

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

Volume 10 – No. 5 • May 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
12 to 15-9-2019	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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Members who desire to get only the e-Times as against a physical copy should send an e-mail to [aiftpimes@gmail.com](mailto:aiftpimes@gmail.com) with the following details – Membership Number, Name, Subject stating that **“I SUPPORT & OPT TO GET ONLY E-TIMES”**.

Let's start moving forward, in working towards making a green impact. As we know, one of the best decisions organisations can make towards being environment friendly is by slowly implementing a paperless office. This step has a twofold benefit of helping organisations become more environmentally friendly while encouraging efficiency through streamlined corporate processes.

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Remember, all it takes to go green is to Reduce, Reuse, Recycle and Repair.

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**Kishor Vanjara**  
Chairman/Editor, AIFTP Times

**Anand Pasari**  
Secretary General

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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 & PIMPRI CHINCHWAD 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)

**Theme : Dnyan Sangam – Leaving No One Behind**

**Big Thank You for Overwhelming Response.  
Registration Closed**

## National Tax Conference

*Organised by*  
**ALL INDIA FEDERATION OF TAX PRACTITIONERS - SOUTHERN ZONE**  
*Jointly With*  
**ANDHRA PRADESH TAX PRACTITIONERS & CONSULTANTS ASSOCIATION**  
**THE CHITTOOR DISTRICT TAX PRACTITIONERS & CONSULTANTS ASSOCIATION**  
**THE TIRUPATI TAX PRACTITIONERS & CONSULTANTS ASSOCIATION**  
**and**  
**INSTITUTE OF TAX PRACTITIONERS OF INDIA**  
on 22nd and 23rd June, 2019  
at Hotel Fortune Select Grand Ridge,  
#8-84, Shilparamam (Urban Hut), Tiruchanoor Road, Tirupati

**THEME : KNOWLEDGE IS DIVINE - LEARN TO LIVE**

### 22nd June, 2019 (Saturday)

9.00 am to 9.30 am	Registration, fellowship & breakfast
9.30 am to 11.30 am	Chief Guest : <b>Judge, Supreme Court of India *</b> <b>Inaugural Session</b> Guests of Honour : <b>Chief Justice, High Court of AP*, Judge, High Court of AP*</b>
11.30 am to 11.45 am	Tea Break
11.45 am to 1.15 pm	<b>1st Technical Session</b> Topic : Input Tax Credit Eligibility & Procedure under GST Chairman : <b>Shri M. V. J. K. Kumar</b> , Advocate, Hyderabad Guest : <b>Commissioner</b> , CGST Commissionerate, Tirupati Speakers : 1. <b>Dr. Venkatanath. M. C.</b> , CA. Tirupati 2. <b>CA Raginee Goyal</b> , Guwahati
1.15 pm to 2.00 pm	Lunch
2.00 pm to 3.30 pm	<b>2nd Technical Session</b> Topic : Real Estate & Works Contracts both under Income-tax & GST Chairman : <b>Shri Sreedhara Parthasarathy</b> , President, ITPI

3.30 pm to 3.45 pm 3.45 pm to 5.15 pm  5.15 pm to 7.00 pm 7.00 pm onwards	Guest : CIT (Appeals), Tirupati Speaker : CA. Bramhananda Rao B., Rajahmundry Tea Break <b>3rd Technical Session</b> Topic : E-filing & e-communication under GST Chairman : Shri J. Mruthyunjaya Rao, DC (ST)(Retd.), Hyderabad Speaker : CA. Chunduru Sudheer, Vijayawada AIFTP National Executive Meeting (for NEC Members only) at Hotel Fortune Select Grand Ridge, Tirupati Cultural Programme & Dinner at Hotel Fortune Select Grand Ridge, Tirupati
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**23rd June, 2019 (Sunday)**

