

# AIFTP TIMES

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*We wish all our members and readers A Happy New Year 2014*

## ELECTION OF NATIONAL EXECUTIVE COMMITTEE AND OFFICE BEARERS

Total 56 nominations were received for the National Executive Committee for the term 2014 & 2015 at the Extraordinary General Meeting held on 25th December, 2013 at Radio Club, Colaba, Mumbai, following 40 members were elected for the term 2014 & 2015.

<b>Sr. Name No.</b>	<b>Zone</b>	<b>Place</b>	<b>Sr. Name No.</b>	<b>Zone</b>	<b>Place</b>
1. Achintya Bhattacharjee	Eastern	Kolkata	21. M. Srinivasa Rao	Southern	Eluru
2. Amit H. Nagarsheth	Western	Vadodara	22. Mehul Gandhi	Western	Ahmedabad
3. Arvind Kumar Mishra	Northern	Allahabad	23. Mitesh Kotecha	Western	Mumbai
4. Ashvin C. Shah	Western	Ahmedabad	24. Mukul Gupta	Northern	Ghaziabad
5. B. N. Mahapatra	Eastern	Bhubaneswar	25. Narayan P. Jain	Eastern	Kolkata
6. Basudev Panda	Eastern	Cuttack	26. Nikita R. Badheka	Western	Mumbai
7. C. K. Chatterjee	Eastern	Kolkata	27. O. P. Shukla	Northern	Varanasi
8. Deepak K. Bapat	Western	Mumbai	28. P. M. Chopra	Central	Jodhpur
9. Dilipkumar Agrawal	Eastern	Siliguri	29. Pankaj Ghiya	Central	Jaipur
10. Dinesh M. Sinha	Northern	Delhi	30. Rajendra Sodani	Central	Ujjain
11. Dr. M. V. K. Moorthy	Southern	Hyderabad	31. Rajesh B. Shah	Western	Vadodara
12. Ganesh N. Purohit	Central	Jabalpur	32. Rajesh Joshi	Central	Indore
13. Harish N. Motiwalla	Western	Mumbai	33. Ritu G. P. Das	Central	Kota
14. Hemendra V. Shah	Southern	Hyderabad	34. S. B. Kabra	Southern	Hyderabad
15. J. D. Nankani	Western	Mumbai	35. S. C. Garg	Eastern	Kolkata
16. Jagbandhu Sahoo	Eastern	Cuttack	36. S. R. Wadhwa	Northern	New Delhi
17. Janak Vaghani	Western	Mumbai	37. Samir Jani	Western	Junagarh
18. K. L. Goyal	Northern	Chandigarh	38. V. Nagendra Prasad	Southern	Hyderabad
19. K. Sankaranarayanan	Southern	Kochi	39. V. P. Gupta	Northern	Delhi
20. Kishor Vanjara	Western	Mumbai	40. Vipul K. Shah	Western	Vadodara

### FOR ANY QUERIES MEMBERS MAY CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
<b>National President</b> — J. D. Nankani, Adv.	022-22841717	22831717	9821034867	jagdish@nankanis.com
<b>Deputy President</b> — Dr. M. V. K. Moorthy, Adv.	040-23228474	23261667	9849004423	mvkmoorthy59@gmail.com
<b>Secretary General</b> — CA. Harish N. Motiwalla	022-22002103	22094331	9819422300	hnmotiwalla.ca@gmail.com
<b>Treasurer</b> — CA. Janak K. Vaghani	022-22821978	-	9324680306	janak.vaghani@gmail.com

## OFFICE BEARERS

At the first meeting of National Executive Committee, the following members were unanimously elected as Officer Bearers for the term 2014 & 2015.

Sr. No.	Name	Place	Designation
1.	Shri J. D. Nankani	Mumbai	National President
2.	Dr. M. V. K. Moorthy	Hyderabad	Dy. President
3.	Shri B. N. Mahapatra	Bhubaneswar	Vice President, Eastern Zone
4.	Shri Kishor Vanjara	Mumbai	Vice President, Western Zone
5.	Shri M. S. Rao	Eluru	Vice President, Southern Zone
6.	Shri Mukul Gupta	Ghaziabad	Vice President, Northern Zone
7.	Shri Pankaj Ghiya	Jaipur	Vice President, Central Zone
8.	Shri Harish N. Motiwalla	Mumbai	Secretary General
9.	Shri Janak Vaghani	Mumbai	Treasurer
10.	Shri O. P. Shukla	Varanasi	Joint Secretary, Northern Zone
11.	Shri Rajesh Joshi	Indore	Joint Secretary, Central Zone
12.	Shri S. B. Kabra	Hyderabad	Joint Secretary, Southern Zone
13.	Shri S. C. Garg	Kolkata	Joint Secretary, Eastern Zone
14.	Shri Samir Jani	Junagarh	Joint Secretary, Western Zone

## REPORT OF ELECTION OF AIFTP (WESTERN ZONE)

In the Extraordinary General Meeting of All India Federation of Tax Practitioners – Western Zone, held on 29th October, 2013 at 6.00 p.m., the following members were declared elected to the Managing Committee of Western Zone for the term 1-1-2014 to 31-12-2015:

Sl. No.	Name	Place	Sl. No.	Name	Place
1.	Shri Ajit Rohira	Mumbai	14.	Shri Jayesh M. Shah	Baroda
2.	Shri Ajit Tiwari	Baroda	15.	Shri K. Gopal	Mumbai
3.	Shri Anil B. Vakharia	Pune	16.	Shri Kishor T. Lulla	Sangli
4.	Shri Ashok L. Sharma	Mumbai	17.	Shri Mitishkumar Modi	Surat
5.	Shri Ashvin A. Acharya	Mumbai	18.	Shri Pravin R. Shah	Mumbai
6.	Shri Avinash Lalwani	Mumbai	19.	Shri Pravin Veera	Mumbai
7.	Shri Bharat M. Swami	Baroda	20.	Shri Santosh Gupta	Nagpur
8.	Shri Chirag S. Parekh	Mumbai	21.	Shri Shashank Dhond	Mumbai
9.	Shri Deepak R. Shah	Mumbai	22.	Shri Suresh U. Keswani	Jalgaon
10.	Shri Hardik P. Marfatia	Mumbai	23.	Shri Tushar P. Joshi	Mumbai
11.	Shri Hemant Save	Mumbai	24.	Shri Vijay N. Kewalramani	Mumbai
12.	Shri Hitendra Upadhyay	Baroda	25.	Shri Vipul B. Joshi	Mumbai
13.	Shri Hitesh R. Shah	Mumbai	26.	Shri Yatin K. Desai	Mumbai

In the 1st Managing Committee meeting of the members held immediately after EGM, the following office Bearers of All India Federation of Tax Practitioners – Western Zone were unanimously elected:-

1. Vipul B. Joshi, Zonal Chairman
2. Chirag S. Parekh, Zonal Vice Chariman
3. Pravin R. Shah, Zonal Secretary
4. K. Gopal, Zonal Jt. Secretary
5. Tushar P. Joshi, Zonal Jt. Secretary
6. Hitesh R. Shah, Zonal Treasurer

## REPORT OF ELECTION OF AIFTP (NORTHERN ZONE)

Extraordinary General Meeting of Northern Zone was held on 22-11-2013 at 5 p.m. at Vyapar Bhawan, New Delhi in which Shri D. M. Sinha, Election Officer conducted election. Total 26 nominations were received for members of Managing Committee against 18 numbers. The nominations received are of following candidates:

<b>Sl. No.</b>	<b>Name</b>	<b>Place</b>	<b>Sl. No.</b>	<b>Name</b>	<b>Place</b>
1	Shri Ajay Kumar Singh	Varanasi	14	Shri Jag Mohan Bansal	Chandigarh
2	Shri Ajay Kumar Goel	Ghaziabad	15	Shri Kashmiri Lal Goel	Chandigarh
3	Shri Ajay Sinha	Ghaziabad	16	Shri Madan Mohan Bhasin	Delhi
4	Shri Alok Jain	Chandigarh	17	Shri Mukul Gupta	Ghaziabad
5	Shri Anirudh Aggarwal	Delhi	18	Shri Narender Kumar Jain	Ghaziabad
6	Shri Anand Kumar Pandey	Varanasi	19	Shri Navin Kumar Garg	Ghaziabad
7	Shri Anil Kumar Shrivastava	Delhi	20	Shri Om Prakash Shukla	Varanasi
8	Shri Anuj Bansal	Delhi	21	Shri Prakash Gupta	Varansi
9	Shri Arvind Kumar Sharma	Ghaziabad	22	Shri R.K. Bhalla	Delhi
10	Shri Arvind Shukla	Varanasi	23	Shri Sandeep Goel	Chandigarh
11	Shri Ashwin Kumar Mittal	Ghaziabad	24	Shri Sanjay Kumar Verma	Varanasi
12	Shri Asm Zafar	Varanasi	25	Shri Sujit Gosh	Delhi
13	Shri Brij Gopal Das Shah	Varanasi	26	Shri Vinod Dhingra	Delhi

