

All India Federation of Tax Practitioners**AIFTP TIMES**

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Volume 9 – No. 11 • November 2018



*We Wish all our Members and Readers a
Happy Diwali and Prosperous New Year*

**FORTHCOMING PROGRAMMES**

Date & Month	Programme	Place
24, 25-11-2018	Two Day Conference (NZ)	Prayagraj
21-12-2018	ITAT Bar Associations' Co-ordination Committee Meeting	Guwahati
21-12-2018	National Executive Committee Meeting	Guwahati
22, 23-12-2018	21st National Tax Convention, 2018	Guwahati

AIFTP's Newly Designed Website

AIFTP's website has been completely changed and it is now interactive with facilities of Online Membership, Journal Subscription, Online payments, Corrections of data for All Members' Directory, (to be published soon) etc.

It includes new members approved in various NEC Meetings under the head of "New Members List" and also the Zonal Chairman's Report.

Please visit website www.aiftponline.org for regular updates and changes. We request you to send your feedback.

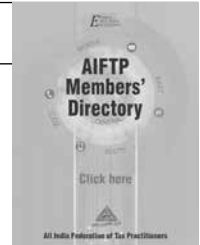
**AIFTP Online Membership**

AIFTP Membership is now **ONLINE**. You can ask your professional friends to join the AIFTP by online filling the application forms, uploading documents. The membership fees can also be paid online. Please log on to www.aiftponline.org & click

AIFTP's Members' Directory

AIFTP is shortly coming out with its Members' Directory of all members. The online facility for checking and correcting of details is available.

All members are requested to visit AIFTP's website and check and correct the data. You can also upload your photo online. Please visit www.aiftponline.org and click

**Announcement****SAARTHI****21st NATIONAL CONVENTION 2018**

Organised by

All India Federation of Tax Practitioners (EZ)

on 22nd & 23rd December, 2018 at GMCH Auditorium, Guwahati

Theme**Globalisation and Changes in Tax Laws – Role and Responsibilities of Tax Professionals in Nation Building**

For further details, please visit website i.e. www.aiftpghyconvention2018.com

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

Name	Mobile	Tel. (O)	Fax	E-mail
National President – Shri Ganesh Purohit, Sr. Adv.	9425154914	0761-2660402	4003074	purohitganesh@gmail.com
Deputy President – Dr. Ashok Saraf, Sr. Adv.	9864020679	0361-2529532	2460041	drashoksaraf@gmail.com
Secretary General – Shri Pankaj Ghiya, Adv.	9829013626	0141-2621679	2621679	pankajghiyajapur@gmail.com
Treasurer – Shri Vipul B. Joshi, Adv.	9820045569	022-66333736	22080951	vipulbjoshi@gmail.com

Report on Two-Day National Tax Conference at Thane (Maharashtra) held on 6th and 7th October, 2018

A two-day National Tax Conference with the theme – “DISHA – The Way Forward” was organised on 6th and 7th October, 2018 at Hotel Satkar Residency at Thane, by All India Federation of Tax Practitioners – Western Zone (AIFTP-WZ), Tax Practitioners’ Association, Thane (TPA, Thane), The Goods and Services Tax Practitioners Association of Maharashtra (GSTPAM) and Tax Friends, Mumbai.

The Conference was well attended by over 310 participants from across the country, having a participation of over 225 delegates from outside Thane District.

The conference was inaugurated by Hon’ble Mr. Justice Abhay S. Oka, Judge, Bombay High Court. In his inaugural address, Hon’ble Mr. Justice Abhay S. Oka emphasised on changing times and approach of the judiciary and also raised concerns on the backlog in the judiciary. He appreciated the theme of the conference stating that it was apt for creating a road map for the future. The heads of each participating organisation welcomed the delegates to the conference and thanked them for making it a grand success. Shri Ganesh Purohit, National President AIFTP, raised the need for better co-operation between Government and the Tax Practitioners Associations, specially in view of the constantly changing tax laws in the country.

