to the newly elected office bearers of the Chartered Accountants Association, Ahmedabad for the year 2015-16.

President : CA Yamal A. Vyas
Vice President : CA Raju C. Shah
Hon. Secretaries : CA Nirav R. Choksi • CA Dilip U. Jodhani
 We wish them all success.

“Those who are not getting AIFTP Times, the same can be downloaded from our website

i.e. www.aiftponline.org”

TWO DAY CONFERENCE

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS – SZ (AIFTP-SZ)
Jointly with
**BANGALORE BRANCH OF SIRC OF ICAI &
KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (KSCAA)**
on Saturday, 13th & Sunday, 14th of June, 2015
at Hotel Le-Meridian, Sankey Road, Bengaluru

PROGRAMME

DAY 1 – 13TH JUNE, 2015

- 09:45 AM INAUGURAL SESSION
Inauguration by
Chief Guest : Hon'ble Shri D. V. Sadananda Gowda, Hon'ble Minister for Law & Justice,
Govt. of India
Guest of Honour: Shri F. R. Singhvi
- 11:30 AM **SESSION I** – Gearing up for GST
CA. Madhukar Hiregange, Bengaluru
Chairperson: Dr. Anita Sumanth, Advocate, Chennai
- 01:15 PM LUNCH
- 02:15 PM **SESSION II** – Important Amendment in Service Tax
Mr. K. Vaitheeswaran, Advocate, Chennai*
Chairman: Mr. Bharat Ji Agrawal, Sr. Advocate, Allahabad
- 04:00 PM **SESSION III** – Companies Act, 2013 – Important provisions for Practitioners
CA. Gururaj Acharya, Bengaluru
Chairman: Eminent Faculty

DAY 2 – 14TH JUNE 2015

- 09:00 AM SPIRITUAL SESSION
- 10:15 AM **SESSION IV** – Direct Taxes – Finance Act, 2015 – Discussion on Provisions relating to – TDS &
Place of effective management
CA P.V.S.S. Prasad, Hyderabad
Chairman: Jnanasagara CA. S. Krishnaswamy, Bengaluru
- 12:00 noon **SESSION V** – Labour Laws for practising professionals
Mr. B. C. Prabhakar, Advocate, Bengaluru
Chairman: Eminent Faculty
- 01:15 PM LUNCH
- 02:15 PM **SESSION VI** – Panel discussion on Works Contract (VAT/Service Tax/Income Tax)
CA. Raghuraman, Advocate, Bengaluru, CA. K. K. Chythanya, Advocate, Bengaluru
CA. Vishnumurthy, Bengaluru
Moderator: CA. S. Ramasubramanian, Bengaluru
- 04:30 PM VALEDICTORY SESSION

DELEGATE FEE: Members – ₹ 3,000/- inclusive of Service Tax

Mode of Payment: Cash/ Cheque in favour of “Bangalore Branch of SIRC of ICAI” payable at Bengaluru

For further details please contact Ms. Geetanjali. D., Tel : 080-3056 3500 / 3513 |

Email: blregistrations@icai.org Website: www.bangaloreicai.org

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AIFTP South Zone

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B'lore Br. of SIRC of ICAI

CA. Raveendra S. Kore
President
KSCAA

CA. D. R. Venkatesh
Convenor

CA. T. R. Rajesh Kumar
Co-Convenor

* Confirmation awaited

TWO DAY NATIONAL TAX CONFERENCE AT AHMEDABAD

Organised by
ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)
Jointly with
**ALL GUJARAT FEDERATION OF TAX CONSULTANTS, AHMEDABAD &
OTHER LOCAL ASSOCIATIONS**

Venue : J. B. Auditorium, Ahmedabad Management Association, Near IIM, Panjrapole, Ahmedabad

Dates : 11th & 12th July, 2015

Delegate Fees: Members ₹ 2,000/- & Spouse ₹ 1,500/-

PROGRAMME

11TH JULY, 2015 (SATURDAY)