Following candidates have withdrawn their nominations:

1	Shri Ajay Kumar Goel	Ghaziabad	5	Shri Jag Mohan Bansal	Chandigarh
2	Shri Anirudh Aggarwal	Delhi	6	Shri Narender Kumar Jain	Ghaziabad
3	Shri Asm Zafar	Varanasi	7	Shri Om Prakash Shukla	Varanasi
4	Shri Brij Gopal Das Shah	Varanasi	8	Shri Sanjay Kumar Verma	Varanasi

Managing Committee elected the following office bearers:

1	Shri Arvind Shukla	Varanasi	Chairman
2	Shri Anil Kumar Shrivastava	Delhi	Vice Chairman
3	Shri Ajay Sinha	Ghaziabad	Secretary
4	Shri Anuj Bansal	Delhi	Joint Secretary
5	Shri Anand Kumar Pandey	Varanasi	Treasurer

## REPORT OF ELECTION OF AIFTP (EASTERN ZONE)

In the Extraordinary General Meeting of All India Federation of Tax Practitioners (Eastern Zone), held on 30th November, 2013 at Kolkata, the following members were declared elected to the Managing Committee of Eastern Zone for the term 1-1-2014 to 31-12-2015:

<b>Sl. No.</b>	<b>Name</b>	<b>Place</b>	<b>Sl. No.</b>	<b>Name</b>	<b>Place</b>
1.	Anand Kumar Pasari	Ranchi	13.	Narendra Prosad	Patna
2.	Apurba Saha	Siliguri	14.	Natabar Mohanty	Bhubaneshwar
3.	Arvind Agarwal	Kolkata	15.	Rabindra Nath Pal	Cuttack
4.	Bajrand Lal Kheria	Kolkata	16.	Ramdeo Kakra	Kolkata
5.	Bibekananda Mohanty	Jajpur	17.	Ramesh Kumar Dhal	Bhubaneshwar
6.	Himandri Mukhopadhyay	Kolkata	18.	Ramniwas Gupta	Jamshedpur
7.	Indu Chatrath	Kolkata	19.	Sandip Choraria	Kolkata
8.	Jagdish Kumar,	Patna	20.	Satish Chandra Sharma	Kolkata
9.	Kamlesh Kumar Saha	Patna	21.	Subhash Chandra Agarwal	Kolkata
10.	Medha Lila Gope	Guwahati	22.	Subhasis Mallik	Dhanbad
11.	Mohit Seth	Cuttack	23.	Suresh Chandra Garg	Kolkata
12.	Nanda Dulal Saha	Kolkata			

Managing Committee elected the following Office Bearers:-

1. Shri Indu Chatrath, Chairman
2. Shri Ramdeo Kakra, Vice Chairman
3. Shri Rabindra Nath Pal, Vice Chairman
4. Shri Anand Pasari, Vice Chairman
5. Shri Jagdish Kumar, Vice Chairman
6. Smt. Medha Lila Gope, Vice Chairperson
7. Shri Nanda Dulal Saha, Hon. Secretary
8. Shri Sandip Choraria, Hon. Jt. Secretary
9. Shri Arvind Agarwal, Hon. Jt. Secretary
10. Shri Satish Chandra Sharma, Hon. Treasurer

Following Members were co-opted:-

1. Shri Aditya Bubna, Kolkata
2. Shri Bishnu Kumar Loharuka, Kolkata
3. Shri Dipak Kumar Bandopadhyay, Kolkata
4. Shri Dilip Kumar Agarwal, Siliguri
5. Smt. Neetu Hawelia, Guwahati
6. Rajendra Kumar Mishra, Ranchi
7. Sandeep Gadodia, Ranchi
8. Satyajit Nanda, Keonjhar
9. Subrata Kumar Sen, Kolkata
10. Vivek Agarwal, Kolkata

### **REPORT OF ELECTION OF AIFTP (SOUTHERN ZONE)**

In the Extraordinary General Meeting of All India Federation of Tax Practitioners – Southern Zone, held on 9th November, 2013 at Hyderabad, the following members were declared elected to the Managing Committee of Southern Zone for the term 1-1-2014 to 31-12-2015:

<i><b>Sl. No. Name</b></i>	<i><b>Place</b></i>	<i><b>Sl. No. Name</b></i>	<i><b>Place</b></i>
1. B. Srinivasa Rao	Hyderabad	17. G. Baskar	Chennai
2. M.V.J.K. Kumar	Hyderabad	18. Dr. Anita Sumanth	Chennai
3. B.V.S. Chalapathi Rao	Vijayawada	19. K. Hyder Vali	Kurnool
4. C. Satyanarayana Gupta	Nellore	20. B. S. Seethapathi Rao	Kakinada
5. R. Sinivasa Rao	Guntur	21. A. Retna Kumar	Trivandrum
6. V. Ganesh Bhujanga Rao	Hyderabad	22. C. Guru Prasad	Nizamabad
7. K.A.S.V. Prasad	Ongole	23. Ganapathi Raj C.	Bangalore
8. C. Sanjeeva Rao	Visakhapatnam	24. P. K. Prabhakar Rao	Vijayawada
9. G. Bhima Sankar	Visakhapatnam	25. K. V. Ramana Reddy	Hyderabad
10. D. Amarnath	Hyderabad	26. Najmal Banu Karambayil	Calicut, Kerala
11. P. Lakshmi Narayana	Palakol	27. S. Padmanabhan	Trivandrum
12. G. Pavan Kumar	Hyderabad	28. V. Ganapathi	Nagar Coil, Tamilnadu
13. B. C. Guru Swamy	Bellary	29. Bala Gopal Ramamohan	Kochi
14. Srinivasa Rao Siddamsetty	Hyderabad	30. P. V. Ravi Kumar	Chennai
15. B. Phani Raja Kumar	Narsaraopet	31. M. Amarender	Hyderabad
16. K. Narsing Rao	Hyderabad		

The election results were declared at the National Executive Committee Meeting held at Mumbai on 25-12-2013 as follows:-

Dr. Anita Sumanth      Chairperson  
Mr. Retna Kumar      Treasurer  
Mr. G. Baskar      Secretary

The chairperson was authorised to nominate other office bearers and members to be co-opted to the Managing Committee.

## REPORT OF ELECTION OF AIFTP (CENTRAL ZONE)

Extraordinary General Meeting of AIFTP Central Zone was held on 24th November, 2013 Sunday at 4.30 p.m. at Hotel Mando, Paota Jodhpur for the term 2014 and 2015. 27 valid nominations were received of the following candidates, out of which, 3 nominations were withdrawn on or before 20th November, 2013.

List of candidates declared elected and withdrawn are as under:

Sr No.	Name	Place	Whether Elected or Withdrawn
1.	Jagdish Mal Lodha	Jodhpur	Elected
2.	Tansukh Lal Jain	Jodhpur	Elected
3.	Shrawan Kumar Kejriwal	Jhunjhunu	Elected
4.	Ashok Jangid	Jodhpur	Elected
5.	Rajendra Singh Jain	Jodhpur	Elected
6.	Abhishek Ajmera	Ajmer	Elected
7.	Milind Vijay Vargiya	Kota	Elected
8.	Neeraj Jain	Kota	Elected
9.	Rajesh Mehta	Indore	Elected
10.	Komal Singh Bantiya	Bhopal	Elected
11.	Sudhir Bhansali	Jaipur	Elected
12.	Inder Mal Sethia	Chittorgarh	Elected
13.	Suresh Chandra Ojha	Bikaner	Elected
14.	Dr. S. L. Jain	Jaipur	Elected
15.	D. S. Bohra	Bikaner	Elected
16.	Mahendra Dave	Pali-Marwar	Elected
17.	Paras Chhajed	Rajnandgaon (C.G.)	Elected
18.	Dilip G. Patni	Ratlam (M.P.)	Elected
19.	Prem Chand Batna	Jaipur	Elected
20.	M. M. Sharma	Kota	Elected
21.	M. L. Tiwari	Jaisalmer	Elected
22.	Dr. Nirmal Kunawat	Udaipur	Elected
23.	Mahesh Gahlot	Jodhpur	Elected
24.	Om Prakash Bantiya	Balotra	Elected
25.	Deep Chand Mali	Jodhpur	Withdrawn
26.	Hari Shankar Tak	Jodhpur	Withdrawn
27.	Bhanwar Lal Bissa	Jodhpur	Withdrawn

After the election of 24 Managing Committee members, elections of the following office bearers have taken place immediately by the elected Managing Committee members who were present in the above meeting.