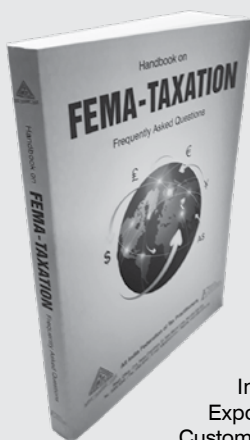
The AIFTP mobile app and also the AIFTP Publication FEMA and Taxation were also launched on the occasion at the hands of the Chief Guest. A video message from Shri Devendra Fadnavis, Hon’ble Chief Minister of Maharashtra was played, wherein he congratulated the conference organisers and assured of better co-operation between the Government and the Tax Practitioners Associations in successful implementation of various tax laws.

In all there were 6 Technical Sessions and a Panel Discussion on Income Tax and GST were held.

Along with the academic sessions on the first day, National Executive Committee Meeting of AIFTP was also held at Hotel Satkar Residency which was attended by around 49 members. Also the EOGM of AIFTP was held on the first day which was attended by around 69 members.

The Conference concluded with a Vote of Thanks.

BOOK RELEASE ANNOUNCEMENT



We are pleased to announce the release of the publication by the All India Federation of Tax Practitioners titled “**Handbook on FEMA – Taxation – Frequently Asked Questions**”.

Hon’ble Mr. Justice A. S. Oka, Judge, Bombay High Court released the said publication on 6th October, 2018 at the National Tax Conference, Thane organised by the AIFTP (WZ) and other local associations.

The Editorial Board for the publication consists of CA Dilip J. Thakkar and Sr. Adv. Dr. K. Shivaram who have shared their experience and knowledge. The publication is authored by CA Paresh P. Shah.

This is a unique publication compiled in a question-answer format explaining the provisions, laws, conventions etc. An aggregate of 293 questions are answered by giving references to relevant case laws on the respective subject. This scholarly publication will be a useful referencer for Lawyers, Chartered Accountants, Tax Practitioners, Departmental Representatives. It is divided into 15 Chapters viz., Emigrating Indians, Non-Resident Indians, Returning Indians, Facilities for Resident Indians / Returning Indians, Direct Investment Outside India, Imports by Persons Resident in India, Exports under FEMA, Compounding of Offences, Penalties, Adjudication and Appeals under FEMA, 1999, Customs Baggage Rules, PIO Card, Overseas Citizens of India, The Citizenship Act, 1955, Foreign Contribution Regulation Act, 2010, Taxation of Non-Resident Indians and Prevention of Money Laundering Act, 2002.

This publication would be an invaluable treasure in the library of tax professionals.

The price of the publication is ₹ 750/-

For members of the AIFTP, ITAT Bar Association and subscribers of www.itatonline.org, the same will be available at a price of ₹ 600/- and for others, the same is available for ₹ 675/-.

Local/outstation members requiring delivery of the book are requested to add ₹ 100/- per publication as courier charges. Please make all drafts payable to “All India Federation of Tax Practitioners”.

For further details please contact:

ALL INDIA FEDERATION OF TAX PRACTITIONERS
215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020
Tel.: 2200 6342 / 4970 6343 Telefax: 2200 6343 • E-mail: aiftp@vsnl.com

Prayagraj Tax Conference 2018

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS – NORTH ZONE

In Association With

**THE INCOME TAX BAR ASSOCIATION, ALLAHABAD & THE U.P. TAX BAR ASSOCIATION,
SCHOOL OF MANAGEMENT STUDIES, MNNIT, ALLAHABAD**