10.00 am to 11.00 am	Inaugural Session
Inauguration by :	Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court of India,
Guests of Honour :	Hon'ble Mr. Justice V. M. Sahai, Acting Chief Justice, High Court of Gujarat Hon'ble Mr. Justice Dev Darshan Sud (Retd.), President, ITAT
11.00 am to 11.15 am	Break
11.15 am to 1.15 pm	Panel Discussion on Tax Reforms Chairperson : Hon'ble Smt. Rani Singh Nair, IRS Member (L&G) CBDT Panellists : Dr. K. Shivaram, Sr. Advocate, Mumbai & Mr. S. R. Wadhwa, Advocate, New Delhi, Co-ordinator and Panellist : Mr. Mukesh Patel, Advocate, Ahmedabad
01.15 pm to 2.15 pm	Lunch Break
2.15 pm to 3.45 pm	First Technical Session on Service Tax Chairman : Mr. Vikram Nankani, Sr. Advocate, Mumbai Subject : Unearthing Settled Principles – After effects of CESTAT judgments Speaker : Mr. Mukul Gupta, Advocate, Ghaziabad Subject : Reverse Charge Mechanism & Finance Act, 2015 Speaker : Mr. Monish Bhalla, Advocate, Ahmedabad
3.45 pm to 4.00 pm	Tea Break
4.00 pm to 5.45 pm	Second Technical Session on Direct Taxes Chairman : Mr. K. H. Kaji, Advocate, Ahmedabad Subject : Taxation of Capital Gains Speaker : Mr. Saurabh Soparkar, Sr. Advocate, Ahmedabad Subject : Disallowance u/s. 14A Speaker : CA. H. Padamchand Khincha, Bengaluru

12TH JULY, 2015 (SUNDAY)

10.00 am to 11.30 am	Third Technical Session on Direct Taxes Chairman : Mr. N. M. Ranka, Sr. Advocate, Jaipur Subject : Revision & Reassessment Speaker : Mr. Ajay Vora, Sr. Advocate, New Delhi Subject : Assessment Proceedings and Recovery Speaker : CA. Ashwin C. Shah, Ahmedabad
11.30 am to 11.45 am	Break
11.45 am to 1.15 pm	Fourth Technical Session on VAT Chairman : Mr. Bharat Ji Agrawal, Sr. Advocate, Allahabad Subject : Disputed Issues of ITC under GVAT Speaker : Mr. Nayan A. Sheth, Advocate, Ahmedabad Subject : Developments under GST Speaker : Mrs. Nikita Badheka, Advocate, Mumbai
1.15 pm to 2.15 pm	Lunch Break

2.15 pm to 3.00 pm	Presentation on Investment Opportunities in Cambodia & Myanmar by Ms. Sophia Sin, Legal Advisor, BNG Legal, Mumbai
3.00 pm to 4.30 pm	Brains' Trust on Direct & Indirect Taxes Chairmen : Mr. S. K. Poddar, Advocate, Ranchi & Mr. P. C. Joshi, Advocate, Mumbai Trustees : Mr. Samir Divetia, Advocate, Ahmedabad Mr. Manish J. Shah, Advocate, Ahmedabad Mr. Rajul K. Patel, Advocate, Ahmedabad Mr. M. L. Patodi, Advocate, Kota Mr. Paresh Dave, Advocate, Ahmedabad
4.30 pm to 5.00 pm	Valedictory Session
5.00 pm	High Tea

PLACES OF VISIT

Ahmedabad Local Sight seeing, Gandhi Ashram, Akshardham, Adalaj Step Well, Kankaria Lake, Siddi Said, Hatheesingh Temple, Sardar Patel Museum, Sarkhej Roja, etc.

ACCOMMODATIONS

PREMIUM ₹ 3,500 – ₹ 4,000 – KARNAVATI CLUB, RAJPATH CLUB, YMCA CLUB, RAMADA, COMFORT INN, RADISSON

COMFORT ₹ 2,000 – ₹ 2,500 – Sarovar Portico, Ambassador, Vice President

ECONOMY ₹ 1,500 – ₹ 2,000 – Hotel Heritage, Nilkanth Group

Payment should be made by Account Payee Cheque in favour of "All India Federation of Tax Practitioners – Western Zone" or "All Gujarat Federation of Tax Consultants, Ahmedabad"

TWO DAYS SEMINAR ON REAL ESTATE DEVELOPMENT

ON 7TH AND 8TH AUGUST, 2015

We are pleased to announce Two Days Seminar on "Real Estate Transactions - Legal, Taxation and Accounting Aspects", organised jointly with The Chamber of Tax Consultants and The Sales Tax Practitioners' Association of Maharashtra.

This is one of the most important and burning topics of today, in view of complexities of such transactions and several recent amendments and court rulings. The focus of the Seminar will be to enlighten the participants about the conceptual understanding, recent developments and controversies as well as to provide solutions thereto, thereby covering various aspects of Real Estate Development. The topics have been selected keeping in mind the day to day needs of legal and tax professionals, apart from the needs of the consumers as well as the industry. The faculty comprises of eminent professionals, who will share their rich knowledge and experience with the participants.

