

All India Federation of Tax Practitioners



AIFTP TIMES

Volume 8 – No. 7 • July 2017

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
7th July, 2017	National Executive Committee Meeting	Goa
7th July – 9th July, 2017	Residential Education Programme	Goa
15th July, 2017	Notice of Annual General Meeting AIFTP (EZ)	Kolkata
15th July, 2017	Notice of Annual General Meeting AIFTP (NZ)	New Delhi
18th July, 2017	Notice of Annual General Meeting AIFTP (WZ)	Mumbai
2nd September, 2017	National Executive Committee Meeting	Kolkata
2nd & 3rd September, 2017	Two Day National Tax Conference	Kolkata

RENEWAL SUBSCRIPTION TO AIFTP JOURNAL

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal in first week of April, 2017. Members are requested to send the DD or Cheque at par in favour of “All India Federation of Tax Practitioners” payable at Mumbai as early as possible.

Members can also download the subscription form from our website; i.e., www.aiftponline.org and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners

Vipul Joshi
Treasurer

Note:

- Members who have not paid the subscription for AIFTP Journal for the year 2017-18 will not receive the AIFTP Journal from July, 2017 onwards.
- Members who required the AIFTP Journal to be couriered separately at their communication address, should add ₹ 300/- per year as courier charges.

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

Name	Mobile	Tel. (O)	Fax	E-mail
National President – Smt. Premlata Bansal, Sr. Adv.	9811558194	011-23955703	–	plbansal49@gmail.com
Deputy President – Shri Ganesh Purohit, Sr. Adv.	9425154914	0761-2660402	4003074	purohitganesh@gmail.com
Secretary General – Shri Sanjay Sharma, Adv.	9810071545	011-45539955	45539955	adv_sanjay_31@yahoo.co.in
Treasurer – Shri Vipul B. Joshi, Adv.	9820045569	022-66333736	22080951	vipulbjoshi@gmail.com

REPORT OF INTERNATIONAL TOUR-CUM-CONFERENCE – 2017

Kandy, Colombo, Sri Lanka, 3rd – 8th June, 2017
By Sanjay Sharma, Advocate, Secretary General

On persistent demand of members to organise an International Tour during summer vacations, our National President, Smt. Prem Lata Bansal along with the undersigned took the call and chose the destination 'SRI LANKA' (formerly Ceylon), an island nation in the Indian Ocean with diverse landscapes ranging from rainforest, highlands and sandy beaches. Besides, touring, Conferences on the burning issues of the new intriguing GST Law and Income Tax Law were planned to be organised in two major cities of the visiting country. The dates chosen as 1st week of June suited most as the Courts also observe holidays during this time.

The process of arrangements started from mid February, 2017 to give proper shape to the Tour-cum-Conference in a methodical way. A total number of 98 persons contingent comprising of Members of AIFTP including few of their family members from all over the country joined for participation.

To give comfort to the travellers the whole trip of 6 days was arranged with 5 star facilities. The tour was reasonably priced and included airfare; 5 star hotel accommodation; breakfasts, all lunches and dinners; daily sightseeing in comfortable AC Deluxe Coaches and 2 Gala Dinners besides other features and two conferences. In order to reach Colombo (Sri Lanka) from all over the country and to join each other at a particular span of time, it was suitably planned to depart from 4 major destinations viz. Ex-Delhi, Ex-Mumbai, Ex-Kolkata and Ex-Chennai as per the convenience of the travellers.

A fortnight before the date of travel it came on news that Sri Lanka was hit by a typhoon with floods reported in many of its parts. The whole programme got shaken but Lord Krishna had been kind enough to clear the weather conditions just 2 days prior to travel. National President took opinion of the Senior Members of the Federation, who were travelling along for confirmation of the programme in wake of this happening. However, all the Senior Members viz. Sh. Samir Jani, Sh. Narayan Jain, Sh. V. P. Gupta, Sh. R. D. Kakra and the undersigned were of collective view that the tour must GO ON. Hence this tour became a reality.

