

AIFTP TIMES

Volume 5 - No. 10 | October 2014



We wish all our members and readers
Very Happy Diwali and Prosperous New Year



FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
30-10-2014	Adjourned Annual General Meeting	Mumbai
15-11-2014	Foundation Day Celebration (Western Zone)	Mumbai
19-12-2014	National Executive Committee Meeting	Jaipur
20, 21-12-2014	National Tax Conference (Central Zone)	Jaipur

NOTICE OF ADJOURNED ANNUAL GENERAL MEETING

NOTICE is hereby given that the adjourned Annual General Body meeting of All India Federation of Tax Practitioners will be held on Thursday, October 30, 2014 in the office of Federation at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020 at 6.00 p.m. to transact the following business:

AGENDA

- To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2014.
- Any other matter with the permission of Chair.

For All India Federation of Tax Practitioners
Sd/-

Harish N. Motiwalla
Secretary General

Place : Mumbai

Date : September 26, 2014

- Note:
- The Audited Profit and Loss Account and Balance Sheet will be circulated to the National Executive Members by E-mail.
 - If there is no quorum by 6.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

ANNOUNCEMENT

To celebrate Foundation Day of All India Federation of Tax Practitioners, the Western Zone is pleased to announce holding a programme on Saturday, November 15, 2014 at Navin Thakkar Auditorium, Shraddhanand Road, Vile Parle (W), Mumbai – 400 057, jointly with The Sales Tax Practitioners Association of Maharashtra, Mumbai.

The programme includes address by eminent personality and cultural event thereafter, to be followed by Dinner. As a token, contribution of ₹ 100/- only per person will be charged.

Kindly send your contribution through cash / cheque in favour of "All India Federation of Tax Practitioners – Western Zone" payable at Mumbai.

Further details will be published in next issue of AIFTP Times.

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

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REPORT ON TWO DAYS NATIONAL TAX CONFERENCE AT SURABURDI MEADOWS, NAGPUR HELD ON 23RD & 24TH AUGUST, 2014

by **Vipul B. Joshi**, *Chairman, AIFTP (WZ)*

1. The All India Federation of Tax Practitioners (Western Zone) along with The Sales Tax Practitioners' Association of Maharashtra, Sales Tax Bar Association, Nagpur and Vidarbha Tax Practitioners' Association, Nagpur organised Two Days National Tax Conference at Suraburdi Meadows, Nagpur on 23rd & 24th August, 2014. The total delegates were around 300 with around 170 resident delegates coming from various parts of India. The theme of the conference was "Learn, Relax & Rejuvenate" keeping in mind the unique location of the resort. The chief guest for the inaugural session was Hon'ble Shri Justice Bhushan Dharmiashikari, Bombay High Court, Nagpur Bench and Guest of Honour was Shri G. B. Indulkar, Additional Commissioner of Sales Tax, Maharashtra State. This was followed by various technical sessions for one and half day. In all, there were seven papers presented, each by prominent tax professional and covering various aspects of Income Tax, VAT and Service Tax. Each speaker very aptly presented the paper and each session was chaired by very prominent and senior member of the profession, who shared their rich knowledge and experience with the participants. The highlight of the technical sessions was that the participants very much appreciated not only selection of the topics but also the paper writers who beautifully presented the papers and the Chairmen who gave their valuable comments. So much was the level of enthusiasm that on the first day, the last technical session was carried on till 8.00 p.m. at night, against the scheduled time of 6.30 p.m. The participants, who had assembled from 9.00 a.m., participated till 8.00 p.m. with rapt attention. The seven technical sessions were followed by Brain Trust Session, where varied queries covering all the three branches of taxation were answered by eminent brain trustees.
2. The meeting of National Executive Committee was held on 22nd evening, which was attended by 36 NEC members including 5 Past Presidents. On 23rd evening, gala dinner with entertainment programme was organised, which provided the much required unwinding experience for the participants and their families.
3. The venue was unique in many senses. Apart from being located in a scenic beauty, it provided an opportunity to the participants and their families to mingle under one roof.