Relevant details of the Seminar are as under:

Days and Dates	: Friday 7th August, 2015 and Saturday 8th August, 2015
Time	: 9.30 am to 5.30 pm.
Venue	: West End Hotel, New Marine Lines, Near Churchgate Station, Next to Bombay Hospital, Mumbai – 400 020
Broad Topics	: <ol style="list-style-type: none"> 1. Basic Concepts of transfer of immovable property (involving Transfer of Property Act, Easements Act, Rent Act), Relevant provisions of MOFA. 2. Concept of FSI, TDR, etc. (involving relevant provisions of BMC Act, DCR, etc.) 3. Legal issues in Redevelopment of Properties, including from the point of view of housing cooperative societies / their members. 4. Relevant provisions of Bombay Stamp Duty Act & Indian Registration Act. 5. Accounting Aspects (including Accounting Standards, Guidance Note, etc.) 6. Issues under VAT 7. Issues under Service Tax 8. Issues under income tax from the perspective of developers/ builders (including section 43 CA, ICDS, etc.) 9. Issues under income tax from the perspective of land owner / flat purchaser / seller (including section 50C, 194 IA, 56 (2), 54, 54F etc.)
Faculties	: Eminent faculty will address the Seminar

Fees : (Including tea, breakfast, lunch on both the days and course material)

For Members : ₹ 3,135/- (Enrolment upto 10th July, 2015) ₹ 3,420/- (Enrolment after 10th July, 2015)

For Non-Members : ₹ 3,705/- (Enrolment upto 10th July, 2015) ₹ 3990/- (Enrolment after 10th July, 2015)

Due to the focus on in-depth discussion, the enrolment is restricted. Interested participants are requested to block these two dates and register at the earliest. Kindly collect the Enrollment Form from AIFTP's office.

DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarda and Ms. Neelam Jadhav
Advocates, KSA Legal Chambers

HIGH COURTS

1. S. 12A : Assessing Officer is certainly empowered to examine nature of expenditure in application of trust and cannot go behind the certificate issued u/s. 12A

Assessee is registered as charitable trust, received IILM Undergraduate Business School, from RKSCIT, Based upon certain remittances made by assessee to RKSCIT, AO held that the assessee was not in fact carrying on charitable activities and therefore, not entitled to the benefit of S. 12A. CIT(A) confirmed order of AO. Tribunal granted relief to assessee on ground that AO was not empowered to comment either on correctness or otherwise of certificate which had been granted u/s. 12A. the honourable ITAT had taken view that whilst AO is certainly empowered to examine nature of expenditure in application of trust, and he cannot go behind the certificate issued u/s. 12A.

CIT v. Ram Kishan Kulwant Rai Charitable Trust (Del)(HC) ITA 1312, 1322/2010 & 16/2013 dated 14-5-2015

2. S. 43B Expl. 3C: Conversion of outstanding interest into a loan does not amount to an “actual payment” of the interest and so deduction for the interest cannot be claimed

Explanation 3C to S. 43B was inserted and it was declared that deduction of any sum, being interest payable under clause (d) of S. 43B of the Act, shall be allowed if such interest has been actually paid and any interest referred to in that clause, which has been converted into a loan or borrowing, shall not be deemed to have been actually paid. Conversion of interest amount into loan would not be deemed to be regarded as actually paid amount within the meaning of Section 43B of the Act. Explanation 3C as it negates the assessee's contention that interest which has been converted into a loan is deemed to be “actually paid”. In light of the insertion of this explanation, which, as mentioned earlier, was not present at the time the impugned order was passed, the assessee cannot claim deduction under Section 43B of the Act.

CIT v. M. M. Aqua Technologies Ltd. (Del.)(HC)
 Source : itatonline.org

TRIBUNALS

3. S. 37(1) : Transport charges cannot be disallowed where the assessee incurred transportation and handling charges wholly and exclusively for the purpose of business

Assessee Company had been trading as suppliers of molasses to various distilleries for manufacture of IMFL (Indian Made Foreign Liquor). Assessee Company paid transportation & handling of the molasses from UP, Haryana irrespective of the distance between the point of origin and the point of destination. AO made disallowance out of transportation & charges. CIT(A) deleted addition, Price structure of molasses was highly fluctuating and was dependent upon various crushing seasons. it was the first year of business of the assessee for supply of molasses, therefore, the assessee was dependent only upon the experienced transporters having specialised tankers for transportation. The Hon'ble ITAT observed and held that assessee company has no infrastructure for supply of molasses to the distilleries. TDS was also deducted and claimed in the returns by all these transporters. AO merely assumed certain facts without bringing any evidence or material against assessee of excessive payments. The assessee company had to procure substantial molasses from U.P. and Haryana in performing its specialised transaction to supply molasses with particular quality. The assessee had paid the amount in question to the transporters/tankers, nothing excessive or unreasonable payments have been paid to any of the transporters. Amount was paid wholly and exclusively for the purpose of business, therefore, mere estimated disallowance on assumption was not justified.

ACIT vs. Superb Agrovet Inds. (P) Ltd. ITA No. 378/Chd/2006 dated 19-5-2015 (Chandigarh)(Trib.)