1. Dr. S.L. Jain (Jaipur), Zonal Chairman
2. Shri Komal Singh Bantiya (Bhopal), Zonal Vice-Chairman
3. Shri Paras Chhajed (Rajnandgaon), Zonal Vice-Chairman
4. Shri Mahesh Gehlot (Jodhpur), Zonal Vice-Chairman
5. Shri Rajesh Mehta (Indore), Zonal Secretary
6. Shri T. L. Jain (Jodhpur), Zonal Joint Secretary
8. Shri Ashok Jangid (Jodhpur), Zonal Treasurer

After election for the above posts, the newly elected Managing Committee members present in the meeting have co-opted Managing Committee members for the term 2014 and 2015 – 1. Shri Sumer Patwa  
2. Shri K.K Gehlot 3. Shri Sunil Goyal 4. Shri Rajesh Gupta.

## ANNOUNCEMENT

### Concessional Subscription for [www.taxmann.com](http://www.taxmann.com)

We are glad to inform you that we have worked out concessional subscription for [www.taxmann.com](http://www.taxmann.com) for AIFTP members vide letter No. A-1777 dated 12-1-2013.

**[www.taxmann.com](http://www.taxmann.com) will be available to AIFTP Members at Just ₹ 4,500/- per year (Otherwise priced at ₹ 8,800/-). This arrangement is for 3 years with 10% increment in the offer price above at the end of each year. The agreement is renewable after expiry of 3 years at same for and conditions etc.**

The website <http://www.taxmann.com/> – is a Complete Data Base on Direct Tax Laws since 1886, Corporate Laws since 1913, CST & VAT, Excise & Customs.

It will also provide updates on GOODS & SERVICES TAX, Reporting of nearly New 4500 cases in 2014, Reporting more cases than all other Websites & Journals put together, always updated Acts/Rules/Forms/Circulars & Notifications on ST & VAT/Service Tax/Excise & Customs, as well as Commentaries and Articles (details of features are enclosed).

MEMBERS OF AIFTP ARE REQUESTED TO TAKE BENEFIT OF OUR UNDERSTANDING WITH TAXMANN.

## *Hearty Congratulations*

Hearty Congratulations to the newly elected office bearers of Rajasthan Tax Consultants Association for the year 2013-15.

President	: CA. Satish Kumar Gupta, Jaipur
General Secretary	: Adv. Vinay Kumar Jolly, Jaipur
Regional Vice Presidents	: Adv. Suresh Ojha, Bikaner, CA. C. P. Laddha, Pali, CA. Rajesh Kumar, Alwar, CA. Ampy Chattar, Kota, CA. G.P. Singhal, Bhilwara
Regional Secretaries	: CA. Pawan Mittal, Sriganganagar, CA. Sanjay Mittal, Nagaur, Adv. Dinesh Chand Agarwal, Jhunjhunu, CA. Rakesh Sisodia, Chitorgarh, CA. B.V. Maheshwari, Kota
Treasurer	: CA. Shyam Lal Jain, Tonk

We wish them all the success.

## **PAPER BOOK OF 17TH NATIONAL CONVENTION**

Paper book of 17th National Convention is available for sale at ₹ 450/-. The book besides, paper presented at 17th National Convention and also contains 15 articles on different topics which are authored by the person who are authorities on the subjects.

Those who desire to buy the same may contact the office of the Federation.

Local/Outstation members not collecting from office are requested to add ₹ 80/- towards courier charges.

Please draw Cheque/ Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai.

## REPORT OF THE SECRETARY GENERAL FOR THE YEARS 2012 and 2013 (Presented in EOGM on 25th December, 2013)

After the election of National Executive Committee at Ranchi Convention on 9th December, 2011, the new team under the leadership of Shri S.K. Poddar took charge from 1st January, 2012. Thereafter a number of national tax conferences and Seminars were held in various parts of the country. Far reaching developments took place in the working of the Federation. Some of the important issues are narrated here below:

### I. Activities

- a) **Nani Palkhivala Moot Court Competition:** The 9th Nani Palkhivala Moot Court Competition was organised jointly by AIFTP and Income Tax Bar Association, Mumbai successfully from 11th to 13th October, 2012 where many Law Colleges participated. Dignitaries who graced the programme include: Hon'ble Mr. H. L. Karwa, President, ITAT; Hon'ble Mr. D. Manmohan, Vice President (MZ), ITAT and as many as 10 Members of ITAT. In addition Mr. Perci Pardiwalla, Sr. Advocate and many leading Advocates and Chartered Accountants also participated. The topic of Research paper was "General Anti Avoidance Rule (An Indian and International Perspective)". We acknowledge the support of Mr. R.B. Malik, Principal, Government Law College, Mumbai.

The 10th Nani Palkhivala Moot Court Competition was successfully organised this year from 3rd to 5th October, 2013. Hon'ble Justice S.J. Vazifdar, Judge, Bombay High Court, Hon'ble Justice M.S. Sanklecha, Judge, Bombay High Court, Hon'ble Justice A.A. Sayed, Judge, Bombay High Court, Mr. H.L. Karwa, Hon'ble President ITAT and other members of ITAT, Mr. Arun Sathe President, ITAT Bar Association, Mumbai, Shri S.K. Poddar, Shri P.C. Joshi, Shri M.L. Patodi and many member of NEC graced the programme. All admired the role of AIFTP, IT Bar Association and the Government Law College, Mumbai. This year I had the privilege of witnessing the Moot Court programme and was quite impressed with the presentation by budding lawyers.

Dr. K. Shivaram and his team deserve our full appreciation.

- b) **36th Foundation Day Celebrations:** The 36th Foundation Day of the Federation was organised by various Zones on 11th November, 2012. East Zone organised it in Cuttack. South Zone organised at Missionary of Charities, Mother Teresa ID Hospital, Secunderabad. This year also it was organised by various Zones. All the office bearers, NEC members, Zone Chairmen and participating members deserve our appreciation for nicely celebrating Foundation Day.
- c) **AOTCA Conference:** 8 Senior Members including 3 past presidents of AIFTP participated in the AOTCA Conference at Vietnam which was held from 17th to 20th October, 2012. Dr. K. Shivaram, S/Shri P.C. Joshi, M.L. Patodi, J. D. Nankani, Kamal Kumar Poddar, Hari Om Agarwal, Ms. Shivandi Patni, Dr. P. Daniel participated. They all deserve our appreciation.

2. **Programmes organised by various Zones:** A number of Programmes were organised by various Zones during the period. These are briefly summarised below.

3. **SOUTHERN ZONE:** This Zone has been most active under the leadership of Zone Chairman Dr. M.V.K. Moorthy and his dynamic team. The glimpses of some activities:

- a) **Seminar at Nellore:** It organized one day Seminar at Nellore on 14th April, 2012 in which Hon'ble Justice Gulam Mohammed, Judge A.P. High Court was the Chief Guest.
- b) **Seminar at Kakinada:** One day Seminar on Direct and Indirect Taxes was organized at Kakinada (A.P.) on 14th July, 2012.
- c) **Tax seminar at Tirumala:** It organised a Tax seminar at Tirumala on 16th and 17th March, 2013.
- d) **Late V. Ramachandran's Foundation Trust:** An inaugural function of the past president late National President "Late V. Ramachandran's Foundation Trust" was held at Chennai with a Memorial Lecture delivered by Hon'ble Mr. Justice F.M. Ibrahim Kalifulla of Supreme Court at Hotel Park Sheraton, Chennai.
- e) **Tirumala National Tax Conference:** The One Day National Tax Conference was held successfully at All India Arya Vaishya Samajam, Ring Road, Tirumala on 16th March, 2013 jointly with Tirupati Tax Bar Association. It was exceptional opportunity of having nice darshan of Lord Venkatesh Balaji and also having a conference at Tirumala. Our thanks to Dr. M.V.K. Moorthy, Shri M. Srinivasa Rao and the entire conference committee.
- f) **Hyderabad National Tax Conference:** A Two-Day National Tax Conference was held at Hyderabad on 6th and 7th July, 2013 preceded by NEC meeting on 5th July, 2013. AIFTP (Southern Zone) in co-ordination with the office bearers of two local bar Associations made their best efforts to organise the conference with a significant difference and distinction. The Chief Guest His Lordship Justice Anil R. Dave of the Supreme Court mesmerised the audience with the witty and jocular expressions touching upon the concept of the Seminar very effectively and emphasising the need for payment of taxes due to the State by every citizen as the revenue payment is a *sine qua non* for the well being and growth of every country. The importance of the branch of law of taxation in view of the fast growing trend