at

Bishop Johnson School, M. G. Marg, Civil Lines, Allahabad

on

Saturday 24th & Sunday 25th November 2018

THEME : Role of Tax Professionals in Fiscal Laws

PROGRAMME

Saturday, 24th November 2018

08.30 AM to 9.30 AM	Registration
09.30 AM to 11.30 AM	Inaugural Session Chief Guest : Hon'ble Mr. Justice Ashok Bhushan, Judge, Supreme Court of India Guests of Honour : Hon'ble Mr. Justice Vineet Saran, Judge, Supreme Court of India : Hon'ble The Chief Justice of Allahabad High Court : Hon'ble Senior Judge of Allahabad High Court MOC : CA. Jamuna Shukla & Mr. Arvind Shukla, Advocate, Varanasi
11.45 AM to 01.45 PM	1st Technical Session : a) Restrictions on Cash Transactions under various provisions of the Income-tax Act 1961 b) Taxation of Capital Gains in case of Securities & Real Estate Transactions c) Recovery of Taxes under the Income-tax Act 1961 Chief Guest : Hon'ble Judge of Allahabad High Court Chairman : Dr. K. Shivaram, Senior Advocate, Mumbai Panellists : Mr Ashok Kumar Tripathi, CIT (Appeals), Allahabad : Mr. Rahul Agrawal, Advocate, Allahabad : CA. Rajesh Mehta Chairman (Central Zone), Indore : Mr. Anand Kumar Pandey, Advocate, Varanasi : Mr Anand Godbole, Advocate, Allahabad MOC & Introduction of Subjects : CA. Sakshi Khanna, Allahabad
01.45 PM to 02.45 PM	Lunch Break
02.45 PM to 05.00 PM	2nd Technical Session : a) Admissibility of ITC Under GST Laws. b) Implications of GST in case of e-Commerce Chief Guest : Hon'ble Justice Rajesh Bindal, Judge, Punjab & Haryana High Court Chairman : Mr. M. L. Patodi, Advocate, Kota Panellists : Mr. Vikram Chawla, Advocate, Saharanpur : CA. S. Venkatramani, Bengaluru : Mr. D. K. Gandhi, Advocate, Ghaziabad : Mr. Sanjay Pathak, Jt. Commissioner, GST MOC & Introduction of the Subject : Mrs. Stuti Saggi, Advocate, Allahabad
05.00 PM onwards	High Tea

Note: All Technical Session are Interactive Sessions

Sunday, 25th November 2018

- 09.00 AM to 10.30 AM Breakfast
10.30 AM to 12.30 Noon **3rd Technical Session :**
a) Assessment of Charitable Trusts, Educational Institutions and Medical Hospitals
b) Money Laundering and Taxation after Demonetisation
Chief Guest : Hon'ble Miss Justice Bharti Saprum Judge, Allahabad High Court, Allahabad.
Chairperson : Mrs. Prem Lata Bansal, Senior Advocate, Delhi
Panellists : CA. Rano Jain, (Mrs.), New Delhi
: Mrs. Shilpi Satyapriya Satyam, Advocate, Delhi
: Mr. V. P. Gupta, Advocate, Delhi
: CA. A. K. Srivastava, Delhi
: Mr. Subachan Ram, PCIT, Allahabad
MOC & Introduction of Subjects: Mr. Siddharth Pathak, Advocate, Allahabad
- 12.30 Noon to 01.45 PM **4th Technical Session**
Subject : Unbiasing Genders at work places – An ethical – Legal perspective
Chairperson : Mrs. Rekha Sharma, National Council for Women, New Delhi
Panellists : Prof. Geetika, Chairperson, Women Grievance Cell, MNNIT, Allahabad.
: Mrs. Sumitra Chowdhry, Advocate, Delhi
: Mrs. Anjo Jain, Advocate, New Delhi.
: Mrs. Shilpi Mitchell, Educationist, Allahabad
MOC & Introduction of the Subject : Mrs. Pooja Talwar, Advocate, Allahabad
- 01.45 PM to 02.30 PM Lunch Break
02.30 PM to 04.30 PM **5th Technical Session**
Sub: a) Inspection, Search, Seizure & Arrest under GST
b) Penalties under GST
Chief Guest : Hon'ble Justice S. D. Singh Judge of Allahabad High Court, Allahabad
Chairman : Dr. M. V. K. Moorthy, Advocate, Hyderabad
Panellists : CA. Siddheshwar Yellamali, Bengaluru
: CA. Dharmendra Srivastava, Kanpur
: Mr. Rakesh Agrawal, Advocate, Ghaziabad
: Dr. Naveen Rattan, Advocate, Amritsar
: Mr. Tarun Gulati, Advocate, New Delhi
MOC & Introduction of the Subjects: Mr. Harsh Vardhan Gupta, Advocate, Allahabad
- 4.30 PM to 5.00 PM Valedictory Session
Delegate Registration Fees : ₹ 3,000/- from 01-11-2018 onwards
Bank Details : Indian Overseas Bank, Civil Lines, Allahabad
Name of Account : PRAYAGRAJ TAX CONFERENCE – 2018; A/C No. : 035001000062798; IFSC : IOB0000350
- 1. For Delegate Registration Please Contact: Mr. Arvind Mishra – 9839503498 Mr. Arvind Gupta – 9415207624**
 - 2. We are arranging for SANGAM SNAN early morning on Sunday, 25th November 2018 All the delegates interested in taking a holy dip in Sangam may give their names to: Mr. K. K. Mishra, 9415214681 / Mr. Pawan Kumar Mishra, 9389468193**
 - 3. For Hotel Details and Accommodation please contact: Mr. Sanjay Kumar - 9415216798; Mr. Himanshu Misra - 7905952125; Mr. Vimal R. Ralph - 9451789367**