Daywise Sri Lanka Tour Programme is as under: -

Day 1, Saturday, June 3, 2017

- * Board flight to Colombo
- * Arrive Colombo, freshen up at Hotel Goldy Sand Nigambo and transfer to Kandy, a large city in Central Sri Lanka, which is a plateau surrounded by mountains and is home to tea plantations and biodiverse rainforest.
- * Accommodation at Hotel Grand Kandyan 5 Star.
- * Evening visit to Kandy lake, popular for strolling; Tooth Relic Temple famous for sacred Buddhist sites and a pious shrine. Temperature pleasant 20 – 22°C.

Day 2, Sunday, June 4, 2017

- * Leave Hotel for Nuwara Eliya (Ashok Vatika) for Hotel Araliya Green Hills, 5 Star, Nuwara Eliya (City of lights) in the Central Mountain range of Sri Lanka is blessed with a salubrious climate, breathtaking views of valleys, meadows, mountains and greenery. Temperature ranged from 15 – 18°C.
- * On the way visit Herbal Garden / Spice Garden. Great experience in fresh air and atmosphere giving feeling of freshness.
- * Visit to Blue Ribbon Tea factory, pioneer in management of tea estates, where all served with tea blended with natural aroma.
- * Visit to Ramboda Temple (station of Lord Rama's army to fight against Ravana) with recently built Hindu Temple by Chinmaya Mission having largest stature of God Hanuman (16 Feet) height. Also view three mountain ranges in shape of sleeping Hanuman.

Day 3, Monday, June 5, 2017

- * Local Nuwara Eliya Tour covering Gregory Lake. This is most prominent attraction and place to spent some time and relax. Members enjoyed the cloudy weather and boating in lake in the surrounding of beautiful park.
 - * Visited Seeta Amman Temple (Ashoka Vatika) which is a unique temple dedicated to Seeta Mata. It has been made at a place where Seeta Mata spent her days in prison of Ravana. River flowing beneath the temple is told to be from the water flowing from the eyes of Seeta Maa. A big foot step of Hanuman is also near the Temple and is a spot of attraction.
 - * Visited another temple Gayathri Peedam run by Swami Shankaranda in an efficient ashram and only temple in the World boasting of two Gayathri statues. A unique feature of the shivaling in this temple is that the same is growing in size unlike other Shivalings. The temple also has 108 Shivalings and is known for various prayers and functions.
 - * Reached Hotel at 4 pm and relaxed. Evening started with Conference at well lit meeting Hall of Hotel Arliya Green Hills, Nuwara Eliya.
 - * The Conference started with ritual Saraswati Vandana and lighting of lamp. Thereafter, welcome address by Smt. Prem Lata Bansal, Sr. Advocate, National President. It was followed by addresses of Keynote speakers on the important topics as under: -
 1. TDS from payments of Commission on Exports – V. P. Gupta, Advocate.
 2. Pre-deposit for appeals under VAT – K.L. Goyal, Sr. Advocate.
 3. New Tax Laws for cashless Clean Economy – Arvind Shukla, Advocate
 4. Penalties and Prosecution under GST – Dr. Naveen Rattan, Advocate
- Vote of Thanks was proposed by Sh. Samir Jani, Vice President WZ and concluded by National Anthem. The undersigned was the Master of Ceremony and conducted it in a joyous manner.

Day 4, Tuesday, June 6, 2017

- * Transfer to Colombo for stay at Hotel Cinnamon Lake side 5 star accommodation. Temperature ranged from 25 – 28°C.
- * On way to Colombo visited Munneswaram Temple and Kali Amman Temple.
- * Munneswaram Temple is an important regional Hindu Temple complex in Sri Lanka and is in existence since 1000 CE, although myths surrounding the temple associate it with Ramayan. It is one of the five ancient temples dedicated to Shiva in the region. The presiding deity Shiva is installed in form of Lingam in the sanctum sanctorium. A place worth visiting where the members enjoyed praying and watching the Abhishek and unique Shringaar of the deity.
- * Evening was enjoyed with GALA Dinner and drinks. Members exchanged pleasantries and enjoyed the evening.

Day 5, Wednesday, June 7, 2017

- * Visited Bentota in morning. Just across the Bentota bridge over the River Bentara also called Bentota Ganga is the coastal town and a pretty rural area. The greenery of the landscape needs a special mention. Nearly all the members despite different ages enjoyed the water sports such as Speed motor boating, Jet Ski. Banana ride, Ringo Ride (tubing) complementary in the package and enjoyed the sumptuous lunch in well shaded and sheltered by tall trees Restaurant. All the members had a fun filled morning to afternoon Session and relaxed in the Hotel on return to Colombo.
- * Evening started with most lustrous event and Conference at 5 Star Hotel Cinnamon Lakeside.

