

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

Volume 10 – No. 4 • April 2019

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
10, 11-5-2019	National Tax Conference	Pune
22-6-2019	National Executive Committee Meeting	Tirupathi
22, 23-6-2019	National Tax Conference	Tirupathi
4-8-2019	One Day Seminar	Patna
26-8-2019 to 4-9-2019	International Study Tour, 2019	Europe
6 to 8-9-2019	National Tax Conference	Shimla
12-10-2019	National Executive Committee Meeting	Udaipur
12, 13-10-2019	National Tax Conference	Udaipur
11, 12-11-2019	One Day Seminar & Darshan of Lord Viswanath, Ganga Arti and Dev Deepavali	Varanasi

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The world is slowly becoming more environment conscious and working towards making a more positive impact on the environment through different initiatives. Your Federation is also thinking, planning and implementing this process in a phased manner.

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Kishor Vanjara
Chairman/Editor, AIFTP Times

Anand Pasari
Secretary General

Report of Prayagraj Kumbh Darshan 2019

For detailed report, please visit our website www.aiftponline.org

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

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National Tax Conference Dnyan-Sangam 2019

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Jointly with

**THE WESTERN MAHARASHTRA TAX PRACTITIONERS ASSOCIATION, PUNE
GOODS AND SERVICES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA**

And in Association with

PUNE BRANCH OF WIRC OF ICAI

on Friday, 10th May, 2019 and Saturday, 11th May, 2019

at Hotel Sheraton Grand, Pune

(Nr. Raja Bahadur Mill Road, Sangamvadi, Pune, Maharashtra 411001)

Fees for Members of above Associations / Non-Members

	Super Early Bird Fees Registration on or before 20-4-2019	Early Bird Fees Registration between 21-4-2019 to 30-4-2019	Registration Fees from 1-5-2019 onwards
Members	₹ 3,000/- + 18% GST	₹ 4,000/- + 18% GST	₹ 4,500/- + 18% GST
Non-Members	₹ 3,500/- + 18% GST	₹ 4,500/- + 18% GST	₹ 5,000/- + 18% GST
Accompanying Spouse Fee : ₹ 2,500/- including GST			
The Fee includes course material, delegate kit, Meals : breakfast / lunch / high tea			

Bank Details for sending registration

Name of the Bank Account:	The Western Maharashtra Tax Practitioners' Association.
Corporate Address:	Yadav Vyapar Bhavan, 602 Shukrawar Peth, Shivaji Road, Pune-411002 (Telephone : 020-24470237)
Bank Name:	Bank of Baroda
Branch Address:	Subhash Nagar Branch, Sanas Plaza, Shukrawar Peth, Subhash Nagar, Pune 411002
Bank Branch:	Subhash Nagar
Bank Account Number:	07910100005036
Account Type:	Saving
NEFT / IFSC :	BARB0SUBHAS(5TH LETTER ZERO)
MICR:	411012012

Notes :-

- In case of Online Payment, please intimate on email "thewmtpa@gmail.com"
- We have arranged the tour to Mahabaleshwar for those interested (intimation in advance & payment before 20-4-2019).

STAY: Suggested Hotels with whom rates have been negotiated are listed hereunder:

(Payment details of Hotel would be put up shortly on website. In the meantime members can e-mail the preferred Hotel)

Name of the Hotel	Star Category	Location	Charges (Per Day Per Room including Breakfast)	Distance from Venue of Conference
Hotel Sheraton Grand	5	Nr. Raja Bahadur Mill Road, Sangamvadi, Pune, Maharashtra 411001 Phone: 020-6641 1111	Double : 6000 + GST	0 km
Hotel Lemon Tree Premier	3	15 & 15A City Center, 40 Connaught Road Pune 411001 Phone: 020-67684343	Double : 5000 + GST	1 km