in the process of globalisation of the entire world into one village was much stressed by him. The Chief Justice concluded his address applauding the role being played by the Federation in enriching the bar as well as the bench. Hon'ble Justice Kalyan Jyoti Sengupta, Chief Justice of Andhra Pradesh High Court and Hon'ble Justice R.K. Agrawal, Acting Chief Justice of Madras High Court graced as our Guests of Honour. In addition, the august presence of Mr. Ramachandra Rao, the retired Judge of Supreme Court and former Chairman, Law Commission and Hon'ble Justice M.S. Ramachandra Rao and other Judges of the Andhra Pradesh High Court was well appreciated. The inaugural session on 6th instant went on very well beyond vision and expectations. The Hon'ble Judges were received with a traditional welcome by the Pandits with 'Poornakumbham' by chanting Vedas from the entrance to the venue. On this occasion Justice Challa Kodandaram, the former Member of AIFTP, recently elevated to the Bench of the Andhra Pradesh High Court and three senior Professionals namely, Advocate D. Harikishan, C.A. Mr. M.V. Purushothama Rao and Tax Practitioner Mr. S.B. Chandrana were also felicitated.

- g) **Seminar at Kochi:** One day Seminar was organised at Kochi on 6th September, 2013 by South Zone along with ICAI, Enarkulam Branch. Our National President was the Chief Guest. Speakers were CA PVSS Prasad, Mr. Raghu Ram, Dr. Anitha Sumanth, Advocate were the speakers. Mr. Mukul Gupta and Mr. Narayan Jain chaired the technical session. They also organised Kerala tour programme including back water trip at house boat for delegates. Participation of 18 delegates from West Bengal was appreciated. The Zone Chairman Dr. Moorthy, Vice Chairman incharge of Kerala CA A. Retna Kumar and their team deserve our appreciation.
4. **EASTERN ZONE:** The sun rises in the East and the team working of this Zone under the dynamic leadership of Mr. Indu Chatrath has been exemplary.
- a) After hosting, National Convention at Ranchi in December, 2011 the East Zone organised 2 National Tax Conferences at Guwahati and Bhubaneswar.
- b) **National Tax Conference at Guwahati:** A Two Day National Tax Conference with the theme NAV CHETNA 2012 "Globalisation – Emerging Opportunities in Corporate and Tax Laws" was organised on 17th and 18th March, 2012 at ITA Centre, in Guwahati. Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India, Hon'ble Mr. Justice Jasti Chelameswar, Judge, Supreme Court of India; Hon'ble Mr. Justice Adarsh Kumar Goel, Chief Justice of Gauhati High Court as well as other Judges, high officials from Income Tax and Sales Tax departments; dignitaries and eminent Speakers graced the occasion. I have no words to appreciate the wonderful efforts put in by Dr. Ashok Saraf, Chairman, Conference Committee and his team in organising the Conference, which will be cherished by all. Tax Bar Association, Guwahati was also associated in the Conference.
- c) **National Tax Conference at Bhubaneswar:** National Tax Convention at KIIT Auditorium, Bhubaneswar was held on 11th and 12th August, 2012 jointly with Bhubaneswar Tax Bar Association. Hon'ble Mr. Justice A.K. Pattnaik, Judge, Supreme Court of India was the Chief Guest. Hon'ble Mr. Justice B.P. Das, Judge Odisha High Court, Dr. A. Samanta, founder, KIIT University, Bhubaneswar and many other dignitaries graced the Conference. It was an experience with a difference as many students of law and MBA also attended. Shri Indu Chatrath, Chairman (EZ), Shri R.K. Mishra (Vice Chairman incharge of Odisha), Shri N.D. Saha, Shri M.R. Mohapatra, Shri N. Mohanty, Shri Rabindra Nath Pal, and their dynamic team in the Conference Committee made best possible arrangements to host the NEC Meeting as well as the National Tax Conference.
- d) **Mega Seminar at Siliguri:** A full day Mega Seminar was organised at Siliguri on 12th May, 2012 at Hotel Orbit, Siliguri by East Zone jointly with Siliguri Tax Bar Association and Siliguri Branch of EIRC of ICAI. Program was inaugurated by lighting the lamp by Shri S.K. Poddar, National President of AIFTP. Speakers include Shri Bharatji Agrawal (Past President, AIFTP), Shri Narayan Jain (Secretary General, AIFTP), Mr. S. Venkatramani. Mr. N.D. Saha, Secretary (AIFTP-EZ), Co-ordinator Mr. Dilip Agarwal, Advocate, President (STBA) and Shri Apurba Saha, Secretary (STBA) and their team did wonderful job in making the Seminar a success. The Siliguri Branch of EIRC of ICAI was joint organiser.
- e) **Seminar on Adjustment of Refunds and Black Money:** A Seminar on "Adjustment of Refunds with Unverified demands and discussion on White Paper on Black Money" was organized in Kolkata.
- f) **Tax Seminar at Jamshedpur:** It organised a One Day Tax Seminar on 3rd November, 2012 at Jamshedpur wherein Hon'ble Mr. Justice D.N. Upadhyay, Judge of Jharkhand High Court was the Chief Guest and Shri B.K. Singh, CIT (Appeal), Jamshedpur was Guest of Honour. Speakers included Shri S.K. Poddar, National President; Shri Narayan Jain, Shri M.D. Kedia, Shri R. N. Gupta.
- g) **Time Mangement:** A workshop on Time Management was conducted by Mr. Narayan Jain on 26th January, 2013 along with a picnic.
- h) **Seminar on Scrutiny Assessment:** A Seminar on Scrutiny Assessment and issues relating to Refund at ICCR on 9th February, 2013. Shri S.K. Poddar, National President and Shri Narayan Jain made expert comments on the topics. Speakers were CA P.K. Agarwalla, Advocate Subash Agarwal.
- i) **Workshop on VAT:** A workshop on VAT on Developers was held on 11th May, 2013 at the Calcutta Chambers of Commerce. Mr. Sandeep Choraria discussed the salient features.
- j) **Seminar on Direct and Indirect Taxes:** One day seminar on Direct and Indirect Taxes was organised at the Bengal Club, Kolkata on 8th June, 2013. It was quite successful. Mr. Gopal



Mukherjee, Advocate and past Chairman of the Zone was felicitated by Shri S.K. Poddar and other dignitaries.

- k) **Seminar on Natural Justice:** A Seminar on "Natural Justice in Taxation" was organised on 10th August, 2013 at the Calcutta Swimming Club, in which Hon'ble Mr. Justice Kalyan Jyoti Sengupta, Chief Justice of Andhra Pradesh High Court was the Chief Guest. Other speakers were Mr. Narayan Jain, Dr. M.V.K. Moorthy. On this occasion Hon'ble Justice B.L. Jain, Sri S.K. Poddar, National President and Dr. Ashok Saraf, National Vice President also addressed. CA Indu Chatrath Zone Chairman presided over.
- l) **Seminar on "Stay of Tax Demand" with Business Standard:** A Seminar on stay of tax demand was organized at the Calcutta Club on 30th November, 2013 by East Zone jointly with famous newspaper "Business Standard". The key note speakers were Shri S.K. Poddar and Shri Narayan Jain. Mr. Subash Agarwal and Mr. Deepak Jain also deliberated the topic very well. The Business Standard carried a quarter page complimentary advertisement as well as nice coverage of the Seminar.

The Zone Chairman Shri Indu Chatrath and his team deserves our full appreciation. The Zone was ably guided by Dr. Ashok Saraf, Vice President incharge of the Zone. The President and Secretary General being from same Zone, were always available. The team spirit of the Zone is admirable.