CONFERENCE COMMITTEE

- Mr. Ganesh Purohit National President, AIFTP, Jabalpur, 9425154914
Mr. Sanjay Kumar, Chairman, AIFTP (NZ), Allahabad, 9415216798
Mr. Ajit Dhawan, Conference Chairman, ITBA, Allahabad, 9415218681
Mr. Arvind Mishra, Convenor, ITBA, Allahabad, 9839503498
Dr. Ashok Saraf, Deputy President, AIFTP, Guwahati, 9435009811
Mr. Arvind Gupta, Vice Chairman, President UPTBA, Azamgarh, 9415207624
Mr. Madhurendra Nath, Vice Chairman, President ITBA, Allahabad, 9415267915
Prof. Tanuj Nandan, School of Management, MNNIT Allahabad, 9919622767
Mr. V. P. Gupta, Vice President, AIFTP (NZ), New Delhi, 9810052890
Mr. Pankaj Ghiya, Secretary General, AIFTP, Jaipur, 9829013626
Mr. Jamuna Shukla, Secretary, AIFTP (NZ), Varanasi, 9450361366
Mr. Sourabh Singh Gahlaut, Secretary, UPTBA, Lucknow, 9415002138

Direct Taxes

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

Tribunal

Unreported Decisions

1. S.2(22)(e) : Flat purchased for providing residential accommodation to the MD is a business necessity – it cannot be a deemed dividend

The assessee company purchased flat for the residence of CMD and for the same assessee took a loan from bank and paid installment along with interest. The AO declined the claim of the assessee u/s. 2(22)(e) as there was no business nexus between the residential premises of MD and the assessee company. The assessee contended before the Tribunal that the assessee purchased the flat for his CMD where he can treat the patient of the hospital very conveniently, if the residence is near to hospital, therefore, it is a business necessity of the assessee. Further the assessee nowhere transferred the fund of the company to any other person, therefore, the provision of s. 2(22)(e) was wrongly applied to the assessee.

The Honourable ITAT while deciding the issue held that when a company purchases flat for providing accommodation facility to its Managing Director, which was a business necessity, then tax benefits shall not be denied to the assessee as the activity is a business necessity, therefore an addition by invoking the provisions of deemed dividend u/s. 2(22)(e) was not correct. (AY 2010-11)

Aditya Jyot Eye Hospital Pvt. Ltd. v. ITO, ITA No. 5325/Mum/2015 dt. 24-10-2018 (Mum)(Trib.) Source : www.itat.nic.in

2. S.37 : Business Expenditure – Compensation directed by the Supreme Court to be paid by assessee, to compensate the Government for the loss of revenue from mining or marginal illegalities, it is not a penalty but it is allowable as business expenditure u/s. 37

The assessee company is Public Sector Undertaking, engaged in business of 'mining of iron ore diamonds; and generation and sale of wind power'. The AO observed that assessee was carrying out mining activity in India and particularly in Karnataka and that Supreme Court of India took view of large scale illegal mining activity carried on by various companies in Karnataka at cost or detriment to environment and delivered their judgment levying appropriate charges on leaseholders. The AO observed that Supreme Court, based on extent of illegal mining, classified mining leases into three categories and that assessee fell in Category-B, before consideration of any resumption of mining operations by Category-B, each of lease holder must pay compensation for areas under illegal mining pits outside sanctioned area at certain rate and for illegal overburden for specified rate. Said direction was subject to final determination of notional loss caused by illegal mining and illegal use of land. The assessee made certain payment towards contribution

for Special Purpose Vehicle and penalty / compensation for encroachment of mining area beyond sanctioned / leased area. However, AO disallowed payment on ground that payment was punitive in nature.