9.00 am to 10 am 10.00 am to 11.30 am  11.30 am to 11.45 am 11.45 am to 1.15 pm  1.15 pm to 2.00 pm 2.00 pm to 3.30 pm  3.30 pm to 3.45 pm 3.45 pm to 4.45 pm 4.45 pm to 5.30 pm	Breakfast <b>4th Technical Session</b> Topic : GST Audit & Assessment Chairman : Shri A. V. S. Krishna Mohan, President, APTPCA Guest : Joint Commissioner, ST, Chittoor Speaker : CA. Ravichandran V.G., GST Officer, Tirupati Tea Break <b>5th Technical Session</b> Topic : Income Tax - Presumptive Tax. under Sec. 44AD, ADA, AE Chairman : CA. A. K. Srivastava, New Delhi Guest : CIT (Regular), Tirupati Speaker : Dr. CA. Phalguna Kumar E., Tirupati Lunch <b>6th Technical Session</b> Topic : Composition Scheme under GST Chairman : CA. Rajendra Kumar P., Chennai Guest : CA. Siva Prasad A., GST Advisor, Govt. of AP Speaker : CA. Viswanathan G., Chennai Tea Break <b>Brains' Trust Session</b> Trustees : Speakers and Chairmen of Technical Sessions Valedictory Session & Vote of Thanks
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\*Confirmation awaited.

**Fees**

For Members & Non Members	₹ 2,500 (Including GST) – Up to 15-5-2019 ₹ 3,000 (Including GST) – After 15-5-2019
For Accompanying Spouse (without Kit)	₹ 1,500 (Including GST)
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**LORD BALAJI DARSHAN**

All the participants are requested to enroll and intimate your willingness to have darshan of Lord Balaji, Tirumala on or before 15-05-2019 for making necessary arrangements. Cost will be informed later.

## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of the Bihar Income Tax Bar Association, Patna for the year 2019-21

Patron	Adv. Lakshmi Narayan Rastogi, Sr. Adv.
President	Adv. Sudhir Kumar Narain
Vice Presidents	Adv. Madan Lal Gupta, Adv. Tej Narayan Gami, Adv. Ajay Kumar Rastogi
Treasurer	Adv. Narendra Prasad
General Secretary	Adv. Kamlesh Kumar Saha
Jt. Secretaries	Adv. Sunil Kumar Singh, Adv. Ratneshwar Prasad Nayak, Adv. Mahesh Kumar Gupta

Hearty Congratulations to the newly elected office bearers of the Institute of Tax Practitioners of India for the year 2019-22

National President	TPr. Sreedhara Parthasarathy
National Convener	TPr. M. Srinivasa Rao
National Spokes Person	TPr. Nigam Shah
National Secretary General	TPr. D. M. Bhattad
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We wish them all the success.

## Direct Taxes

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

### Tribunal

**1. S.40(a)(ia) : Business Expenditure – after amendment in s. 200/201, when recipient of amounts are shown in their return of income and same is assessed to tax, then disallowance is not warranted in the hands of the payer**

During assessment proceeding, the AO noticed that assessee had paid freight charges to X and Y without deducting TDS. The Assessee submitted that TDS was not deducted since provider had made available PAN to assessee and thus, there was no liability to deduct tax u/s.194C. The AO made disallowance u/s. 40(a)(ia) and CIT(A) has also confirmed the same.

The Honorable Tribunal while deciding the issue held that, Assessee has rightly contended that after amendment in s. 200/201, when recipient of amounts were shown in their return of income and same was assessed to tax, then disallowance was not warranted. If payees had reflected payment in question towards them in their respective return of income and have taken into account this sum of amount in their Return of Income and had paid tax due on income declared in Return of Income, and fulfilled conditions stipulated u/s. 200, then no disallowance u/s 40(a)(ia) was warranted. (AY 2012 – 2013)

*Modern Impex vs. ACIT, ITA No.755/KOI/2018 dt.27/03/2019 (Kol)(Trib.) www.itat.nic.in*