5. S. 271(1)(c) : Surrender of income after questionnaire – surrender is on condition of no penalty and assessment is based only on surrender and not on evidence, penalty cannot be levied

During the course of scrutiny assessment proceedings, the AO found that the assessee received share application money. In order to buy peace, offer the share application money received as income for A.Y. 2009-10. The AO being not satisfied by the explanation, added income u/s. 69A and also levied

penalty u/s. 271(1)(c). Share application money was surrendered by assessee with a request not to initiate any penalty proceedings. There was no *mala fide* intention on the part of the assessee and the AO had not brought any evidence on record to prove that there was concealment of income. At the time of surrender itself contention of not initiating any penalty proceedings. The surrender of share capital after issue of the notice u/s. 143(2) could not lead to any inference that it was not voluntary. The assessee has offered the amount of share capital for taxation voluntarily. Even surrender of amount by the assessee after receipt of questionnaire could not lead to any inference that it was not voluntary, in the absence of any material on record to suggest that it was bogus or untrue. No concealment was ever detected by the AO, no penalty was imposable. It was categorically observed that penalty should be imposed only when there is some element of deliberate default and not a mere mistake. Explanation of the assessee that he has declared additional income to buy peace of mind and to come out of litigation could be treated as *bona fide*, and therefore levy of penalty u/s. 271(1)(c) was not justified.

Heranba Industries Ltd vs. DCIT ITA No.2292/Mum/2013 dtd. 8-4-2015 before "H" Bench, Mumbai

4. S. 143 (3) : Additions made solely on the basis of AIR information are not sustainable in the eyes of law if the

Revenue has not made any enquires to find out whether the AIR information was correct or not

The addition made by the A.O. on account of interest received on the basis of AIR information. AO asked the assessee to explain, the assessee submitted that it was having no information available with it regarding receipt of such an interest. The AO therefore made the addition on the basis of AIR information. The Ld. CIT(A), observed that the AIR information is generated from the Income-tax software which is directly linked with PAN number of the concerned assessee. Since there was an AIR information and the assessee could not reconcile the said receipts of interest, he therefore held that the addition made by the AO was correct. The Hon'ble ITAT observed and held that addition has been made solely on the basis of AIR information and without any corroborative evidence regarding the receipt of any interest. The assessee has specifically denied the receipt of such an interest income. The Revenue has not made any enquires to find out whether the AIR information was correct or not. It has been held that the additions made solely on the basis of AIR information are not sustainable in the eyes of law. it is for the AO to prove that the assessee has received income as the assessee cannot prove the negative.

M/s. Kroner Investments Limited, ITA No.5125/M/2013 dated 10-4-2015 (Mum)(Trib.)



Announcement

Two Day Tax Conference

Organized by AIFTP (WZ) jointly with MCCA, Pune and WMTA, Pune
at Pune (Saturday, 20th & Sunday, 21st June, 2015)

The conference is postponed due to unavoidable circumstances.
The new dates will be announced in the next AIFTP Times.

ERRATA

1. At page No. 5 of May, 2015 issue of AIFTP Times – MOS Hon'ble Mr. Jashwant Sinha to be read as Mr. Jayant Sinha
2. At page No. 9 of May, 2015 issue of AIFTP Times – Citation of Point No. 3 of High Court is missing, which is as under:-
Nivi Trading Limited vs. UOI WP No. 2314 of 2015 (Bom.) (HC) Source : itatonline.org

VOLUNTEERS FOR DIGESTING THE CASE LAWS FOR AIFTP JOURNAL

We invite our members who desire to digest the case laws for AIFTP Journal to please e-mail us at aiftp@vsnl.com

LIST OF PUBLICATIONS AVAILABLE FOR SALE

Name of Publication	Edition	Rates (₹)		
		Members	Non Members	Courier Charges
Basic questions and answers on FEMA, Non-Resident Taxation, LLP, Allied Laws & Report of Foreign Bank and Financial Accounts	Dec., 2014	200.00	225.00	60.00

- Notes: 1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
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(W.e.f. 15th July, 2013)**

	Particulars	Per Insertion
1.	Quarter page	₹ 1,500/-
2.	Ordinary half page	₹ 2,500/-
3.	Ordinary full page	₹ 5,000/-
4.	Third cover page	₹ 7,500/-
5.	Fourth cover page	₹ 10,000/-
There shall be Discounts on bulk advertisements.		

**Membership of AIFTP
as on 27-5-2015
Life Members**

	Associate	Individual	Association	Corporate	Total
Central	0	806	23	3	832
Eastern	3	1176	35	3	1217
Northern	0	967	17	0	984
Southern	1	925	14	7	947
Western	4	1760	33	18	1815
Total	8	5634	122	31	5795

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

Associate Editor of AIFTP Times : Mr. Deepak R. Shah

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