Hotel Shree Pancharatna	2	7, Tadiwala Road, Pune 411001, India Phone: 020-26059999 / 26059496 Mobile : 9765010497	Single : 4000 + GST Double : 4500 + GST	1 km
Hotel Madhav International	3	Behind Railway Station, 6A Ramabai Ambedkar Road, Before Hotel Sheraton Grande, Pune 411001 Phone : 020-2605 9118 / 2605 9119 Mobile : 99229 27680	Single : 2700 + GST Double : 2900 + GST	0 km
Hotel Woodland	3	Sadhu Vaswani Circle, Near Pune Railway Station, Pune 411001 Phone : 020-2621 2121 / 2612 6161 Mobile : 94204 96604	Single : 2000 + GST Double : 2100 + GST	1 km

Connectivity

Pune Airport is directly air-linked to all cities in India as Mumbai, Delhi, Kolkata, Hyderabad, Chennai, Bengaluru etc. The airport is conveniently located at a distance of around 7 km east of the town. Various trains run from different cities. Pune Railway Station is 1 km from venue. Several luxury and State buses too run between various cities to Pune.

For details of Papers and Speakers, Pl. visit our website www.aiftponline.org

For any query or assistance relating to room booking please contact :

Mrs. Anagha Kulkarni (M : 9822117404) or Shri Narendra Sonawane (M : 9822601617)

For any further enquiries relating to NTC, please contact

Dr. Ashok Saraf, National President, AIFTP, 9864020679	CA Ruta Chitale, Chairman, Pune Branch of WIRC of ICAI
CA Deepak Shah, Chairman, AIFTP (WZ) 9820148536	Adv. Anagha Kulkarni, Chief Co-ordinator, Pune NTC 9822117404
Shri Narendra Sonawane, Chairman Pune NTC, 9822601617	CMA Shripad Bedarkar, Jt. Secretary, WMTPA 9890672049
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Shri Navneetlal Bora, President, WMTPA, 9822051829	
E-mail : punentc@gmail.com	

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of the Income Tax Bar Association, Varanasi for the year 2019

President	Shri Om Prakash Shukla, Advocate
Vice-President	Shri Brij Gopal Das
Secretary	Shri AjayKumar Singh
Joint Secretary (Admin.)	Shri Ashutosh Singh
Joint Secretary (Library)	Shri Ashutosh Bharadwaj
Treasurer	Shri. R. K. Chaurasia

We wish them all the success.

Activity Report of AIFTP (CZ) for the month of March 2019

For detailed report, please visit our website www.aiftponline.org



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AIFTP Member's Directory is available for members free of cost at Mumbai Office. If required it can be couriered at a nominal cost of ₹ 100/- to be paid in advance. Contact Ravi at Mobile 8169472814 for getting the latest updated directory.

Direct Taxes

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

High Court

1. S.28(ii)(c) : Mere reference of the term ‘agency’ in the agreement, is not conclusive relationship between parties to attract the provisions of S.28(ii)(c)

The assessee had entered into an agreement with US-based Company. Under such agreement the assessee was to solicit business on behalf of the said US based Company. After some disputes between the parties, this contract was terminated pursuant to which the assessee received compensation during the period relevant to the assessment year in question. As per the assessee, the receipt was capital in nature and therefore, not assessable to tax. The AO, however, rejected such contention and held that it would be chargeable to tax in terms of S.28 (ii)(c). The CIT(A) held that there was no principal-agent relationship between the parties and the contract was on principal-to-principal basis and therefore s.28(ii)(c) would not apply. The Tribunal confirmed the view of the CIT(A). Before the High Court, the department contended that the agreement itself described the relationship between the parties as one of the agency.

The Hon'ble High Court while deciding the issue, rejected the contention of the department and observed that "S. 28(ii)(c) makes any compensation or other payment due, the receipt of a person holding an agency in connection with the termination of the agency or the modification of the terms and conditions relating thereto, chargeable as profits and gains of business and profession. The essential requirement for application of section would therefore be that there was a correlation of agency principal between the assessee and the US based company." Thus considering the same, held that the agreement in question was not one of agency, though the document may have used such term to describe the relationship between the two sides.

