

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

Volume 7 – No. 4 • April 2016

FORTHCOMING PROGRAMMES

| Date & Month | Programme | Place |
|-----------------------|---|----------|
| 2,16,30-4-2016 | Workshop on MVAT Act | Mumbai |
| 31-5-2016 to 4-6-2016 | International Tax Conference, Tashkent – 2016 | Tashkent |

REPORT ON

TWO DAY NATIONAL TAX CONFERENCE (COMPREHENSIVE SYMPOSIUM ON DIRECT AND INDIRECT TAX) AT THE GATEWAY HOTEL, AMBAD, NASHIK (TAJ GROUP) HELD ON 12TH & 13TH MARCH, 2016

By Chirag S. Parekh, Chairman, AIFTP (WZ)

Two day National Tax Conference was held on 12th & 13th March, 2016 at The Gateway Hotel, (Taj Group) Ambad, Nashik. The Theme of the Conference was “COMPREHENSIVE SYMPOSIUM ON DIRECT AND INDIRECT TAX”. The Conference was organised by All India Federation of Tax Practitioners – Western Zone in association with The Sales Tax Practitioners’ Association of Maharashtra, Tax Practitioners’ Association, Nashik and Nashik Branch of WIRC of ICAI.

Two day National Tax Conference was inaugurated by Hon’ble Mr. Justice S. C. Dharmadhikari, Judge, Bombay High Court followed by key note address on “TAX–JURISPRUDENCE – CHALLENGES AHEAD” during the inaugural session.

Shri Santosh Mandlecha, Sr. Vice-President of Maharashtra Chamber of Commerce, Industry & Agriculture (MACCIA) graced the occasion and shared his views.

At the Inaugural Session Dr. M. V. K. Moorthy, National President was very much happy to note that Western Zone has always been forefront runner in carrying the mantle of the Federation.

The total delegates were around 225 with around more than 150 resident delegates coming from various parts of India.

In all there were seven technical sessions (including Budget Session on Direct & Indirect Tax). During all the technical sessions, the highlight of the technical sessions was that the participants very much appreciated not only selection of topics on burning issues of Income Tax, MVAT & Service Tax, but also the paper writers who ably introduced and presented the paper and thereafter Chairmen of each technical session offered their concluding remark by their crystal clear view on the subject which put an end to deliberations. Last session was Brains’ Trust Session and Trustees were varied queries covering all three branches of taxation were answered by eminent trustees.

The meeting of National Executive Committee Members was also held on 12th March, 2016 at 6.30 p.m. which was attended by NEC members and National Past Presidents followed by Gala Dinner and Entertainment Programme which provided the much required unwinding experience for the participants and their families.

The Conference was memorable and will be cherished by all participants.

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

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REPORT

First Study Circle Meeting of AIFTP Thiruvananthapuram for the year 2016 was held on 16-1-2016 at Mini Hall, Hospitality Centre, Trivandrum Club at 6 p.m.

by
A. Retnakumar, Jt. Secretary, AIFTP (SZ)

There were Thirteen participants including one non-member.

Meeting started with a silent prayer.

A. Retnakumar, Joint Secretary welcomed the participants.

The deliberations of the Mega Event “National Convention 2015” which took place at Jal Vihar, Hyderabad on 26-12-2015 & 27-12-2015 were explained to the members. He also informed the participants about the taking over ceremony of Shri M. V. K. Moorthy as the National President and Shri Sreenivasa Rao as the Secretary General. The appointment of A. Retnakumar of Thiruvananthapuram as the Joint Secretary by the National President was also informed.

Topic for discussion was “Foreign Remittance – Legal Compliance – Latest Developments”.

Presentation of the topic by CA. Padmanabhan, G C Member was practice oriented and very much useful.

As foreign remittance has become order of the day and there is a necessity for updation of knowledge for the Tax Practitioners, it emanated good discussion.

CA. Hari has been requested to be the Convener of Monthly Study Circle Meetings in Thiruvananthapuram and to which proposal he has readily agreed.