The ITAT held that said expenditure was nothing but payment which was required to be made without which assessee could not have carried on mining activities and therefore, it was 'business expenditure'. Since CEC had categorised assessee as Category-A company and Supreme Court had accepted said categorisation, there would have been marginal illegalities committed by assessee and compensation / penalty as directed by Supreme Court was only to compensate Government for loss of revenue from such mining or marginal illegalities and not as penalty. Compensation was proportionate to area of illegal mining outside leased area and that assessee had paid proportionate compensation for mining in areas outside sanctioned area allotted to it and that 10% of sum was to be transferred to SPV and balance 10% was to be reimbursed to respective lessees, provided that it was payment made as 'compensation' for extra mining, without which assessee could not have resumed its activities. Hence the payment made by the assessee was compensatory in nature and was 'business expenditure' and was allowable u/s. 37(1).

NNDC Limited & Anr. v. ACIT, ITA No.1823, 1824/Hyd/2017, ITA Nos. 1785 & 1786/Hyd/2017 dt.17-10-2018, (Hyd.)(Trib.) Source : www.itat.nic.in

3. S.145(3) : In absence of any finding as to incorrectness in books of account or stock details, merely there is fall in gross profit ratio, books of account of the assessee cannot be rejected u/s. 145(3)

The assessee had filed its return of income declaring total loss of certain amount. During course of assessment proceedings, AO noticed that there was decrease in gross profit declared by assessee when compared to gross profit declared for AY 2011-12. The AO observed that though there was difference in gross profit declared for year, when compared to previous financial year, assessee failed to explain such difference with plausible reasons and further he observed that assessee company had been consistently showing gross profit about 10% over period and sudden decline was not explained satisfactorily. On the aforesaid facts the AO rejected the books of account of the assessee u/s.145(3) and income was determined on basis of gross profit estimation.

The Tribunal held that, assessee had been maintaining same set of books of account and stock register year-after-year and which had been accepted by AO in past. Even otherwise, assessee had reconciled quantity details of raw materials and finished goods category wise. Under these facts, it was not justified in making *ad hoc* addition and rejection of books of account u/s. 145(3) without recording any reasons as to how books of account maintained by assessee were inconsistent with regular method of accounting and accounting standards.

Further held, in absence of any finding as to incorrectness in books of account or stock details, merely for reason that there was fall in gross profit ratio, books of account could not be rejected u/s. 145(3), more particularly, when assessee had reconciled difference in gross profit ratio with necessary evidences.

ACIT v. Kamani Oil Industries Ltd. I.T.A. No.5010/Mum/2016, dtd.10-10-2018 (Mum.)Trib. Source : www.itat.nic.in

4. S.271(1)(c) : Revised return validly filed pursuant to notice u/s.153A, is accepted, defects found in original return cannot be considered for imposing penalty u/s. 271(1)(c) (r.w.s. 139(1))

The assessee filed return of income declaring a huge loss. Pursuant to the search and seizure operations u/s.132 and issuance of notice u/s.153A, assessee filed the return of income declaring a loss which the assessee revised declaring nil income. Assessment was completed on the NIL income only.

The AO observed that the conduct of the assessee in initially declaring a huge loss which was reduced substantially pursuant to the notice u/s. 153A and subsequent revision declaring nil income amounts to concealment of income by filing inaccurate particulars, Therefore, he levied penalty u/s. 271(1)(c) being 100% of the tax sought to be evaded.

The ITAT observed that when the revised return pursuant to the notice u/s.153A validly revised and the assessment completed accepting the revised return then no penalty could be initiated. Further there is no incriminating documents, asset or income found during the course of search which leads to the concealment or furnishing inaccurate particulars of income. Further held that the return of income filed in response to notice under section 153(A) is termed as return filed under section 139 and officer made assessment on said revised return and the penalty is to be levied on the income assessed over and above the income returned under section 153A of the Income-tax Act, if any. (AY 2009-10 to 2013-14)

M/s. OSE Infrastructure Ltd. vs. ACIT, ITA No.5895/Del/2015, dt.14-8-2018, (Del)Trib. Source : www.itat.nic.in



Indirect Taxes

Tanmay Mody, GST Practitioner

1. TNVAT Act – Time Limit for Admissibility of ITC

Whether Section 19(11) of the TNVAT Act, 2006 violates Article 14 and 19(1)(g) of the Constitution of India? Whether Section 19(11) is directory provision, non-compliance of which cannot be a ground for denial of input tax credit to the appellants? Whether Assessing Authorities could extend the period for claiming Input Tax Credit beyond the period as provided in Section 19(11) of Act?