Pr. CIT vs. M/s. RST India Ltd. ITXA No.1798/2016 dt. 12-3-2019 (Bom)(HC) www.bombayhighcourt.nic.in

Tribunal

2. S.154 : A debatable issue cannot be treated as a mistake apparent on the face of the record for rectification u/s. 154

The Tribunal *vide* its order directed to tax receipts from non-members and TMBT's of the assessee club on the basis of separate sets of books of account maintained by them. Accordingly, effect for the said order was given treating the entire amount of income determined as exempt from tax. Then, finding that no separate sets of books of account to distinguish the receipts from members and non-members had been maintained for the years prior to AY 1998-99 and in those assessments, the AO treated only 50% of the

receipts as exempt from tax, rectification order for the year under consideration has since been passed withdrawing 50% of the excess income which was wrongly allowed in the appeal effect given order as exempt, due to the reason that no separate sets of books of account so as to distinguish the receipts from members and non-members had been maintained for the year under consideration.

On appeal, the CIT(A) observed that the AO, by virtue of s. 154 can rectify any mistake apparent from the record. The assessee approached the Tribunal against the order of the CIT(A). Before the Tribunal, the department contended that in the assessment years prior to the assessment year 1997-98, the Club did not maintain separate accounts for the receipts from members/non-members and in those assessments, 50% of the receipts were treated as exempt, as the receipts from non-members were not discernible. Therefore, the treatment of exempted 50% of taxable receipts was a mistake. Allowing relief to the assessee, the Tribunal held that this contention of the DR cannot be accepted as it is a debatable issue. "U/s. 154, the AO can rectify the mistake if it is a mistake apparent from record. In other words, it must be an obvious patent mistake and not something which can be established by a long process of reasoning on points on which there may be conceivably two different opinions and hence, it is a debatable issue. It was not a mistake apparent from record. Hence, rectification is not possible since, the issue was taken up by the AO in the proceedings u/s. 154 which is a debatable issue. Thus, the AO is not justified in rectifying the mistake.

M/s. Trivandrum Club vs. ADIT, ITA No.138/Coch/2017 dt. 16-1-2019 (Coch)(Trib.); www.itat.nic.in

3. S.254(2) : Tribunal cannot review its own decisions u/s. 254(2) unless there is a mistake apparent from records

The assessee had filed Miscellaneous Application seeking recall of the Tribunal order for the AY 1996-97. The AO received information from the investigation wing that the assessee has a bank account during the relevant year with HSBC Bank at Geneva, Switzerland. While confronting the same information AO invoked provision of s.147/148. Assessee filed a Nil return by claiming that she was a non-resident during that time and also failed to produce passport before AO since the same was lost. She also claimed that she also lost all the bank statements and transactions during the non-resident period and she did not have any income which could be brought into tax for the relevant period. Thereafter, AO accepted the contention and the assessment was framed at Nil income. Subsequently, Pr. CIT while invoking S. 263 held that AO failed to prove with respect to her stay in India and without any cogent material and verifications. The assessee has now filed this Miscellaneous Appeal to rectify mistakes apparent from records u/s. 254(2) by recalling the orders passed by the Tribunal. The assessee claimed that

assessee declared herself to be non-resident in the application form filed by the assessee with UTI for allotment of US 64 securities in July 1995 and the same was sufficient to prove that she is non-resident during that period. The Tribunal Bench perused the assessment order passed by AO which clearly reveals that no enquiry was conducted by the AO and contentions of the assessee were accepted by the AO without any application of mind. The Tribunal observed that "It is only the discussion by the tribunal on the scope of taxability of the income of non-residents which was covered by provisions of S.5(2) and in any case all non-residents are covered by said provision which is already placed in statute by legislature

which did not make Tribunal order amenable to corrections within limited mandate u/s. 254(2). The Tribunal held that no prejudice is caused to the assessee with the said discussion on the relevant and applicable provision of the Act, thus there is no mistake apparent from records in the said order of the Tribunal which can be corrected within limited mandate of S.254(2).