- 5. **NORTHERN ZONE :** Shri N.K. Arora, the Zone Chairman and his team made their best possible efforts to rejuvenate the activities in the North Zone.
  - a) **Study Circle Meeting:** The North Zone organised a Study Circle Meeting at Hotel Radisson, Varanasi on 7th January, 2012 under the Chairmanship of Shri Arvind Shukla.
  - b) **Seminar on Indirect Taxes at Meerut:** It also organised one day Seminar on Indirect Taxes at Meerut on 15th April, 2012 in which Hon'ble Mr. Justice Pankaj Mithal, Judge of Allahabad High Court was the Chief Guest. It was attended by 143 delegates.
  - c) **Tax Conference at Varanasi:** The North Zone in co-operation with Varanasi Branch of CIRC of ICAI organised a Tax Conference at Hotel Clarks on 31st August and 1st September, 2013 in Varanasi. Hon'ble Justice Shiv Kirti Singh, Chief Justice Allahabad High Court was the Chief Guest while Hon'ble Mr. Justice Tarun Agrawal, Judge, Allahabad High Court and CBDT Member were the Guests of Honour. Our National President Shri S.K. Poddar, Past President Shri Bharatji Agarwal, Deputy President Shri J.D. Nankani and many NEC members were also present. Speakers were CA Girish Ahuja, CA Ashok Batra; CA Dharmendra Srivastava. Sri Arvind Shukla, Conference Chairman and their entire team deserve our appreciation.
  - d) **National Tax Conference at Rishikesh:** National Tax Conference was organized at Rishikesh from 15th to 17th November, 2013. It was inaugurated by Hon'ble Mr. Justice A.K. Sikri, Judge, Supreme Court of India, Hon'ble Dr. Justice Arijit Pasayat, former Judge, Supreme Court of India and Chairman Authority on Advance Ruling; Hon'ble Mr. Justice Barin Ghosh, Judge, Uttarakhand High Court, Hon'ble Mr. Justice Rajesh Bindal, Judge Punjab & Haryana High Court, Hon'ble Ms. Justice Reva Khetrpal, Judge, Delhi High Court; Hon'ble Mr. Justice J.K. Ranka, Judge Rajasthan High Court. HH Swami Chidanand Saraswati blessed all the delegates and his speech enlightened the Conference. Eminent personalities were the Chairmen and speakers of various sessions. Our President, Deputy President, many past presidents and NEC members also graced the Conference. We appreciate Mrs. Premlata Bansal, Mr. N.K. Arora, Mr. P.S. Sarin, Mr. V.P. Gupta, Mr. Vinod Dhingra and the organizing team for their well meaning efforts.
- 6. **WESTERN ZONE :** The West Zone is having the highest number of members in AIFTP. The Zone Chairman Shri Vinayak Patkar ably led his team of West Zone.
  - a) **Tax Conference at Surat:** The West Zone organised 2 Day Tax Conference at Surat on 7th and 8th April, 2012. Hon'ble Mr. Justice D.A. Mehta, former Judge of Gujarat High Court inaugurated the Conference.
  - b) **Workshops on MVAT:** The Zone also organised a number of workshops on MVAT, Service Tax and allied laws during December, 2012 to March, 2013 in Mumbai.
  - c) **National Tax Conference at Kolhapur:** The National Tax Conference was organised at Kolhapur from 1st June to 3rd June, 2012. Mr. Justice F.I. Rebell, former Chief Justice, Allahabad High Court; Shrimanth Chhatraapati Shahu Maharaj, Kolhapur were the dignitaries. Our President, Deputy President, Secretary General, Treasurer and other members of NEC also graced. It was addressed by eminent speakers.
  - d) **Seminar on "Real Estate Development" :** Two day Seminar on "Real Estate Development" was organised in Mumbai on 14th and 15th December, 2012.
  - e) **National Seminar at Diu:** A National Seminar was successfully organised by the AIFTP (WZ) jointly with All Gujarat Federation of Tax Consultants and other local associations from 5th to 7th January, 2013 at Diu. Speakers were CA Samir N. Divetia, CA Mahendra Sanghvi, Mr. K.H. Kaji, Sr. Advocate, Mrs. Nikita Badheka, Advocate, CA Jigar Shah. Mini informal NEC was organised at Diu on 4th January, 2013. A tour programme was also organised. Our congratulations to the organising committee and special thanks to Mr. Samir Jani for his initiative and efforts.
  - f) **National Tax Conference at Vadodara:** All India Taxclave on Direct and Indirect Taxes was organised jointly with Central Gujarat Chamber of Tax Consultants at Vadodara on 26th and 27th

October, 2013. It was graced by Shri S.K. Poddar, our President; Shri P.C. Joshi, Dr. K. Shivaram, Shri Bharat Ji Agrawal, Shri M.L. Patodi. We thank Mr. Vinayak Patkar, Ms. Nikita Badheka, Mr. Chirag Parekh, Mr. Pravin Shah and their organising team.

7. **CENTRAL ZONE** : The Zone organised a number of activities under the leadership of Zone Chairman Mr. S.C. Maheshwari.
- a) **Felicitation of CCIT:** The Zone felicitated CCIT, Indore on 2nd January, 2012 and also brought to his notice the problem of mismatch of TDS Data and other problems.
  - b) **Seminar on Income Tax and CST:** A Seminar on Income Tax and CST was organised at Indore on 7th January, 2012.
  - c) **Seminar on VAT:** A Seminar was organised on VAT in Ujjain on 3rd Feb., 2012.
  - d) **Workshop on CPC:** A workshop on CPC was held at Indore on 10th Feb., 2012 where CIT, CPC, Bengaluru was also present.
  - e) **Tax Conference at Jodhpur:** A Tax Conference was organised at Jodhpur on 11th Feb., 2012 in which Hon'ble Mr. P.R. Ratnoo, Member Rajasthan Tax Board was the Chief Guest.
  - f) **Seminar at Raipur:** A tax Seminar was also successfully organised at Raipur.
  - g) **Udaipur National Tax Conference:** The National tax Conference was held on 15th and 16th December, 2012 at Udaipur. Hon'ble Mr. Justice Swatanter Kumar of the Supreme Court was the Chief Guest. All appreciated the speech delivered by his Lordship. Our thanks to Dr. S.C. Jain, Dr. O.P. Chaplot, S/Shri Prakash Javaria, Pankaj Ghiya, Kishor Kumar Pahuja, Praveen Agarwal, Ganesh Purohit, VP-Central Zone, and the entire Conference Committee.
  - h) **Felicitation of Hon'ble Justice J.K. Ranka** : A programme was organised at Kota wherein our Life member Hon'ble Justice J.K. Ranka was felicitated on his elevation as Judge of Rajasthan High Court. Shri M.L. Patodi, our IPP and his team deserve our appreciation.
- Shri S.C. Maheshwari, Zone Chairman and Shri P.M. Chopra, Immediate Past Zone Chairman, Shri Rajesh Joshi and all their colleagues deserve our appreciation.

8. **REPORT OF VARIOUS COMMITTEES:**

a) **Representations Committee**

A number of representations on Direct Taxes as well as Indirect Taxes have been sent by AIFTP from time to time and useful suggestions have been made to the Government. Shri S.R. Wadhwa, Smt. Nikita Badheka and Shri Mukul Gupta, Chairmen, of various Representation Committees did a commendable job. Our delegation met Dr. Parthasarathi Shome, Advisor to the Hon'ble Finance Minister as also the Chairman and Members of the Central Board of Direct Taxes from time to time.

The success of Service Tax/GST Committee of AIFTP is depicted from the Report dated 7th August 2013 of the Standing Committee on Finance on the 115th Constitutional Amendment Bill for introduction of GST. The GST Committee of AIFTP along with some Members under the Leadership of Deputy President Shri J.D. Nankani appeared before the Standing Committee of Parliament on 27th June, 2012. It is a matter of pride that most of the suggestions made by AIFTP have found place as being considered in the Report placed before the Lok Sabha for framing of Law by way of amendment in the Constitution for the purpose of GST.

b) **Journal Committee:**

The AIFTP Journal and AIFTP Times are being published regularly. Dr. K. Shivaram, Shri Mitesh Kotecha, Chairman of this Committee, and their colleagues are making admirable contribution. Shri Kishor Vanjara and Shri Deepak R. Shah, Associated Editors for AIFTP Times congratulated for their contribution.

c) **Publications :**

A new book "International Taxation- Important Aspects and Issues" was released at Udaipur in the National Tax Convention in December, 2012.

Another new book "Digest of case laws- Direct Taxes (including Allied Laws) – A Tax Companion" was published and it got wonderful response. Thanks to Dr. K. Shivaram and his dedicated team.

d) **Membership Committee :**

In NEC meeting held at Delhi on 11th November, 2011 the AIFTP crossed the magic figure of 5000 life members as the Membership strength stood at 5007 on that day. I am glad to inform you that our membership has now reached 5513 as on 27th November, 2013. In 2012 and 2013 we have been able to add more than 500 members in the AIFTP family with co-operation of you all. It has been possible with the active co-operation of the various Zones. East Zone has recruited maximum members during the year.