REPORT ON FULL DAY NATIONAL SEMINAR AT ANAND HELD ON 6TH SEPTEMBER, 2014

by **Vipul B. Joshi**, *Chairman, AIFTP (WZ)*

The All India Federation of Tax Practitioners (Western Zone) and The Anand VAT Sales Tax Association, along with All Gujarat Federation of Tax Consultants, The Gujarat Sales Tax Bar Association and Central Gujarat Chamber of Tax Consultants organised Full Day National Seminar at Elecon Hall, GIDC, Anand (Gujarat) on 6th September, 2014. The total numbers of participants were around 360, with participants from various parts of Central Gujarat participating enthusiastically. The seminar had three papers and a Brain Trust Session. Here also, due to the overwhelming response from the participants, the Seminar continued up to 8.00 p.m., against the scheduled time of 5.30 p.m. The seminar was followed by cultural programme in the form of 'Dayro'.

DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarda and Ms. Neelam Jadhav

Advocates, KSA Legal Chambers

SUPREME COURT

1. **National Tax Tribunal – Constitutional Validity of National Tax Tribunal Act, 2005 – Separation of powers – Rule of law – Whether CA/CS can appear before NTT – Constitutional validity of sections 5, 6, 7, 18 and 13 of NTT Act**

Though it was held that it is open to the Parliament to substitute the appellate jurisdiction vested in the jurisdictional High Courts and constitute courts/tribunals to exercise the said jurisdiction, we are of the view, that while vesting jurisdiction in an alternative court/tribunal, it is imperative for the legislature to ensure, that redress should be available, with the same convenience and expediency, as it was prior to the

introduction of the newly created court/tribunal. The mandate incorporated in Section 5(2) of the NTT Act to the effect that the sittings of the NTT would ordinarily be conducted in the National Capital Territory of Delhi, would render the remedy inefficacious, and thus unacceptable in law.

It cannot be appropriate to allow the Central Government to play any role, with reference to the places where the benches would be set up, the areas over which the benches would exercise jurisdiction, the composition and the constitution of the benches, as also, the transfer of the Members from one bench to another. It would be inappropriate for the Central Government, to have any administrative dealings with the NTT or its Members. Vesting of the power of determining the jurisdiction, and the postings of different Members, with the Central Government, in our

considered view, would undermine the independence and fairness of the Chairperson and the Members of the NTT, as they would always be worried to preserve their jurisdiction based on their preferences/inclinations in terms of work, and conveniences in terms of place of posting. Therefore section 5 of the NTT Act is not sustainable in law and sub-sections (2), (3), (4) and (5) of Section 5 of the NTT Act are unconstitutional.

Furthermore, the Court observed that it is not understandable how Technical Members, who may not even possess the qualification of law, or may have no experience at all in the practice of law, would be able to deal with—substantial questions of law, for which alone, the NTT has been constituted. Also, it is not possible to accept, that Accountant Members and Technical Members have the stature and qualification possessed by judges of High Courts. Appointment of Accountant Members and Technical Members of the Appellate Tribunals to the NTT, would be in clear violation of the constitutional conventions recognized by courts, the world over. The composition of the NTT would have to be on the same parameters as judges of the High Courts. Since the appointments of the Chairperson/Members of the NTT are not on the parameters expressed hereinabove, the same are unsustainable under the declared law. Therefore, section 6(2)(b) of the NTT Act is liable to be declared unconstitutional.

If the jurisdiction of the High Courts is being transferred to the NTT, the stature of the Members of the Tribunal had to be akin to that of the judges of High Courts. So also the conditions of service of its Chairperson/Members. And the manner of their appointment and removal, including transfers. including, the tenure of their appointments.

Section 7 cannot even otherwise, be considered to be constitutionally valid, since it includes in the process of selection and appointment of the Chairperson and Members of the NTT, Secretaries of Departments of the Central Government. In this behalf, it would also be pertinent to mention, that the interests of the Central Government would be represented on one side, in every litigation before the NTT. It is not possible to accept a party to a litigation, can participate in the selection process, whereby the Chairperson and Members of the adjudicatory body are selected.

A provision for reappointment would itself have the effect of undermining the independence of the Chairperson/Members of the NTT. Every Chairperson/Member appointed to the NTT, would be constrained to decide matters, in a manner that would ensure his reappointment in terms of Section 8 of the NTT Act. His decisions may or may not be based on his independent understanding. We are satisfied, that the above provision would undermine the independence and fairness of the Chairperson and Members of the NTT. Therefore, section 8 of the NTT Act is held unconstitutional.

Whether CA/CS can appear before NTT – Section 13(1) of the NTT Act authorising Chartered Accountants to appear for a party before the NTT is unconstitutional and unsustainable in law. Company Secretaries cannot be permitted to appear before the NTT.