Sh. Bimal V. Pala (legal heir of late Smt. Ranjana Vrajlal Pala) vs. Pr. CIT MA No. 397/Mum/2017 dt. 12-2-2018 (Mum)(Trib.); www.itat.nic.in



Indirect Taxes

Tanmay Mody, GST Practitioner

1. Customs / GST – Imposition of pre-import condition

Petition challenging the "pre-import condition" laid down under Notification No.18/2015-Cus., and in paragraph 4.14 of the Foreign Trade Policy, 2015-20. Whether the impugned "pre-import condition" in any manner furthers the objective of the Foreign Trade Development Act and the Foreign Trade Policy?

Held: In view of the "pre-import condition", it is not possible for the manufacturers-exporters to import duty free imports against an Advance Authorisations. With the advent of the Goods and Services Tax regime, on account of the condition of pre-import stipulated to get the benefit of exemption from the levy of integrated tax and GST compensation cess, imports under the Advance Authorisation scheme, have become next to impossible, which certainly does not subserve the objective of the Act and the Foreign Trade Policy. The condition of pre-import militates against the Advance Authorisation Scheme and therefore, the impugned condition(s) to the extent the same imposes a "pre-import condition" in case of imports under Advance Authorisation for physical export for exemption from the whole of the integrated tax and GST compensation cess do not meet with the test of reasonableness and are also not in consonance with the scheme of Advance Authorisation. The "pre-import condition" contained in paragraph 4.14 of the Foreign Trade Policy, 2015-20 inserted *vide* Notification No.33/2015-2020 dated 13-10-2017 and inserted *vide* clause (xii) in Notification No.18/2015-Cus *vide* Notification No.79/2017-Cus dated 13-10-2017, are struck down as being *ultra vires* the Advance Authorisation Scheme as contained in the Foreign Trade Policy, 2015-2020 as well as the provisions of the Handbook of Procedures.

(Source: Order by the Gujarat High Court in the case of M/s. Maxim Tubes Co. P. Ltd. v. The Union of India, dated 4th February, 2019)

2. Service Tax – Erroneous payment under RCM

Erroneous payment of service tax under Reverse Charge Mechanism - Rejection of refund claim made by the appellant

on the ground that it failed to qualify the test of unjust enrichment.

Held: The appellant's claim that it had paid the service tax under the erroneous belief that as per RCM, it is liable to pay the same but subsequently Board Circular had clarified the same to be non-taxable. Therefore, the service tax is supposed to be treated as deposit as there is no sanction behind it by the legislature in conformity with Section 265 of the Constitution of India. The Commissioner (Appeals) had drawn a presumption that incidence of duty had passed on knowing, fully well that presumption, however strong, cannot take the place of proof. Adjudicating Authority and Appellate Authority had drawn adverse inference to the *bona fideness* of the appellant who consider it their bounden duty to pay service tax under Reverse Charge Mechanism which was in fact not payable as per clarificatory circular issued by the Board. Therefore, the appellant has passed the test of unjust enrichment and it is entitled to the refund claimed by it for non-leviable service tax. The appellant is entitled to refund claim with applicable interest.

(Source: Order by CESTAT, Mumbai in M/s. Godrej & Boyce Mfg. Co. Ltd. v. Commissioner of CGST, Navi Mumbai, dated 22nd February, 2019)

3. GST – Detention of Goods

Section 129 - Detention for mistake in lorry number - writ petition challenging detention order - FORM GST MOV-06.

Held: Detention or seizure is provided for only in cases where the Department is *prima facie* convinced that there is a contravention of the provisions of the Act and the Rules. The order of detention has to reflect the reasons for which the seizure of the conveyance / goods has been effected. In the impugned order none of the relevant fields have been ticked and almost all fields have been left blank. Thus, it is entirely unclear as to what statutory provision or Rule the petitioner has contravened. The order of detention cannot be sustained and the same is quashed. The vehicle shall be released forthwith.

(Source: Order by Madras High Court in G. Murugan v. The Union of India & Ors., dated 14th February, 2019)

4. GST – Maharashtra AAR

Whether Input Tax Credit can be claimed by the applicant on procurement of gold coins which are to be distributed to the customers at the end of scheme period?