It is a proud moment for AIFTP members that the Conference was inaugurated by H.E. Mr. Taranjit Singh Sandhu, High Commissioner of India to Sri Lanka. The Chief Guest, High Commissioner Sandhu has a distinguished career spanning 30 years after joining IFS in 1988. He has earlier served as Head of the Political wing to many countries and United Nations.

Ms. Shuza, Economic Advisor from India also graced the Conference with her charming personality.

The Conference started with Lighting of Ceremonial lamp and dance by little girl Ms. Pranavee on the Saraswati Vandana to invoke the blessings of Goddess. After the floral welcome of the Chief Guest the National President Smt. Prem Lata Bansal, Sr. Advocate gave her welcome address with special stress on the theme of the Conference – Role of Tax Professionals in Global Economy. A befitting Souvenir containing informative articles on the current topics of interest on GST and Income Tax, messages and blessings from Justice A. K. Sikri, Judge Supreme Court of India; Justice Gita Mittal, Acting Chief Justice High Court of Delhi; Justice Dr. S. Muralidhar Judge Delhi High Court; Justice R.V. Easwar, Judge Retired Delhi High Court; Sh. M. S. Wadhwa Member Judicial Appellate Tribunal VAT; Sh. H. Rajesh Prasad IAS, Commissioner DVAT. It also contained photos of our Federations Forefathers, Past National Presidents; list of members NEC-2017, Conference schedule, Tour programme and painting by Registrar Delhi High Court. The Souvenir was exotic and digitally designed. H.E. specially praised and congratulated the members on its release.

H.E. also intermingled with all the members and ladies and had photographs with them. The addresses by the speakers made the show a Grand Success on the intriguing topics as under:-

1. Cross-Border Transaction Indo-Sri Lanka Treaty - K. Sampath, Advocate
2. Input Tax Credit under GST - Rajesh Jain, Advocate
3. Cash Transactions and Demonetisation - Narayan Jain, Advocate

The undersigned was the Master of Ceremonies. Elegant Mementoes of Diviniti 24 carat gold were presented to the Chief Guest and his accomplice, the Economic Advisor. All the professional participants were awarded with specially designed Certificate of Participation, duly signed by the National President and the Secretary General of AIFTP with Indian and Sri Lankan National Flags symbolized. All the members and ladies were then presented with high quality Branded gifts as a mark of their joining on the International tour and for sweet remembrance for times to come.

The undersigned also proposed the Vote of Thanks and the Conference concluded with the National Anthem.

Gala Dinner with drinks and complementary cultural performance by famous Sri Lankan dancing troupe added more colour to the evening.

Thereafter, many members visited the famous Bellagio, Bally's Casino chain in Colombo, and experienced and enjoyed the late evening thrills.

Day 6, Thursday, June 8, 2017

- * After breakfast at leisure, checked out of Hotel at Noon for local Colombo city tour and shopping. Sri Lanka's Capital Colombo, a port city, with rich colonial heritage, on western coast is a potpourri of races, religions and cultures. The city is a contrast itself, with mansions, lush gardens, fine dining options standing next to urban slums.
- * Visit to famous Anjaneyar Temple (Panchamukhi Hanuman Temple) with spectacular peace was nice to adieu good bye to the country.
- * Evening transfer to Nigambo Hotel Goldysand for Beach Dinner and thanksgiving session by the National President and the Secretary General where all the members shared the fun and experiences of this Tour -cum-Conference making it a wonderful event.

After dinner transfer to airport for onward flight to India, but and all the members relished the memories, having experienced the Disciplined, Clean, Green, Salubrious climate and Breathtaking views of Valleys, Meadows, Mountains and scintillating Beaches of this island nation SRI LANKA.