Held

The input credit is in nature of concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the statute. Whenever concession is given by a statute the conditions thereof are to be strictly complied with in order to avail such concession. The use of words “shall make the claim” needs no other interpretation. Thus, the time period as provided in Section 19(11) is mandatory and not directory. The statute having not given any indication for extension of time which is a condition for claiming Input Tax Credit, the submission that period could have been extended by assessing authority is unfounded and cannot be accepted.

(Source: M/s. ALD Automotive P. Ltd. v. The Commercial Tax Officer and Ors., Order in Civil Appeal Nos. 10412, 10413 of 2018 dated 12th October, 2018)

2. GST – Taxation of Lottery under GST Acts

Whether CGST Act, 2017 and IGST Act, 2017 to the extent proposing to tax lottery is beyond the Constitutional definition of ‘goods’? Whether lottery is ‘goods’ or an ‘actionable claim’?

Held

A lottery ticket can be held to be goods if at all only because it evidences the transfer of a right. Lotteries being actionable claims are generally speaking “goods” or movable property. Since lotteries are generally speaking ‘goods’ and come within the definition of ‘actionable claims’, and since, lotteries are kept

out of the purview of ‘actionable claims’ which do not attract the CGST Act, 2017, lottery can therefore be charged to tax under the CGST Act, 2017.

(Source: Teesta Distributors & Ors. v. Union of India & Ors., Order in W. P. No. 18424 (W) of 2017 dated 10th October, 2018)

3. GST – Goa AAR

Applicant’s liability to pay tax on sale of villas after completion and obtaining necessary approvals from the competent authority.

Held

In absence of any supporting documents to substantiate the applicant’s claim of borrowing, the amount received by the applicant has to be considered as advances received towards sale of villa. The applicant has received advance towards sale of villa prior to issuance of completion certificate. Hence, the same is taxable under GST Act @ 12%.

(Source: Goa AAR Order No. GOA/GAAR/2 of 2018-19/2270 dated 20th September, 2018 in the case of M/s. Quattroporteluxury Home LLP)

4. GST – Punjab AAR

Whether free tickets given as “Complimentary Tickets” falls within the definition of supply under CGST Act, 2017 and thus, whether the applicant is required to pay GST on such free tickets? – Whether the applicant is eligible to claim Input Tax Credit in respect of complimentary tickets?

Held

The import of clause (b) in the definition of ‘consideration’ given in section 2(31) of the CGST Act, 2017 certainly covers the activity of the applicant of giving ‘complimentary tickets’ to certain persons in the furtherance of his business and would thus be covered under scope of supply defined in Section 7(1)(a) of the CGST Act, 2017.

(Source: Punjab AAR Order No. AAR/GST/PB/002 dated 20th August, 2018 in the case of M/s. K. P. H. Dream Cricket P. Ltd.)

5. GST – Karnataka AAR

Applicant is providing marketing, sales promotion and certain post-sales support services to foreign client - Whether promotion and marketing services is “intermediary services” for the purposes of section 12 of the IGST Act, 2017 for determining the place of supply of such services? If after sale support services are also provided under a composite contract, would it then be composite supply?

Held

The contract of services supplied are not pure and mere promotion and marketing services and the services provided is of the nature of facilitating the supply of goods, and hence would amount to “intermediary services”. The incidence of after-sales and warranty services is contingent upon the successful supply of materials and is not contingent upon the marketing “intermediary” services provided by the applicant to the principal and hence cannot be called as a naturally bundled

services. Hence this does not amount to a composite supply and the same are treated as two supplies independent of each other and the valuation of each has to be computed as per Section 15 of the CGST Act.

(Source: Karnataka AAR Order No. KAR ADRG 23 / 2018 dated 19th September, 2018 in the case of M/s. Toshniwal Brothers (SR) P. Ltd.)

6. GST – National Anti-Profitteering Authority

There was no reason for the Respondent to increase the basic price exactly equal to the amount by which the rate of tax had been reduced. Therefore, there is no doubt that the whole exercise of increasing the basic price was done by the Respondent with *mala fide* intention of not passing on the benefit of tax reduction to his customers.