CA. Ramakrishnan proposed vote of thanks. Meeting concluded at 9 p.m. Members dispersed after Dinner.

REPORT

Second Study Circle Meeting of AIFTP Thiruvananthapuram for the year 2016 was held on 29-2-2016 at Mini Hall, Hospitality Centre, Trivandrum Club at 6 p.m.

by
A. Retnakumar, Jt. Secretary, AIFTP (SZ)

There were Twenty Three participants including two non-members.

Meeting started with a silent prayer.

A. Retnakumar, Joint Secretary welcomed the participants.

The deliberations of the cabinet meeting at AIFTP Office, Mumbai was explained. The idea of holding a National Tax Conference at Thiruvananthapuram in August 2016 was discussed. It has been decided to form a Core Committee to discuss the matter. The importance of increasing membership strength was stressed.

Topic for discussion was “Audit of Public Sector Undertakings”.

The topic was presented by CA. Venkitachalam who is a senior member and having rich experience in PSU Audits.

The discussion was very much useful and there was good deliberations.

Ms. Anusha, daughter of CA. Venkitachalam who is recently qualified as a Chartered Accountant was felicitated.

CA. C Hari, Convener proposed vote of thanks.

Meeting concluded at 9 p.m. Members dispersed after Dinner which was hosted by CA. Venkitachalam.

ALL INDIA FEDERATION OF TAX PRACTITIONERS
Announces

INTERNATIONAL TAX CONFERENCE, TASHKENT – 2016

from 31st May – 4th June, 2016

at

LOTTE HOTEL – HOTEL TASHKENT

(Four Star Deluxe Hotel)

DETAILED ITINERARY

DAY 1: DELHI – TASHKENT

- 13.10 ARRIVAL AT TASHKENT – Transfer to Hotel and Check in.
18.00 SIGHTSEEING - Tashkent Panoramic city tour - Visiting:
– “Independence” Square;
– “Victory” monument;
– “Romanov Prince Duke” Residence;
– “Broadway Street” with artist and local souvenirs;
– “Amir Temur” Central Square and Museum;
– “Newly built Minor Mosque”;
– “Grand Opera” - Opera and Ballet Theater Square
20.00 Gala Dinner at Indian Restaurant
23.00 Transfer back to the hotel.

DAY 2: TASHKENT – CHIMGAN – CHARVAK – TASHKENT

- 7.00-9.00 Buffet breakfast at the hotel restaurant
10.00 Morning drive to “Chimgan” Mountains. 80 kilometres away from Tashkent there is “Ugam-Chotqol” National Park. On the way enjoy view of mountains and life of local people, living blocks and fields.
11.30 Reaching the mountains the group will ride on Chair Lift going up to the top of the mountain (30 minutes). Enjoy picturesque views at the mountain peak taking photos and videos for the memory.
12.30 Take the Chair Lift for coming down the mountains (30 minutes).
13.00 Transfer the group to beautiful “Charvak” Lake, which is formed by joining of 4 biggest rivers forming the beautiful lake that’s supply Tashkent city and its region with water all year round.
14.00 Lunch at Charvak Lake “Pyramids” Restaurant with Uzbek-Indian mix Buffet.
15.00 Free time at Beautiful “Charvak” Lake at own activities.
17.00 Drive back to Tashkent.
19.00 Arrive in Tashkent hotel. Refreshment time before the gala dinner
20.00 Gala Dinner at Indian Restaurant
23.00 Transfer back to the hotel.