Activity Report of Central Zone for the Month of June 2017

By D. C. Mali, *Chairman AIFTP(CZ)*

Dated 19-6-2017

In the month of June 2017, we organised two Conferences, one on 4th June 2017 at Jodhpur in which more than 254 delegates were participated, The Conference was on the subject Income Tax Computation and Disclosure Standards and Benami Transation, GST and RERA. Speaker in the Conference was CA Rajesh Mehta on Income Tax, on GST Ms. Prerna Chopra, Executive, Managing Committee of Central Zone member presented demo and Mr. Abhishek Singhania, FCA, PWC and CA Pradeep Jain of Jodhpur delivered the speech on GST. Chairman(CZ) D. C. Mali Welcomed of Delegates and Conference Chairman (CZ) Mr. P. M. Chopra took the suggestions to submit before the GST Council from different association of Jodhpur Division, Bikaner Division, Jalore Division and Ajmer Division. This conference was organized jointly with Marudhara Tax Bar Association (Western Zone), I.T.A.T. Bar and Rajasthan Re-rollers Association.

Second conference was organized in Rajnandgaon on 17 June, which is presided over by Deputy President Adv. Ganesh Purohit and Guest of Honour was Mr. P.M. Chopra Conference Chairman (CZ) and Member NEC. Speaker in the conference was CA Rajesh Mehta from Indore on Income Tax Computation and Disclosure Standards and Benami Transation and RERA. Chairman Mr. D.C. Mali also welcomed the delegates on this occasion felicitation of the President, Secretary of Rajnandgaon Tax Bar and Vice chairman of AIFTP(CZ) has done by Central Zone. On this occasion nearly 70 participants have taken part from Durg, Bhilai, Bilaspur. CA Rajesh Mehta, Joint Secretary and Mr. Arvind Mittal Member, Managing Committee of Central zone were also present there. AGM of Central Zone was also held on the same venue. Lastly Vote of Thanks was given and concluded by National Anthem.

We have also plan to organise seminar at Jalore, Ranakpur, Bikaner, Makrana, Barmer, Jaipur and Bhopal (MP) in the month of July and August 2017.

Notice of Annual General Meeting AIFTP (EZ)

Notice is hereby given that the Annual General Meeting of the members of the All India Federation of Tax Practitioners (Eastern Zone) will be held on Saturday, the 15th July, 2017 at 12.15 PM. at Calcutta Chamber of Commerce, 18H, Park Street, Stephen Court, Kolkata – 700 071 to transact the following business:

1. To read and approve of Minutes of last Annual General Meeting held on 25th June, 2016.
2. To read & approve of Secretary Report for F.Y. 2016-17.
3. To consider and adopt the Audited Accounts of AIFTP (EZ) for the year ended 31st March, 2017.
4. To appoint Auditors for the F.Y. 2017-18 and to fix their honorarium.
5. To transact any other business with the permission of the Chair.
6. To propose Vote of Thanks.

For All India Federation of Tax Practitioners (EZ)
Sd/
(Arvind Agarwal)
Hon. Secretary

Place: Kolkata
Date: 22nd June, 2017

Note: 1) Accounts for the year ended on 31-3-2017 & Report of the Managing Committee of the East Zone can be collected from the Joint Secretary's Office from 9th July, 2017 onwards between 4:00 PM to 5:00 PM. The Accounts & Report can be made available to the Members through e-mail on request to the office.

2) If there is no quorum by 12:15 PM the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

Notice of Annual General Meeting AIFTP (NZ)

NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Northern Zone) will be held on Saturday, the 15th July, 2017 at Lawyers' Chamber, 30, Dindayal Upadhyaya Marg, Rouse Avenue, (Near ITO), New Delhi – 110 002 at 11.30 a.m. to the transact following business:-

AGENDA

1. To read and approve the minutes of the last AGM.
2. To receive and adopt the Annual Report of the Managing Committee (NZ) for the year 2016-17.
3. To consider and adopt the audited accounts for the year ended 31st March, 2017.
4. To appoint Auditors for the year 2017-18 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P (NZ)
Sd/-
(Sudhir Sangal)
Hon. Secretary

Place: New Delhi
Date: 28-6-2017

Note. 1. If there is no quorum by 11.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

Notice of Annual General Meeting AIFTP (WZ)

NOTICE TO MEMBERS

Notice is hereby given that the Annual General Meeting of the Members of All India Federation of Tax Practitioners (Western Zone) will be held on Tuesday, the 18th July, 2017 at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020 at 6.00 p.m. to the transact following business:

AGENDA

1. To read and approve the minutes of the AGM held on 27th June, 2016.
2. To receive and adopt the Annual Report of the Managing Committee (WZ) for the year 2016-17.
3. To consider and adopt the audited accounts for the year ended 31st March, 2017.
4. To appoint Auditors for the year 2017-18 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P (WZ)
Sd/-
(Vijay N. Kewalramani)
Hon. Secretary

Place: Mumbai
Date: 28-6-2017

Note. 1. Accounts for the year ended on 31-3-2017 and the report of the Managing Committee for the Western Zone can be collected from the Office of the Federation from 14th June, 2017 onwards between 11.30 a.m. to 5.00 p.m. The accounts and the report can be made available to the members through e-mail on request to the office.

2. 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.

National Tax Conference at Kolkata

Saturday, 2nd September, 2017 & Sunday, 3rd September, 2017

at

“The Park Hotel” 17, Park Street, Kolkata – 700 016

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)

AIFTP (EZ) has arranged a Two Day National Tax Conference at City of Joy (Kolkata) and invites all the NEC Members and Zone Delegates at NTC, Kolkata – 2017. i.e., Sanjeevani 2017.

PROGRAMME SCHEDULE

Saturday, 2nd September, 2017

08:30 AM to 09:30 AM	Registration & Breakfast
09:30 AM to 10:30 AM	Inaugural Session Chief Guest : MOS Union Minister, Shri Arjun Ram Meghwal* Guest of Honour : Hon'ble Justice Adarsh Kumar Goel, Supreme Court of India
10:30 AM to 11:00 AM	Tea Break
11:00 AM to 01:30 PM	1st Technical Session on GST – Supply – the new object of Taxation Chairman : Hon'ble Justice Adarsh Kumar Goel (SC) Co-Chairman : Shri P. C. Joshi, Advocate, Mumbai Speaker : CA. Shailesh Sheth, Mumbai Input Credit – New Issues & Challenges Speaker : CA. S. Venkatramani, Bengaluru GST Composition Scheme – A Sanjeevani to small traders Speaker : Shri Sandip Goyal, Advocate, Chandigarh
1:30 PM to 02:15 PM	Lunch Break
02:15 PM to 04:00 PM	2nd Technical Session – Survey, Search & Seizure & Implications of GAAR Chairman : Shri N. M. Ranka, Senior Advocate, Jaipur Speakers : Shri N. K. Poddar, Senior Advocate, Kolkata Shri Mahendra Gargeiya, Advocate, Jaipur*
04:00 PM to 04:15 PM	Break
04:15 PM to 05:30 PM	Implications of various changes in Income Tax & Obligation/Compliance in Current Year Return Filing of Income. (A.Y. 2017-18). Chairman : Shri S. K. Poddar, Advocate, Ranchi Speakers : Shri Narayan Prasad Jain, Advocate, Kolkata CA. Vipin Garg, Delhi
05:30 PM to 06:00 PM	High Tea
06:00 PM to 07:30 PM	NEC Meeting at Hotel “The Park” (For NEC Members Only)
07:30 PM onwards	Dinner at Hotel “The Park” Beside Conference Venue

Sunday, 3rd September, 2017

09:00 AM to 09:30 AM	Breakfast & Tea with Cookies
09:30 AM to 11:30 AM	4th Technical Session on Income Tax & GST – Taxation of Real Estate Transactions Chairman : Smt. Premlata Bansal, Senior Advocate, Delhi Speakers : Shri N. K. Poddar, Senior Advocate, Kolkata* Shri K. L. Goyal, Senior Advocate, Chandigarh*
11:30 AM to 11:45 AM	Break
11:45 AM to 01:30 PM	5th Technical Session on GST Chairman : Dr. M. V. K. Moorthy, Advocate, Hyderabad* Co-Chairman : Dr. Ashok Saraf, Senior Advocate, Guwahati Speakers : Shri Mukul Gupta, Advocate, Ghaziabad Smt. Nikita Badheka, Advocate, Mumbai* CA. Arun Agarwal, Kolkata

01:30 PM to 02:30 PM Lunch Break
 02:30 PM to 03:30 PM Practical Problems on GST
 03:30 PM to 05:00 PM Brains' Trust & Valedictory Session
 Chairman : Shri Ganesh Purohit, Senior Advocate, Jabalpur (VS)
 05:00 PM to 05:30 PM High Tea