We have started compilation and circulation of State-wise List of members for ready reference and for doing the needful for taking the Federation to unrepresented States and also to aim for membership growth in all States.

e) **Constitution and Rules Review Committee :**

A committee was constituted under the Chairmanship of Shri Bharatji Agrawal, past President. He circulated the report. It was discussed in NEC from time to time and as decided in NEC meeting at

Mumbai on 6th October, 2013 the proposed amendments have been circulated for consideration in EOGM at Mumbai on 25th December, 2013.

**f) Awards Committee :**

Dr. Ashok Saraf, Vice President was appointed the Chairman of the Awards Committee and his report has been circulated. The matter was discussed at length in NEC at Mumbai on 6th October, 2013 and decisions taken. The number of awards have been increased. An elaborate awards manual shall also be prepared based on the decision of the said NEC meeting. The proposed amendments relating to awards have also been incorporated for consideration for EOGM.

g) Other committees are also functioning well.

9. **Reporting :** Many office bearers as well as Zone Chairmen presented their Report in NEC meetings and it was appreciated by all including Shri P.C. Joshi, Shri Bharatji Agrawal, and Shri M.L. Patodi Past Presidents. It would be desirable if we all the members of NEC share our report with all other NEC Members and tell the brief details of activities undertaken by them or activities and programme in which we participated and played an important role. This practice needs to be followed in the future as well for streamlining the functioning.
10. **AIFTP Directory of NEC/Zone Managing Committee, etc. :** It was printed with photos of NEC members for the first time. Thanks to Shri Kishor Vanjara, NEC Member and Mr. Ravi Patade, Office Executive at AIFTP for their untiring efforts in compiling the Directory in the new shape with photos.
11. **Legal matters :**
  - a) **Writ on Service Tax on Advocates :** AIFTP joined as a Party to be impleaded in the matter pending before the Delhi High Court titled as '*Supreme Court Bar Association vs. Union of India*' writ petition No. 3437/11 before the Delhi High Court challenging Service Tax imposed on Advocates by the Finance Act, 2011. M/s. Kaushik and Associates, Advocates, Supreme Court of India were engaged on behalf of AIFTP for filing the impleadment application and pursuing the cause of AIFTP in the said Writ Petition. The order issued by the Hon'ble High Court has been appreciated all over India. We thank Shri S. R. Wadhwa, Advocate; Smt. Premlata Bansal, Vice President and their team.
  - b) **PIL regarding adjustment of Refunds with the unverified demands :** As decided in Kolhapur NEC, AIFTP filed application as Intervener in Hon'ble Delhi High Court on 30th August, 2012 in respect of a matter of the PIL regarding adjustment of Refunds with the unverified demands of earlier years by the CPC, Bengaluru. We appreciate the efforts of Shri S.R. Wadhwa and Smt. Premlata Bansal in the matter.
  - c) **Writ on Disposal of appeal :** We have also filed a PIL in Delhi High Court in respect of disposal of large number of pending appeals all over India. The efforts of Shri V.P. Gupta deserve our appreciation.
12. **ANNUAL GENERAL MEETINGS:** The AGM of AIFTP was held on 21st September, 2012 and this year on 20th September, 2013. The audited accounts as well as Annual Reports were duly approved.
13. **NEC MEETINGS:** National Executive Committee Meetings were held regularly in every quarter wherever Two day National Tax Conferences were held. These were attended by members in large numbers and important decisions were taken for smooth working of the Federation. We thanks all the hosts of NEC meetings.
14. **FINANCES AND ACCOUNTS :** Our Treasurer Mr. H.N. Motiwalla has looked after the Finances and Accounts matter very well. He regularly presented his reports in NEC meetings and deserves our full appreciation.
15. **ADVISORY BOARD :** An Advisory Board comprising of S/Shri B.C. Joshi, P.C. Joshi, N.M. Ranka, Dr. K. Shivaram, Bharatji Agrawal, all the Past Presidents was constituted. We are grateful for their valuable guidance and advices from time to time.
16. **WE ARE PROUD OF THEM:** Our Life member Hon'ble Justice J.K. Ranka was elevated as Judge of Rajasthan High Court this year. Dr. Ashok Saraf was appointed as Advocate General of Arunachal Pradesh. Our another Life member Shri K.C. Kaushik was appointed the Additional Solicitor, Govt. of India at Allahabad High Court. Our congratulations to them as well as other members who reached new heights in their life.
17. **GRATITUDE :** On behalf of the Federation, I most humbly thank all our past Presidents, all office bearers and members of NEC, each and every member of the Federation who have contributed towards the cause of the Federation and many of whom have rendered admirable voluntary services for the cause of the Federation. Our thanks to the media for coverage of various programmes of AIFTP in various parts of the country. We appreciate their gesture of co-operation in spreading the news of Federation's activities. Our special thanks to Shri Kishor Vanjara for looking after administration and other matters at the Head Office at Mumbai.

I also convey my personal gratitude to Shri S.K. Poddar our President, Shri M.L. Patodi, IPP, Shri P.C. Joshi, Shri N.M. Ranka, Dr. K. Shivaram and Shri Bharatji Agrawal, all the Past Presidents for the help, co-operation and guidance provided by them in discharging my duties as Secretary General of AIFTP. While all credit for the good work accomplished by the AIFTP goes to all the members of NEC and in case there has been any lapse, I humbly accept the full responsibility.

With thanks, gratitude and regards to all the members of the Federation,  
Mumbai,  
25th December, 2013

**Narayan Jain**  
Secretary General

## DIRECT TAXES

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

### SUPREME COURT

**1. S.132B(4)(b)/240/244A: Assessee is entitled to interest on cash appropriated during search even if refund is directed in appeal proceedings**

Pursuant to a search conducted u/s 132, cash of ₹ 2.35 lakhs was recovered. The AO passed an order u/s 132(5) in which he calculated the tax liability and appropriated the seized cash. An assessment order was also passed to the same effect. The AO's order was finally set aside by the Tribunal and it became final. Consequently, the assessee was refunded the amount of ₹ 2.35 lakhs with interest from 4-3-1994 (date of last of the regular assessments by the AO) until the date of refund. The assessee claimed that he is entitled to interest u/s 132B(4)(b) of the Act for the period from the expiry of period of six months from the date of order u/s 132(5) to the date of regular assessment order. In other words, as the order u/s 132(5) was passed on 31-5-1990, six months expired on 30-11-1990 and the last of the regular assessments was done on 4-3-1994, the assessee claimed interest u/s 132B(4)(b) from 1-12-1990 to 4-3-1994. It was held by the Supreme Court that the department's argument that the refund of excess amount is governed by s. 240 and that s. 132B(4)(b) has no application is not acceptable. S. 132B(4)(b) deals with pre-assessment period and there is no conflict between this provision and s. 240 or for that matter s. 244(A). The former deals with pre-assessment period in the matters of search and seizure and the later deals with post assessment period as per the order in appeal. The department's view is not right on the plain reading of s. 132B(4)(b) and the assessee is entitled to simple interest at the rate of 15% per annum u/s 132B(4)(b) from 1-12-1990 to 4-3-1994. The interest shall be paid within two months from today.

*Chironjilal Sharma HUF v. UOI (Supreme Court) Civil Appeal No. 10601 of 2013 [Arising out of S.L.P. (C) No. 20381 of 2012] November 26, 2013. (www.itatonline.org.)*

**2. S.260A(4): High Court has power to hear the appeal on questions not formulated at the stage of admission of the appeal**

The department filed an appeal u/s. 260A in the High Court in which it raised several questions. The High Court admitted the appeal and framed two substantial questions of law. The Department filed a SLP claiming that by necessary implication, the other questions raised in the memo of appeal before the High Court had been rejected. It was held by the Supreme Court dismissing the SLP that the Revenue is under some

misconception. The proviso following the main provision of section 260A(4) of the Act states that nothing stated in sub-section (4), i.e., "The appeal shall be heard only on the question so formulated" shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question". The High Court's power to frame substantial question(s) of law at the time of hearing of the appeal other than the questions on appeal has been admitted remains under section 260A(4). This power is subject, however, to two conditions, (one) the Court must be satisfied that appeal involves such questions, and (two) the Court has to record reasons therefor.