(Source: Miss Neeru Varshney v. M/s. Lifestyle International P. Ltd., Case No. 8/2018 dated 25th September, 2018)



Service Tax – Important Case Laws

S. S. Satyanarayana, Tax Practitioner

1. Renting of Immovable Property Service

The appellant, who is an owner of properties at Mumbai as also at Agra had rented the same to the tenants under agreement and was receiving the rent on monthly basis from them. The appellant was neither registered with the Service Tax Department nor was discharging its obligation under the “Renting of Immovable Property”, by paying the appropriate service tax. Form 26 AS is a document under the Income Tax Law reflecting the amount of tax deduction at source (TDS). Admittedly the TDS is required to be deducted by a person making payment to another person and reflects on all the payment actually made. The appellants have not produced any evidence to show that such TDS amount reflected in Form 26 AS is incorrect or inflated or the appellant has made any refund claim of such excess TDS collected by the tenant, from the Income Tax Authorities.

Held : The amounts reflected in Form 26 AS represent the correct value of the services which has to be adopted as the assessable value, unless evidence to the contrary is produced by the appellant.

(Ms. Anuradha Sharma v. CST, Lucknow – 2018 (8) TMI 26 – CESTAT Allahabad)

2. Refund of service tax paid

The assessee claimed refund of Service Tax paid on the ground that construction services provided by them do not constitute a residential complex chargeable to service tax. The question before CESTAT was, whether the construction activity relating to villas undertaken by the appellants comes under the construction of residential complex service?

It is clear that construction of residential complex having not more than 12 residential units is not to be taxed. For the levy to be applicable it should be residential complex comprising of more than

12 residential units. In the instant case, the appellants constructed individual residential house, each being a residential unit. It is also brought on record that the plan of each of the building has been approved by the municipal authorities separately. The residential units constructed by them were individual independent houses not covered by the definition of residential complex. (Alliance Infrastructure Projects P. Ltd. – July 24, 2018).

(Alliance Infrastructure Projects P. Ltd. v. C.C.E & C.S.T., Bangalore ST-1 - 2018 (8) TMI 1223 - CESTAT Bangalore)

3. Renting of Immovable Property Service

The four assesseees were co-owners of a property. All the four owners gave the said property on rent to ICICI Bank Ltd. on monthly rent basis. The tenant bank was making payment of the rent individually to all the four owners of the above property by issuing separate cheques/demand drafts in their individual names. The Adjudicating Authority was of the view that the registration of the property in four individual names and execution of rent lease agreement with ICICI Bank in the separate names was only to evade the payment of the service tax by availing the threshold limit of ₹ 10 lakh under SSI exemption Notification No. 8/2008, dated 1-3-2008. **Held :** Where assessee who were joint owners of property, gave said property on rent, in view of fact that tenant was making payment of rent to each co-owner separately, value of said service i.e., rent of all co-owners of property, could not be clubbed so as to deny benefit of Notification No. 8/2008, dated 1-3-2008.

Hon'ble Supreme Court's judgment in the case of *CIT v. Shivsagar Estate* [2002] 124 Taxman 606/257 ITR 59 was followed.

(Anita Singh v. CCE, Dehradun - [2018] 95 taxmann.com 184 (Delhi))



An Appeal

Readers are requested to send their valuable suggestions for reducing the pendency in tax appeals before various forums. Kindly refer, the Editorial published in AIFTP Journal for the month of October, 2018 at Page No. 5. The link of same published on [www.itatonline.org](http://itatonline.org) is <http://itatonline.org/blog/how-to-improve-indias-legal-system-professionals-must-offer-suggestions-to-chief-justice-ranjan-gogoi/>

Advertisement Tariff for AIFTP Journal

	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 29-10-2018 Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	1039	25	3	1067
Eastern	6	1505	36	3	1550
Northern	0	1155	18	0	1173
Southern	1	1259	19	7	1286
Western	4	2306	37	5	2352
Total	11	7264	135	18	7428

Comments from Members

- ☞ Nice to receive message once in blue moon. Not expected, but appreciate the change – *Shri Anujan Raja, TP, Trivandrum.*
- ☞ Good initiative from AIFTP. – *Smt. Varsha V. Deshpande, Adv., Pune.*
- ☞ It's wonderful that AIFTP is adopting good networking system. – *Shri Vinod Sarvaiya, TP, Bhavnagar.*
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