*Confirmation Awaited

Delegate Fees

For Members ₹ 3,000/- (Delgate Fee – ₹ 500/- Food & Kit Charges – ₹ 2,500/-)
 For Accompanying Spouse ₹ 2,500/- (Towards Food)
 For Non-Members ₹ 3,500/- (Delegate Fee – ₹ 1,000/- Food & Kit Charges – ₹ 2,500/-)
 Cheque (at par)/Draft Payable "All India Federation of Tax Practitioners (EZ)", Kolkata

RTGS/NEFT - "All India Federation of Tax Practitioners (EZ)" Allahabad Bank, J.L. Nehru Road Branch, Kolkata – 700 013
 A/c. No. 21162499756
 IFSC: ALLA0211708

Outstation Delegates are requested to e-mail their travel plan & accommodation details OR assistance if any required to aiftpkolkata@gmail.com, rdkakra@gmail.com

For Further Details & Registration – Contact

R. D. Kakra (Advocate) Chairman (AIFTP EZ), M: 7980828838, rdkakra@gmail.com
 Narayan Prasad Jain (Advocate) M: 9830951252, npjain@vsnl.com
 CA Indu Chatrath M: 9831048516, ichatrath@yahoo.com
 Nanda Dulal Saha (Advocate) M: 9830044321, ndsaha-51@hotmail.com
 S. C. Garg (Advocate) M: 9331025737, scgargco@yahoo.com
 Arvind Agarwal (Advocate) Secretary (AIFTP EZ), M: 9831026660, arvindrr@hotmail.com
 Kamal Kr. Jain (Advocate) Jt. Secretary (AIFTP EZ), M: 9830708341, kamalkrjain@yahoo.com
 Sandip Choraria (Advocate) M: 9830022880, taxconcept.sc@gmail.com
 Achintya Bhattacharjee (Advocate) M: 9830026457, achintya_bhattacharjee@hotmail.com

Office Bearers of AIFTP

Mrs. Prem Lata Bansal, National President
 Mr. Ganesh Purohit, Dy. President
 Dr. Ashok Saraf, Vice President
 Mr. Sanjay Sharma, Secretary General,
 Mr. Dilip Kumar Agarwal, Jt. Secretary
 Mr. Vipul B. Joshi, Treasurer

Office Bearers of AIFTP – Eastern Zone

Mr. Ram Deo Kakra, Chairman
 Mr. N. D. Saha, Vice Chairman
 Mr. Jagdish Kumar, Vice Chairman
 Mr. K. L. Mittal, Vice Chairman
 Mr. R. N. Pal, Vice Chairman
 Mr. Suman Chetia, Vice Chairman
 Mr. Arvind Agarwal, Hon. Secretary
 Mr. Kamal Kumar Jain, Hon. Jt. Secretary
 Mr. Ramesh Kumar Dhal, Hon. Jt. Secretary
 Mr. Bishnu Kumar Loharuka, Hon. Treasurer

Advertisement Tariff for AIFTP Journal (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 29-6-2017 Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	926	24	3	953
Eastern	4	1324	36	3	1367
Northern	0	1058	17	0	1075
Southern	1	1142	19	8	1170
Western	4	2243	37	18	2302
Total	9	6693	133	32	6867

DIRECT TAXES

Ms. Neelam Jadhav, *Advocate*, KSA Legal Chambers

Tribunal Unreported Decisions:

1. 43 B(b) : Disallowance of claim of gratuity - If there was no claim of gratuity for relevant year, no question of disallowance would arise

During assessment, the AO perused from the audit report of the assessee wherein it was mentioned that gratuity was shown as payable. Observing that sums which were paid by assessee were allowable u/s. 43B(b), therefore AO disallowed same and brought it to tax. The assessee raised the additional grounds and submitted the amount disallowed by the AO is the opening balance of provision for gratuity and has not accrued during the relevant year.

The ITAT held that as per the Article 265 of the Constitution of India, the Govt. has to collect the tax only in accordance with law and therefore, If there is no claim of gratuity for the relevant year then there is no disallowance u/s. 43B.