*CIT v. Mastek Limited (Supreme Court) Special Leave to Appeal (Civil). CC 3075/2013 dated 4-3-2013. (www.itatonline.org.)*

### HIGH COURTS

**3. S.132: Copy of search warrant should be given to the searched person. Defects in the panchnama do not invalidate the search or the s. 153A assessment proceedings**

A search u/s 132 was conducted on the premises of the assessee and its group concerns. Though a panchnama was prepared, the assessee's name did not appear therein. An assessment order u/s 153A was passed to assess the alleged undisclosed income. The assessee claimed that as s. 153B imposed a limitation for passing of a s. 153A order by reference to the last panchnama drawn in relation to the searched person, the absence of the assessee's name in the panchnama meant that the s. 153A assessment order could not be passed. A Writ Petition was filed to challenge the assessment. It was held by the High Court dismissing the Petition that S.153A(1) does not make any reference to panchnama or the date of panchnama. A panchnama is not a pre-condition for invoking s. 153A. As regards the argument that the time limit u/s 153B is calculated with reference to the date of the last panchnama, a panchnama was drawn up on the occasion of the search and it referred to documents belonging to the assessee though it did not refer to the assessee by name. The panchnama also does not refer to the conclusion of the search. The non-reference to the name of the assessee and the suspension/conclusion of the search is a lapse and failure to comply with the requirements of the search and seizure manual. However, this does not affect the validity of the search or the assessment order u/s 153A. The department should take remedial steps and ensure that such

lapses do not occur in future. Also, the department should give a copy of the search warrant to the person searched so as to curtail allegations of interpolation, addition of names, etc.

*MDLR Resorts Pvt. Ltd v. CIT (Delhi High Court) Writ Petition (Civil) No. 823/2013 Reserved on: 24th October, 2013. Date of Decision: 20th December, 2013. (www.itatonline.org.)*

**4. S.14A & Rule 8D: Expenditure on acquiring shares out of “commercial expediency” and to earn taxable income cannot be disallowed**

The assessee borrowed funds and invested ₹ 6 crore in shares of subsidiary companies. It claimed that the said subsidiaries were Special Purpose Vehicles (SPVs) formed out of “commercial expediency” in order to obtain contracts from the NHAI and that the SPVs so formed engaged the assessee as contractor to execute the works awarded to them (i.e. SPVs) by the NHAI. It was pointed that the turnover from the execution of the contracts was shown in the P&L A/c. It was claimed that the interest attributable to the investments made by the assessee in the SPVs could not be disallowed u/s 14A read with Rule 8D because it could not be termed as expense/interest incurred for earning exempted income. The CIT(A) and Tribunal (order attached) upheld that assessee’s claim and held that as the investments in the shares were made out of “commercial expediency” the expenditure incurred for that purpose could not be disallowed u/s 14A and Rule 8D. On appeal by the department to the High Court it was held dismissing the appeal that this is merely a question of fact and does not involve any question of law much less a substantial question of law, as the Tribunal held that the expenses which have been claimed by the assessee were not towards the exempted income.

*CIT v. Oriental Structural Engineers Pvt. Ltd. (Delhi High Court) ITA 605/2012 dated 15-1-2013. (www.itatonline.org.)*

**5. S.73: Loss from shares dealing cannot be deemed to be from “speculation” under Explanation to s. 73 if company is not engaged in the “business” of shares dealing**

The assessee, engaged in the business of trading of crafts paper; etc. claimed a loss of ₹ 5.53 lakhs arising on account of a transaction whereby it purchased and sold shares. The AO held that under the Explanation to s. 73, the said loss was deemed to be arising from a speculation business and could not be set off against other business profits. However, the CIT(A) and Tribunal allowed the assessee’s claim on the basis that the assessee was not engaged in the “business of purchase and sale of shares” so as to fall into the mischief of the Explanation to s. 73. In appeal before the High Court, the department relied on *Bhikam Chand Jankilal 131 ITR 554 (MP)* and argued that even a single transaction of sale or purchase of shares might

amount to a “business”. It was held by the High Court dismissing the appeal that the assessee was engaged in the business of trading of crafts paper, installation, job work, consultancy and commission. By all means, the transaction whereby it purchased the shares and incurred loss on account of the fall in the value of the share was a solitary one. The findings of the Tribunal that the transaction did not constitute the business carried on by the company, cannot be termed as perverse or unreasonable. No substantial question of law arises (Standipack 350 ITR 251 (Cal) noted)

*CIT v. Orient Instrument Pvt. Ltd. (Delhi High Court) ITA No. 112/2000 dated 20-11-2013 (www.itatonline.org.)*

**6. S.271(1)(c): Penalty cannot be levied if the assessee discharges the primary burden by a cogent explanation and the AO is unable to rebut it.**

Pursuant to a search conducted u/s 132 it was revealed that the assessee had “on-money” transactions in real estate dealings. The assessee accepted the “on-money” but claimed that it was taxable only on completion of the projects under the ‘completed contract method’. The assessee’s claim was rejected by all the authorities including the High Court. In the s. 271(1)(c) penalty proceedings, the assessee claimed that there was a mistake in the entries regarding the sale of flats to J.B. Exports inasmuch as the rate at which the property was shown as sold to the said party was much higher than the rate at which the property was sold to other parties. The AO and CIT(A) rejected the claim but the Tribunal accepted it on the basis that the huge difference in the rate of sale of the flat recorded in other cases and in the case of J.B. Exports supported the assessee’s contention that there may be a mistake in recording the rate. It held that as the department had failed to prove concealment without any doubt, penalty could not be imposed. On appeal by the department to the High Court it was held dismissing the appeal that merely because the assessment proceedings have been confirmed does not automatically mean that penalty u/s 271(1)(c) is justified. Unless the case is strictly covered by s. 271(1)(c), penalty cannot be invoked. For sustaining penalty, the *bona fide* explanation of the assessee must be looked at so that the contumacious conduct of the assessee for the purpose of sustaining the penalty would be taken as condition that is the main requirement u/s 271(1)(c). In *Mak Data P. Ltd v. CIT* the Supreme Court held that when a difference is noticed by the AO between the reported and assessed income, the Explanation to section 271(1) raises a presumption of concealment and the burden is on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the Explanation has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted undisclosed income. On facts, the onus cast upon the assessee

has been discharged by giving a cogent and reliable explanation. If the department did not agree with the explanation, the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. Such onus has not been discharged by the department and so the Tribunal's finding cannot be interfered with (*Dharmendra Textiles Processors 306 ITR 277 (SC) & Reliance Petroproducts 322 ITR 158 (SC) referred*)

*CIT v. M/s. Gem Granites (Karnataka) (Madras High Court) Tax Case (Appeal) No.504 of 2009 dt. 12-11-2013 (www.itatonline.org.)*

## TRIBUNALS

### **7. S.40(a)(ia): TDS Disallowance: "Paid" or "Payable" View in favour of the assessee should be followed**

The assessee paid an amount without deducting TDS. The AO held that as there was no TDS, the deduction for the amount could not be allowed u/s 40(a)(ia). However, the CIT(A) reversed the AO on the ground that the word "payable" in s. 40(a)(ia) did not apply to amounts that had already been "paid" during the year. On appeal by the department to the Tribunal it was held dismissing the appeal that there is a judicial controversy on whether s. 40(a)(ia) applies to amounts that have already been "paid" or it is confined to amounts that are "payable" as at the end of the year. The Special Bench in *Marilyn Shipping and Transports 16 ITR (Trib.) 1 (Vizag)* and the Allahabad High Court in *Vector Shipping Services* have taken the view that s. 40(a)(ia) applies only to amounts remaining "payable" at the end of the previous year and does not apply to amounts already "paid" before the close of the relevant previous year. However, the Calcutta High Court in *Crescent Export Syndicates & Md. Jakir Hossain Mondal* and the Gujarat High Court in *Sikandarkhan N.Tunvar* have taken a contrary view that even amounts already "paid" have to be disallowed u/s 40(a)(ia). In such circumstances, the rule of Judicial Precedence demands that the view favourable to the assessee must be adopted as held by the Supreme Court in *CIT v. Vegetable Products Ltd. 88 ITR 192*. Following the said fundamental rule declared by the Supreme Court, the judgment of the Allahabad High Court in *Vector Shipping* which is in favour of the assessee has to be followed and it has to be held that disallowance u/s 40(a)(ia) applies only to amounts "payable" and not to amounts "paid".