DAY 3: TASHKENT

- 7.00-10.00 Buffet breakfast at the Hotel restaurant
10.30 After the breakfast the group will be taken for Full Day Tashkent city and shopping tour. Visiting:
– “Lal Bahadur Shastri” Monument and Statue;
– “Russian Catholic Church”;
– “Memorial of Repressions Victims”;
– “Tashkent TV Tower” (outside only);
– “Monument of Courage” (1969)
13.00 Lunch at Indian Restaurant with Indian Buffet
14.00 After the delicious lunch, the continuing of the Tashkent city and shopping tour. Visiting:
– “Old City” of Tashkent and shopping at old oriental bazaar “Chorsu” (crossroads) for buying some traditional souvenirs and dried fruits
19.00 Transfer back to the hotel for fresh and up before the gala dinner.
20.00 Gala Dinner at Indian Restaurant
23.00 Transfer back to the hotel.

DAY 4: TASHKENT

- 7.00-10.00 Buffet breakfast at the Hotel restaurant
 10.30 After the breakfast the group will be taken for Full Day Tashkent city and shopping tour. Visiting:
 – “Peoples’ Friendships” Square with “Abulkaseem” madrasah, the centre of crafts shops in Tashkent;
 – “Alisher Navoi” National Recreation Park;
 – “Parliament” Building
 13.00 Lunch at Indian Restaurant with Indian Buffet
 14.00 After the delicious lunch, the continuing of the Tashkent city and shopping tour. Visiting:
 – Shopping at newly built “Mega Planet Mall” with branded shops and boutiques;
 – Shopping at newly built “Samarkand Darvaza Mall” with branded shops and boutiques.
 18.00 Transfer back to the hotel for fresh and up before the gala dinner.
 20.00 Gala Dinner at Indian Restaurant
 23.00 Transfer back to the hotel.

DAY 5: TASHKENT – DELHI

- 6.00 Early breakfast at the Hotel restaurant
 7.00 Check out the hotel. Clear all the extra room bills.
 7.30 Transfers to Airport for the final departure to Delhi by the flight HY 425 at 10.55 a.m.
 9.00 Check in your flight.

Details of NEC and Tax Conference to be informed later.

Package Cost ₹ 37000 PP + Service Tax Incl. Conference (on Double Sharing) and ₹ 72,000.00 + Service Tax for Couple for booking up to 5th April 2016. Thereafter charges will increase and booking will be subject to availability. PAYMENT TO BE MADE DIRECTLY TO THE TRAVEL AGENT.

PAYMENT & CANCELLATION POLICIES:

Payment

- o 50% Tour payment should be made on or before 5th April, 2016.
- o Balance 50 % Tour payment to be made on or before 15th April, 2016

Cancellation fees:

- o Cancellation – 25 % – if informed upto 25-4-2016
- o Cancellation – 50% – if informed upto 30-4-2016

Thereafter from 30-4-016 – NO REFUND

Note :- Airline Taxes are Subject to Change without any prior notice

Flight Details: Flight on Uzbekistan Airways (Direct Flight) (Tuesday Flight)

| Date | Flight No.: | Sector | Departure Time | Arrival Time | Travel Time |
|------|-------------|---------|----------------|--------------|-------------|
| TUE | HY 422 | DEL-TAS | 0850 | 1310 | 3 hrs. |
| SAT | HY 425 | TAS-DEL | 1055 | 1605 | 3 hrs. |

Visa Requirements

- o Scanned copy of Passport’s front Page.
 - o Two Passport Size Photographs with 80% Face Resolution & white background.
 - o Original Passport before 4 Days of Departure Date.
 - o Please Note it will be a group E-Visa and will be given to you on the day of departure at the Indira Gandhi International Airport at Gate No. 6 by our Travel Consultant.
 - o Need 15 Working days to get the visa Normal Visa
 - o If all documents received within 15 days and before 10 days of departure, urgent visa fees will be charged additionally
 - o Passport valid minimum 6 month from date of travel
- Visa Approval is on the Sole Discretion of the “MOFA” (Ministry of Foreign Affairs) & The Embassy of the concerned Country in India

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Membership Development & P.R.