Viceroy Hotels Ltd. vs. Dy. CIT, ITA NO. 292/Hyd/2016, dtd. 9/6/2017 source : www.itat.nic.in

2. S. 45 : Determination of consideration of transferred land - date of entering into Joint Development Agreement would be "the date" for arriving cost of transfer i.e. cost of structure as on date of agreement would be cost of transfer instead of cost of actual construction in term of Joint Development Agreement

In assessment proceedings, AO proposed to adopt cost of construction incurred by Builder as consideration for exchange of 55% of undivided portion of land. The CIT(A) upheld consideration determined by AO as per cost of construction provided by builder as against FMV of land as on date of Joint Development Agreement.

The ITAT observed that neither AO nor CIT (A) had adjudicate the date of transfer i.e. as to when property would be transferred after built up to assessee in term of Joint Development Agreement. The property would not be transferred to assessee during the year under consideration in terms of Joint Development Agreement. For the purposes of determining cost of construction, the date of entry into Joint Development Agreement would be "the date" for purposes of arriving cost of transfer i.e. cost of structure as on date of agreement would be cost of transfer instead of cost of actual construction in term of Joint Development Agreement.

Y. S. Mythily vs. ITO, ITA No. 235/Bang/2016 dt.9/6/2017 source: www.itat.nic.in

3. S. 153A : Search and seizure – Assessment - No addition can be made in respect of assessments which have become final - if no incriminating material is found during search

During the years the assessee received gift from "X" and the same was declared in the original returns filed in the form of capital accounts. Search on the assessee's place took place on 03-08-2006. The AO during the assessment of u/s. 153A noticed that the gift was already disclosed in the capital accounts filed along with the returns of income and this is not the income discovered or unearthed during the course of search by the department u/s. 132. The AO assessed the same gifts as income from undisclosed sources and the same has been confirmed by the CIT(A).

The ITAT held that, once assessment has attained finality, then while passing independent assessment u/s.153A/143(3) AO could not disturb the same unless the material gathered in the course of search u/s.132 was established.

Nenshi L. Shah vs. Dy.CIT ITA No. 3577/Mum/2011 dtd.24/05/2017 source: www.itat.nic.in

4. S. 199(3) : Amount of TDS claimed, corresponding to claim of unrealized rent which was offered for tax as income, action of the assessee was in accordance with provisions of s. 199 and eligible for seeking credit of TDS

The AO noticed that the assessee company has offered income under the head of income from house property after deducting the amount of unrealized rent under Rule 4 of the Income Tax Rules 1962 and claimed TDS credited on both, realised as well as unrealized rent. The AO restricted the allowances of TDS credited to the extent of actual amount of rent received. The AO rectified this mistake u/s.154. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the AO

The honorable ITAT observed that assessee has disclosed rental income but claimed deduction of unrealized rent u/s. 23(1) r.w.rule 4 of the Rules. The unrealized rent is deduction which is claimed u/s. 23(1) r.w. Rule 4, from the total rental income offered during the year. The unrealised rent is not an exempt income. As the total rental income (includes unrealized rent) which was duly offered to tax under the head 'Income from House Property'. Held that where amount of TDS claimed, corresponding to claim of unrealized rent was offered to tax, then in view of s.198 also same was assessed by AO and it could be held that assessee's action was in accordance with provisions of s. 199, therefore assessee was eligible for credit of TDS amount.

Rangji Realities Pvt. Ltd. vs. Ito ITA No. 6119/Mum/2016. Dt. 9-6-2017 source: www.itat.nic.in

5. S.271B: Penalty – Non-enclosure of Audit report to the return of income did not attract any penalty u/s.2871B

Search and Seizure operations were conducted wherein certain information related to assessee's firm was found and seized and consequent to search proceedings, assessee filed its return of income admitting the income, in response to search proceedings, the noticed issued u/s.153C. The income of the assessee was assessed, but AO had initiated penalty proceedings only for non-enclosure of audit report along with Return,

The ITAT held that non-enclosure of audit report to the return of income does not attract any penalty u/s. 271B, the CBDT Circular No. 5 of 2007 states that while uploading the return, no audit report should be attached with the return and also further states that it should not be furnished separately before or after due date. Since AO has initiated the penalty only for non- enclosure of audit report along with the Return.