**2. S.40(a)(ia) : Business Expenditure - Bank guarantee commission – where principal**

**agent relationship is not there, no disallowance can be made under second proviso to s. 40(a)(ia). (r.w.s.194H)**

The AO noted that assessee made certain payments to scheduled banks qua bank guarantee provided by banks on which TDS was not deducted, and therefore, the AO by invoking provisions of s. 40(a)(ia) and Notification No.56/2012 dated 31-12-2012 issued by CBDT disallowed said amount and made addition in the hands of Assessee. The CIT(A) relying on the Notification NO.56/2012 dated 31-12-2012 allowed part relief to the assessee for the bank guarantee commission paid post-issuance of the Notification.

The Honorable Tribunal while deciding the issues observed that, AO as well as CIT(A) had accepted proposition of the assessee that bank guarantee commission does not cover under definition of “interest”, hence s. 194A was not applicable to such payment. Further in case of bank guarantee commission, principal agent relationship was not there; hence the s.194H was also not applicable.

While considering the issues the Tribunal held that, as per second proviso to s. 40(a)(ia), disallowance could not be made because bank guarantee commission paid by assessee to scheduled banks was duly included in total income of banks as they were tax resident of India and they had duly paid tax on such guarantee commission, so, under second proviso to s. 40(a)(ia), no disallowance could be made for payments to scheduled banks qua bank guarantee provided by the Assessee. (AY 2012 – 2013 & 2013 – 2014)

*Moet Hennessy India Pvt. Ltd. vs. ACIT ITA No. 5003/Del/2017, 5004/Del/2017 dt. 24-4-2019 (Del)(Trib.) www.itat.nic.in*



## Indirect Taxes

Tanmay Mody, *GST Practitioner*

**1. GST – Imposition of Interest on Gross Tax Liability**

Whether the liability to pay interest under Section 50 of the CGST Act, 2017 is confined only to the net tax liability or whether interest is payable on the total tax liability including a portion of which is liable to be set-off against Input Tax Credit?

**Held:** Until a return is filed as self-assessed, no entitlement to credit and no actual entry of credit in the electronic credit ledger takes place. As a consequence, no payment can be made from out of such a credit entry. The tax already paid on the inputs of supplies of goods or services, available somewhere in the air, should be tapped and brought in the form of a credit entry into the electronic credit ledger and payment has to be made from out of the same. If no

payment is made, the mere availability of the same, there in the cloud, will not tantamount to actual payment. Admittedly, the petitioner filed returns belatedly. As a consequence, the payment of the tax liability, partly in cash and partly in the form of claim for Input Tax Credit was made beyond the period prescribed. Though an approval made in principle by the GST Council for the amendment Section 50 of the Act, but the recommendations of the GST Council are still on paper. Therefore, we cannot interpret Section 50 in the light of the proposed amendment. The claim made by the Department for interest on the Input Tax Credit portion of the tax cannot be faulted with.

*(Source: Order by the Telangana High Court in the case of M/s. Megha Engineering & Infrastructures Ltd. v. The Commissioner of Central Tax and Ors., dated 18th April, 2019)*

## 2. GST – Powers of GST Council

Validity of single judge Order directing the GST Council to consider the representations of Respondent-Plastic Recycling Industrial Association and pass orders thereon, after conducting personal hearing.

**Held:** On a perusal of provisions of Article 279A of the Constitution, it is evident that there is no mechanism provided in the Constitution or any other statute for the GST Council to adjudicate the grievances raised by the general public. There is no mechanism for consideration and disposal of representations made by the general public to the Council after conducting personal hearing of the parties who make such representations. The GST Council is a constitutional body and its functions and duties are clearly mentioned in the Constitution. It is not the function of the GST Council to receive representations from the general public and to conduct personal hearings and to pass orders on such representations or to adjudicate on the grievances raised by the members of the general public with regard to imposition and levy of goods and services tax on any product. The learned Single Judge has wrongly exercised his discretion in issuing a direction to the Goods and Services Tax Council to consider representation and pass orders thereon, after conducting personal hearing.