Held: The applicant cannot claim Input Tax Credit on procurement of gold coins which are to be distributed to the customers. Input Tax Credit on 'gifts' will not be available when no GST is being paid on their disposal. Just because the applicant submits that they have satisfied Section 16(1) of the CGST Act 2017 does not mean that they are entitled to credit.

(Source: Maharashtra AAR Order No. GST-ARA-72/2018-19/B-165 in the case of M/s. Biostadt India Ltd., dated 20th December, 2018)

5. GST – Tamil Nadu AAR

Whether the applicant can avail the Input Tax Credit of the full GST charged on the supply of invoice or a proportionate reversal of the same is required in case of post purchase discount (without reversal of GST) given by the supplier of the goods or services?

Held: The value of supply is the full undiscounted value indicated in the tax invoice and the recipient/applicant only makes payment to the extent of invoice value less the discount thrown up by the software. As per proviso to Section 16, the recipient is entitled to avail the credit of input tax on the payment made by him alone and if any amount is not paid as per the value of supply and the recipient has availed full Input Tax Credit, the same would be added to his output tax liability. Therefore, the applicant can avail Input Tax Credit only to the extent of the invoice value less the discounts

and if he has availed Input Tax Credit on the full amount, he is required to reverse the difference amount equal to the discount, to avoid adding to his output liability. As per the provisions of Section 16 of the CGST Act, 2017 the applicant can avail Input Tax Credit only to the extent of the invoice value raised by the suppliers less the discounts as per software which is paid by him to the suppliers.

(Source: Tamil Nadu AAR Order No. 5/AAR/2019 in the case of M/s. MRF Ltd., dated 22nd January, 2019)

6. GST – National Anti-Profitteering Authority – Abbott Healthcare P. Ltd.

Any benefit of reduction in the rate of tax given by the Government by sacrificing their own revenue must be passed on to the customers by commensurate reduction in the prices by the suppliers as per the intention of Section 171 and any other interpretation of the same would be illogical and unreasonable. Mere reduction in MRP due to change in the rate of tax when the base price has been increased does not amount to passing on the benefit of reduction in the rate of tax. There is also no evidence to suggest that the respondent had increased the base price due to withdrawal of the CED exemption the benefit of which he was giving to his customers as discount or due to the implementation of the GST or due to inflation. If the Respondent had not increased his price annually it was his own business call for which he cannot claim any allowance.

(Source: Director-General, Anti-Profitteering v. M/s. Abbott Healthcare P. Ltd. & Ors., Order in Case No. 15/2019 dated 05th March, 2019)



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Subscription	5,000/-	7,500/-	11,500/-	15,000/-	
Total	5,500/-	8,000/-	12,000/-	15,500/-	

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Date: February 21, 2019

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

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Thanking you,

Yours sincerely,

For ALL INDIA FEDERATION OF TAX PRACTITIONERS

CHIRAG S. PAREKH

Treasurer

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Sr. No.	Name of Publication	Edition	Rate (₹)		
			Members	Non-Members	Courier Charges
1.	311 – Frequently Asked Questions on Survey – Direct Taxes	Dec., 2018	600.00	675.00	100.00
2.	Handbook on FEMA – Taxation – Frequently Asked Questions	Oct., 2018	600.00	675.00	100.00
3.	Income Tax Appellate Tribunal – A Fine Balance – Law, Practice, Procedure and Conventions – Frequently Asked Questions	Dec., 2017	1,000.00	1,050.00	100.00
4.	AIFTP – Of Milestone and Beyond – History Book	Nov., 2016	400.00	450.00	80.00

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2. Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.
3. Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai.

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2.	Ordinary half page	₹ 2,500/-
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5.	Fourth cover page	₹ 10,000/-
There shall be Discounts on bulk advertisements.		

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	Associate	Individual	Association	Corporate	Total
Central	0	1048	25	0	1073
Eastern	6	1567	36	0	1609
Northern	0	1194	18	1	1213
Southern	1	1280	19	4	1304
Western	5	2332	37	5	2379
Total	12	7421	135	10	7578

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