*ITO v. M/s.Theekathir Press (ITAT Chennai) ITA No.2076(Mds)/2012 dated 18-9-2013*

### **8. S.2(22)(e): Inter-corporate deposits ("ICDs") are not "loans and advances" and are not assessable to tax as "deemed dividend"**

The assessee received an inter-corporate deposit of ₹ 11.20 cr from IFB Automotive Pvt. Ltd., a company

in which it held 18% of the shares. The AO and CIT(A) held that the said ICD constituted "loans and advances" and was assessable as "deemed dividend" in the assessee's hands u/s 2(22)(e). On appeal by the assessee to the Tribunal it was held allowing the appeal that S. 2(22)(e) refers to 'loans' and 'advances' and does not refer to a 'deposit'. The fact that the term 'deposit' does not mean a 'loan' and that the two terms are two different and distinct terms is evident from the Explanation to S. 269T and S. 269SS of the Act where both the terms are used. Further, the second proviso to S. 269SS recognises the term 'loan' taken or 'deposit' accepted. Once it is accepted that the terms 'loan' and 'deposit' are two distinct terms which have distinct meaning then if only the term 'loan' is used in a particular section the 'deposit' received by an assessee cannot be treated as a 'loan' for that section. The Companies Act, 1956 also makes a distinction between a "loan" and a "deposit" in ss. 58A, 269 & 370. The distinction between a "loan" and a "deposit" is that in the case of a "loan", the needy person approaches the lender for obtaining the loan. The loan is lent at the terms stated by the lender. In the case of a "deposit", the depositor goes to the depositor for investing his money primarily with the intention of earning interest. Also, s. 2(22)(e) enacts a deeming fiction and cannot be given a wider meaning than what it purports to cover. It has to be interpreted strictly. Thus, the view of the AO and CIT(A) that an Inter-corporate deposit is similar to a loan is not correct.

*IFB Agro Industries Ltd v. JCIT (ITAT Kolkata) I.T.A No. 1721/Kol/2012 dated 12-3-2013.*

### **9. S.153A/ 153C: Important principles of law relating to search assessments explained**

Pursuant to a search u/s 132 conducted on the premises of another person, the AO issued a notice u/s 153C upon the assessee and thereafter passed an assessment order. The assessee claimed that the said assessment was not valid on the ground that (a) no books of account of the assessee were found in the premises of the other person, (b) though the AO of the searched person and the assessee was the same it was not shown that the satisfaction was recorded in the course of the assessment of the searched party and not of the assessee, (c) as no assessment was pending on the date of search, the assessment could be made only for the incriminating material found in the search and (d) as the satisfaction was recorded on 23-7-2010 and the relevant AY was 2011-12, the AO could issue a notice u/s 153C only for six preceding AYs relevant to this AY (i.e. AY 2005-06 to 2010-11) and the notice issued for AY 2004-05 was barred by limitation. It was held by the Tribunal as under:

(a) & (b) the satisfaction u/s. 153C has to be recorded by the AO of the searched person and not by the AO of the assessee. Even if the AO of both parties is the same, he has to go through the formality of separately recording satisfaction and the record has to show

that satisfaction was recorded in the assessment of the searched party. Also s. 153C proceedings can be initiated only if books of account etc which are seized from the searched party belong to the assessee. A mere confirmation of account or a copy of the audited accounts or a copy of the return of income does not constitute "books of account" for purposes of s. 153C.

(c) the scope of assessment u/s. 153A & 153C depends on whether the original assessment proceedings are pending or concluded. If a s. 143(1) intimation is passed and the time limit for issue of a s. 143(2) notice has lapsed, the assessment is concluded. In such cases, the s. 153A/ 153C assessment has to be based only on incriminating material found in the search.

(d) S. 153A/ 153C permits the AO to issue a notice for six AYs preceding the AY in which the search took place. As the satisfaction was recorded on 23-7-2010, the relevant AY was 2011-12 and the AO could issue a notice u/s 153C only for six preceding AYs relevant to this AY (i.e. AY 2005-06 to 2010-11). The notice issued for AY 2004-05 is barred by limitation.

*V. K. Fiscal Services Pvt. Ltd v. DCIT (ITAT Delhi) ITA NO 5460-5465/Del/2012*

**10. S.41(I): Liability outstanding for long period of time is assessable as income (despite no write-back in A/cs.) if assessee is unable to prove genuineness of liability**

The assessee, engaged in the business of civil construction and labour contractor, had an amount of ₹ 86.25 lakhs shown as outstanding labour charges in his balance sheet that had remained unpaid for more than three years. The AO held that the fact that the amount was outstanding for so many years was abnormal. As the assessee was unable to give the addresses and labour bills of the labourers, he held that the assessee had failed to prove the genuineness of the liability and that it had ceased to exist. He therefore assessed the said sum as income u/s 41(1). On appeal, the CIT(A) reversed the AO on the ground that the fact that the amount was outstanding for a long period and that the assessee was unable to furnish confirmations did not mean that there was a remission or cessation of liability during the assessment year so as to attract s.

41(1). On appeal by the department to the Tribunal it was held allowing the appeal that it is very improbable that payments to labour can remain outstanding for more than three years. The assessee has not been able to produce the records relating to the name, addresses and bills of the labour; etc. to prove that the liability continues to exist. It is accordingly a case of cessation of liability. The assessee has just continued the entry of the same in his books of account without any intention to pay back the same. The view that such sums shown as liability is assessable to tax is sanctioned by Chipsoft Technology 210 Taxman 173 (Del.) where the view was taken that it would be illogical to say that a debtor or an employer, holding on to unpaid dues, should be given the benefit of his showing the amount as a liability, even though he would be entitled in law to say that a claim for its recovery is time barred, and continue to enjoy the amount. This view is not contrary to the view taken in *Vardhaman Overseas Ltd 343 ITR 408 (Del.)* where the law was laid down that s. 41(1) does not apply if the amount of liability is not written back in the accounts. If both judgements are read in harmony, it can be observed that the assessee cannot be allowed to show an amount as a liability even though he has no intention to pay it back but to enjoy the same for an unlimited period without being added to his income only on the excuse that he has not written off the same in his books of account. However, if the facts of the case establish that the liability has been genuinely shown by the assessee and his subsequent conduct shows that he has paid back the said credits and his intention was not to enjoy the amount for unlimited period without any intention to pay back the same, then it cannot be said to be a case of cessation of liability. On facts, not only is the existence of outstanding liability of labour charges for so many years improbable in the normal course of business but the assessee has also failed to give any evidence regarding the identity and genuineness of the creditors. Accordingly it is a case of cessation of liability and s. 41(1) applies.

*ITO v. Shailesh D. Shah (ITAT, Mumbai) ITA No. 7012/M/2010 dated 11-12-2013.*



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P. C. Joshi, Advocate

**1. Transfer of proceedings**

The full Bench of the Haryana Tribunal, held that the order transferring the proceeding from one place to another; with a copy to the assessee under signature of P.A. to the Commissioner and not Commissioner himself was a valid order. In such a case opportunity of hearing and issue of a show cause notice was not contemplated under Rule 7 of the Haryana General Sales Tax Rules.

*Indian Oil Corpn., Ltd v. State of Haryana (2013) 46 PHT 350 (HTT) (FB)*

**2. Words and phrases****Dispute**

The Allahabad High Court following the judgment of the Supreme Court in the case of *Canara Bank v. NTPC (2001) 1 SCC 43* held that the word 'dispute' would cover a pendency of any litigations or claim of assessee against the department.

*Paliwal Glass Works v. Union of India & Ors. (2013) NTN (Vol. 52) 352.*

**3. Works Contract – Developers**

The much awaited judgment by the Larger Bench of the Supreme Court was pronounced on 26th Sept., 2013. The Larger Bench have affirmed the correctness of the earlier Division Bench Judgment in the case of *K. Raheja Development Corpn., (2005) 141 STC 298*. It observed that three conditions must

be fulfilled 1. There must be a works contract 2. The goods should have been involved in the execution of the works contract and 3. The property in those goods must be transferred to a third party either as goods or in some other form i.e. immovable property. It also held that where a contract involved both a works contract and transfer of immovable property, it did not cease to be a works contract liable, under the language of sub-clause (b) of clause 366(29A) of the Constitution.

Where the nature of the transaction was specifically covered by the said Article 366(29A) (b), the dominant object have no role to play.

It was permissible to levy tax on the value of the goods at the time of its incorporation and becoming the part of immovable property that was agreed to be transferred on construction by the developer to the flat purchaser.

If at the time of construction and its completion there was no contract with the flat purchaser, the goods used in such constructions cannot be deemed to have been sold since at the time of its construction there was no such purchaser.

The aforesaid judgment is of far reaching importance that require a minute concentrated study thereof by all concerned.

*M/s. Larsen & Toubro Ltd. & Anr. v. State of Karnataka & Anr. (2013) 23 STJ 501 (SC) and 2013 NTN (Vol. 53) 65 (SC) and now reported at 65 VST Page 01 (SC).*

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