*(Source: Order by Kerala High Court in Union of India & Ors. v Shiyad & Ors., dated 11th April, 2019)*

## 3. Service Tax – ISD Distribution

Demand for the recovery of CENVAT credit distributed by appellant's ISD on the ground that the same to be inadmissible credit being the construction activities. When the entire credit stands already reversed by the ISD, whether the branch/appellant is liable to reverse the credit?

**Held:** From Rule 7 and Rule 7A of CCR, it is clear that the ISD shall distribute the CENVAT credit in respect of service tax paid on the input services to its manufacturing units provided the credit distributed does not exceed the amount of service tax paid and that the credit of service tax attributable to a particular unit shall be distributed only to that unit. These provisions make it clear that the credit distributed by ISD is found as ineligible credit, the same can be reversed by the ISD itself. If the reversal is prior utilisation of such credit, no question of interest and penalty at all arises. Department was not justified for confirming the said demand as the amount stands already reversed though by the ISD.

*(Source: Order by CESTAT, Delhi in M/s. Godrej Consumer Products Ltd. v. CCE & CGST, Bhopal dated 15th March, 2019)*

## 4. GST – Maharashtra AAR

Whether GST is to be levied on reimbursement of expenses from the lessee by the lessor at actual? Whether reimbursement of expenses by applicant can qualify as expenses incurred as a 'Pure Agent' and would not be considered in the value of supply for the levy of tax?

**Held:** The renting of immovable property would be the main supply and provision of other utilities such as electricity, and water supply, fuel etc. would be in the nature of ancillary supply which help in better enjoyment of the main supply. Principal supply or main supply basically signifies the supply of goods or services that is formed as a substantial constituent of a composite supply and any other supply being ancillary. The utility charges in the nature of electricity charges and water reimbursed by the applicant from lessee forms part of composite supply. As the reimbursement of the expenses constitute composite supply, GST would be payable at a rate as applicable to the principal supply. Applicant has failed to establish themselves as a pure agent as defined under the GST Valuation Rules and therefore the expenditure or cost incurred by the applicant and subsequent reimbursement thereof cannot be excluded from the value of supply.

*(Source: Maharashtra AAR Order No. GST-ARA-71/2018-19/B-171 in the case of M/s. E-Square Leisure P. Ltd., dated 29th December, 2018)*


## 5. GST – Madhya Pradesh AAR

Applicant has purchased cars and has provided them to various companies on lease rent under a Lease Agreement. Whether the GST paid on cars provided to customers on lease rent will be available to it as Input Tax Credit in terms of Section 17(5) of CGST Act, 2017?

**Held:** The activities carried out by the applicant are in the nature of "taxable supply". The term 'further' prefixed to 'supply' is merely in the form of adverb and does not differentiate it from 'Supply' by any stretch of imagination. The activities carried by the applicant regarding supply of tax paid motor vehicles on monthly lease rent (plus applicable GST) to their customer under a proper agreement properly satisfies the conditions laid down under Section 17(5)(a) (i) (A) before the amendment and under sub-section 5(a) (A) after the amendment to make it eligible for availment of input tax credit on motor vehicle for the GST paid by it while acquiring the said vehicles.

*(Source: Madhya Pradesh AAR Order No. 02/2019 in the case of M/s. Narsingh Transport, dated 18th February, 2019)*





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Date: February 21, 2019

Dear Members,

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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.

The subscription rate was fixed in 2014 and due to increase in cost it is increased marginally in the current year.

**Please note that AIFTP Journal subscription for the year 1st April, 2019 to 31st March, 2020 falls due for payment on 1st April, 2019.**

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

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

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Central	0	1056	25	0	1081
Eastern	6	1602	36	0	1644
Northern	0	1206	18	1	1225
Southern	1	1292	19	4	1316
Western	5	2355	37	6	2403
Total	12	7511	135	11	7669

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