Since sections 5, 6, 7, 8 and 13 of the NTT Act have been held to be illegal and unconstitutional, therefore in the absence of the aforesaid provisions, the remaining provisions have been rendered otiose and worthless, and as such, the provisions of the NTT Act, as a whole, are hereby set aside.

Hon'ble Judge Rohinton Nariman, in a separate but concurring judgment also accepted the contention of the Petitioners (which is not accepted by majority judgment) that it is impermissible for the legislature to divest superior courts of record from the core judicial function of deciding substantial questions of law.

Madras Bar Association v. Union of India and Anr., Transferred Case (C) No. 150 of 2006 dt. 25-9-2014, (SC) (www.itatonline.org)

HIGH COURTS

2. Extension of due date of filing return of income-tax audit report due date extended

On a petition filed by the Chamber of Tax Consultants against the CBDT notification dated 20-8-2014 extending due date for obtaining and furnishing tax audit report u/s. 44AB to 30th November 2014 without extending the due date for furnishing the return of income, the Bombay High Court observed that there would be substantial hardship caused to the assessee, if the date of filing return was not suitably extended. Considering the practical difficulties of the assessee, the Court directed the CBDT to look into the issue and take a just and proper decision on the matter, before 30th September 2014.

The Chamber of Tax Consultants & Ors. v. Union of India & Ors., WP Lodging No. 2492 of 2014 dt. 25-9-2014 (www.itatonline.org)

3. S.9(1)(v): Income deemed to accrue or arise in India – Explanation 5 – Indirect transfer – Deriving value from assets situated in India

Copal Partners Limited, Jersey ("Copal Jersey") had a wholly owned subsidiary in Mauritius, Copal Research Limited ("Copal Mauritius 1"). Copal Mauritius 1 further owned shares of various global subsidiaries, an Indian company, Copal Research India Private Limited ("Copal India"), and a Mauritius based subsidiary – Copal Market Research Limited ("Copal Mauritius 2"). Copal Mauritius 2 had an underlying Indian subsidiary, Exevo India Private Limited ("Exevo India").

Moody's group acquired Copal subsidiaries in the following manner:

- Stage 1: Transfer of shares of Copal India by Copal Mauritius 1 to Moody's Cyprus

TRIBUNAL

- Stage 2: Transfer of shares of Exevo Inc. (the US-based parent of Exevo India) by Copal Mauritius 2 to Moody's Inc.
- Stage 3: Transfer of shares of individual shareholders (to the extent of 67% stake) in Copal Jersey to Moody's Inc.

On analysis of the consideration paid for all three transactions, the High Court came to the conclusion that, as US\$ 93.5 million was the consideration allocable to assets situated outside India and only US\$ 28.53 million was allocable to the Indian assets. Also, the term "substantially" as used in Explanation 5 was held to mean "principally", "mainly" or at least "majority" and for the indirect transfer tax provisions to apply, the overseas company should derive at least 50% of its value from Indian assets. Therefore, Copal Jersey cannot be said to derive substantial value from Indian assets.

The HC analysed the DTC, 2010, the Shome Committee report, OECD Model Tax Convention on Income and Capital as well as the UN Model Tax Convention to come to the conclusion. It was also categorically ruled that the structure was not designed to avoid tax.

DIT (IT) v. Copal Research Limited, Mauritius and Ors, W.P. (C) 2033, 2470, 2590, 2597/ 2013 dated 14-8-2014 (Delhi HC) (www.ctconline.org)

4. S. 143(2): Assessment – Service of notice – Service by affixture

Service of notice by affixture is substituted service and since it is not direct or personal service upon the defendant, to bind him by such mode of service the mere formality of affixture is not sufficient. Since the service has to be done after making the necessary efforts, in order to establish the genuineness of such service, the Serving Officer is required to state his full action in the report and reliance can be placed on such report only when it sets out all the circumstances which are also duly verified by the witnesses in whose presence the affixture was done and thus the affidavit of the Serving Officer deposing such procedure adopted by him would also be essential. In the instant case, the Serving Officer had not set out reason for passing subsequent entry nor for adopting the mode for service by affixture and without stating the reasons for doing so, the adoption of the mode of substituted service could not be legally justified.

Held, there was no valid service of notice u/s 143(2) by way of affixation. Hence, the assessment order deserves to be set aside as null and void.

Shri Sanjay Badani v. DCIT, ITA No. 5221/M/2014 dt. 9-9-2014, A.Y. 2008-09, (Mumbai-ITAT)

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

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