ETHICS
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**Request to add at least 200 Members by Each Zone or
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at least 1 Member by General Member**

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1ST, 2ND & 3RD for Individual

1ST, 2ND & 3RD for Zone

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DIRECT TAXES

Ms. Neelam Jadhav, *Advocate*
KSA Legal Chambers

HIGH COURT

1. S. 40(a)(iii) – Assessee deducted tax at source from salary paid overseas to its non-resident employees – paid same to Government account. Tax was not paid within time-limit prescribed u/s. 200(1), payment could not be disallowed

The assessee was a non-resident banking company and its principal place of business was situated outside India. The assessee also carried on banking business in India through its branches situated within the country. During the relevant period, the assessee seconded some of its employees from overseas to its branches in India. These expatriate employees were employed for the business carried on in India. They received a part of their remuneration by way of salaries and perquisites in India which were duly reflected in the Profit and Loss Account drawn up by the assessee in respect of its Indian operations. The assessee also deducted tax at source on so much of the remuneration that was payable to the aforementioned expatriate employees in India.

The CIT(A) and Tribunal held that since no tax had been deducted at source under Chapter XVII-B within the prescribed time, no deduction under section 40(a)(iii) was permissible.

The Hon'ble High Court held that merely because tax was not paid within time-limit prescribed u/s. 200(1), said payment could not be disallowed by invoking section 40(a)(iii). Where legislature wanted to make payment of tax within specified time a necessary pre-condition it would have expressly indicated so. The condition to deposit TDS within prescribed time could not be read into sub-clause (iii) of clause (a) section 40 as unlike language of item (B) of sub-clause (i) of clause (a) of section 40, same had not been specifically enacted.

ANZ Grindlays Bank v. Dy. CIT ITA No. 32 of 2004 dated 1-3-2016 (Del.)(HC) Source : www.delhihighcourt.nic.in

TRIBUNALS

2. S. 145 : Estimation of profits – rejection of books of account – not justified

During the course of assessment, the Assessing Officer found certain clerical errors in the annual report of the assessee-company. The assessee

explained before the A.O. that these are clerical errors which do not have impact on the profit of the company. Even though there is no error in the books of account of the company, based upon the clerical errors in the annual report, the A.O. found that the books of account of the assessee are not reliable. Therefore, by rejecting the books of account, the A.O. estimated the profit in all business of the assessee.

The ITAT held that, when there was no error or mistake pointed out by the A.O. in respect of other businesses, rejection of the entire books of account is not justified. Even with regard to trading in bullion, the assessee-company purchased gold bullion to the extent of ₹ 1,85,34,411/- from M/s. Gajaanand Jewellery Mart Pvt. Ltd., Coimbatore. The ledger account appearing in the books of account of the assessee shows sale of ₹ 2,23,39,087/-. The A.O. has not considered the opening balance of the bullion for the year under consideration and also not considered the profit on sale of the bullion. Merely because there was a difference/discrepancy in the ledger account of the seller with regard to bullion trading, the books of account of the assessee cannot be rejected in toto therefore estimating profit after rejecting the books of account is not justified. *M/s. KTM Jewellery Ltd. v. Dy. CIT I.T.A. No. 989/Mds/2015 dtd. 5-2-2016, Source : www.itat.nic.in*

3. S. 194J : Income – Deemed to accrue or arise in India (Royalty) – New co-promoter acquired 51 per cent of shares of assessee-company from original promoter, consideration paid to him could not be treated as royalty and, thus, TDS under section 194J would not arise

Majority of shares of assessee-company were held by its promoter. Company became co-promoter and acquired 51 per cent of shares of assessee-company. A lump sum consideration was paid to original promoter. ITAT held that since right envisaged in share subscription agreement was only for acquiring controlling interest in new initiative of promoter, consideration paid to him could not be treated as royalty and, thus, question of deducting tax at source under section 194J would not arise.