Sri Sai Prasanthi Realtors & Anr. vs. Dy. CIT TA No. 856/Hyd/16, 857/Hyd/16, 858/Hyd/16, 859/Hyd/16, dtd. 26-5-2017 source : www.itat.nic.in

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IMPORTANT CASE LAWS IN SERVICE TAX, CENTRAL EXCISE

S. S. Satyanarayana, *Tax Practitioner*, Hyderabad.

CENVAT Credit

The appellant is in appeal against the impugned order wherein the CENVAT credit on inputs were denied on the premise that the invoices against which the appellant has taken the credit were not pre-authenticated by the dealer and the dealer has not maintained records for goods supplied to the appellant. Held: Non-maintenance of records of receipt of inputs by the dealer cannot be the ground for denial of CENVAT credit as there is one to one correlation with invoice issued by manufacturer and the dealer.

[M/s. Swaraj Foundry Division v. CCE, Chandigarh – 2017 (3) TMI 499 – CESTAT, Chandigarh]

Central Excise

The respondent M/s. APR Packaging Ltd. are engaged in the manufacture of paper and paper sacks falling under sub-heading No. 4804.90, 4805.00 and 4819.19 of the CETA, 1985 and they cleared their finished goods, i.e. craft paper to their sister concern, viz., M/s. Ballarpur Industries Ltd. The department contention is that the respondents sales transaction with various units of Ballarpur Industries Ltd. are sales to related persons which includes interconnected undertaking as defined in the Monopolies & Restrictive Trade Practice Act, 1969 and Explanation I to IV thereto and the same is evident from the statements given by the Deputy Manager (Commercial) and authorised signatory of the assessee recorded under Section 14 of the Central Excise Act, 1944. It was also contended that the appellant and M/s. Ballarpur Industries Ltd. are under the same management. Therefore, it was proposed that the goods supplied by the appellant to M/s. Ballarpur Industries Ltd. shall be valued on 115% of the cost of production in terms of Rule 8 of the Central Excise Valuation Rules, 2000. The adjudicating authority confirmed the demand of differential duty. Being aggrieved by the order-in-original, the respondent filed appeal before the Commissioner (Appeals), who set aside the order and allowed the appeal filed by the respondent. Therefore, the Revenue is before us. Held : The sale to or through an interconnected undertaking cannot be treated as sales made through related persons. Therefore the entire foundation of allegation stands demolished. The fact being a common Director does not establish the mutuality of interest. Revenue's appeal dismissed.

[CCE v. APR Packaging Ltd. – 2017 (3) TMI 455 – CESTAT, Mumbai].

CENVAT Credit

Denial of CENVAT credit without finding out actual usage of various iron and steel materials used in fabrication of plant and machinery in premises of appellant was not valid. CENVAT credit legitimately available on capital goods would not be denied just because it was entered in assessee's books of account as no utilisation of said credit was possible without commencement of production. Where there was specific inclusion of input services for construction of factory, assessee-manufacturer would be eligible to avail credit of service tax paid on such input services.

[Dalmia Cements Ltd. v. CCE (LTU), New Delhi - [2017] 79 taxmann.com 287 (New Delhi - CESTAT)]

Central Excise

Recovery of dues of sole proprietor concern. Both proprietress as well as power of attorney holder of concern died. The heirs of such deceased sole proprietor/proprietress cannot be proceeded against in the absence of a clear legal stipulation.

[Gaurav Agarwal v. Dy. CCE – 2017 (4) TMI 333 - Bombay High Court]

CENVAT Credit

The appellants are engaged in providing storage and warehousing and other services and are registered with the Service Tax Department. On verification of accounts of the appellant, it was observed that the appellants had availed irregular credit during the period 2007-08 and 2008-09. A show-cause notice was issued to the appellants and after due process of law, the original authority disallowed the credit and ordered recovery of the same along with interest and imposed equal amount of penalty. Being aggrieved, the appellants have filed the present appeal. Held: The documents produced before Tribunal which are photocopies are not at all clear and does not show that service tax has been discharged. All these documents are so shabby. It is for appellant who is availing the benefit of credit to upkeep and maintain proper documents if he intends to avail credit which the appellant has failed.

[East India Petroleum P. Ltd. v. CCE, Visakhapatnam – TOG-326-CESTAT-HYD-2017]

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