WIFI Networks (P) Ltd. v. Dy. CIT ITA Nos. 1624 to 1627 /Bang/2012 dated 24-2-2016 Source : www.itat.nic.in

5

INDIRECT TAXES

CA. Janak Vaghani

1. Question of law deletion of interest and penalty

The credit which was available to the assessee and the same could be carried forward; it could validly be adjusted against the demand of tax. If principal amount of tax thereafter was not receivable, there would not be any justification for charging interest nor any justification for penalty. Under these circumstances element of avoidance of tax could be said as lacking consequently the deletion of interest and penalty on the part of Tribunal could not be said as unjustifiable. No substantial question of law arises.

State of Gujarat v. Nishi Communication (2016) 28 STJ 103 (Guj.)

2. Denial of Input Tax Credit for failure to report sales by selling dealer to Department – Unjustified

Denial of Input Tax Credit just because the dealer / Seller failed to report the same before the respondents is unacceptable for the reason that when admittedly the petitioner firm has paid the tax, he cannot be made liable for the failure on the part of the seller to report the same to the respondents.

Sri Laxmi Textiles v. CCT, (2016) 53 PHT 84 (Mad.)

3. Power of Appellate / Revisional Authority – Cannot grant jurisdiction on the assessing authority to initiate fresh proceedings

The Appellate Authority cannot grant Jurisdiction to the assessing authority for *de novo* assessment in the case when the period of limitation had already expired and no proper notice was served on the assessee.

M/s. Saba Timbers v. Appellate Authority, (2016) 53 PHT 149 (J & K STAT)

4. Article 14 of Constitution of India – Levy of tax on particular product in one region valid

Entry 81-A under Third Schedule of The Puducherry Value Added Tax Act, 2002, providing for levy of tax on sale of live stock in Mahe region of the State only is based on valid and reasonable classification and does not offend Article 14 of the Constitution of India.

M/s. Royal Chickens and Ors v. Union of India. 2015-2016 (21) TNCTJ 235 (Mad.)

5. Application for refund – Beyond time prescribed – Refund application to be considered

The application for refund of input tax credit by dealer against Zero rated sales made beyond time period prescribed u/s. 18(3) of the Act cannot be rejected merely on the ground that it is filed belatedly. The High Court issued direction to consider if on merit.

M/s. First Garment Mfg. Co (India) Pvt. Ltd. v. ACCT, 2015-16 TNCTJ 253(Mad.)

6. Denial of Input Tax credit – For non mentioning of name and TIN of buyer – On invoice cannot be disallowed

Under Section 28(2) read with rule 54(3) of The Haryana VAT Act and Rules, respectively, the buyer is required to produce the tax invoice, its name and TIN entered on it. However, the purchaser cannot be penalised where the seller does not comply with the same. The non mentioning of the buyer's name or TIN as it is issued by the seller cannot be taken to be fatal against the buyer and benefit of input tax credit declined to the buyer on that basis alone.

M/s. New Devi Grit Udyog v. State of Haryana, (2015) 52 PHT (P&H)

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Publications for sale

| Sr. No. | Name of Publication | Rates (₹) | | | |
|---------|--|------------|---------|-------------|-----------------|
| | | Edition | Members | Non-Members | Courier Charges |
| 1. | Basic questions and answers on FEMA, Non-Resident Taxation, LLP, Allied Laws & Report of Foreign Bank and Financial Accounts | Dec., 2014 | 200.00 | 225.00 | 60.00 |
| 2. | “212 Frequently Asked Questions on Survey – Direct Taxes” | Dec., 2015 | 270.00 | 300.00 | 60.00 |

- Notes: 1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
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.

| 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 28-3-2016 Life Members | | | | | |
|--|-----------|-------------|-------------|-----------|-------------|
| | Associate | Individual | Association | Corporate | Total |
| Central | 0 | 862 | 23 | 3 | 888 |
| Eastern | 3 | 1239 | 36 | 3 | 1281 |
| Northern | 0 | 1011 | 17 | 0 | 1028 |
| Southern | 1 | 1032 | 16 | 7 | 1056 |
| Western | 4 | 1794 | 34 | 18 | 1850 |
| Total | 8 | 5938 | 126 | 31 | 6103 |

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Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.

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