



# AIFTP TIMES

Volume 7 – No. 3 • March 2016

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
5,18-3-2016; 2,16,30-4-2016	Workshop on MVAT Act	Mumbai
12-3-2016	National Executive Committee Meeting	Nashik
12, 13-3-2016	Two Day National Tax Conference	Nashik
19-3-2016	Seminar on Union Budget with Focus on TDS	Kolkata

## REPORT ON SEMINAR ON TDS ORGANISED BY AIFTP (EZ) ON 30TH JANUARY, 2016

By Narayan Jain, *National Vice-President*

### TDS provisions need to be simplified

An interesting Seminar on Income Tax TDS was organised by All India Federation of Tax Practitioners jointly with Business Standard newspaper; Calcutta Citizens Initiative and supported by Rajasthan Bengal Maitri Parishad at Aayakar Bhawan, Kolkata on 30th January, 2016. Inaugurating the Seminar Mr. D. N. Mishra, Principal Commissioner of Income Tax said that the department will create awareness for proper TDS compliance by all deductors. Mr. Rakesh Goyal, CIT (TDS) explained the TDS provisions and assured necessary help to tax deductors in proper adherence to law.

Mr. Narayan Jain, National Vice-President, AIFTP and tax advocate urged that monetary limits for TDS need to be revised upwards and rate of TDS be scaled down and multiplicity of provisions relating to Interest and Commission income be consolidated for simplification. The report of Justice R. V. Easwar Committee should be fully implemented in the coming Budget, added Jain. Principal Commissioners of Income Tax Mr. N. N. Mishra, Mr. Sandip Kapoor, Mr. K. C. P. Patnaik, Mr. M. W. Haque also participated. Nilesh Som and other officials answered questions with other speakers. Presiding the Seminar Ashok Purohit raised the problem faced by taxpayers in getting Tax credit. Mr. R. D. Kakra, Chairman, EZ, AIFTP welcomed all and pointed out TDS related problems in case of deductions under section 195 of the Income-tax Act. Mr. Arvind Agarwal, Zone Secretary, Mr. Kamal Jain, Mr. Bishnu Loharuka helped in making the Seminar successful.

Many newspapers and media including Business Standard, Times of India, India Today, PTI, Statesman, DNA, Hitavada, Sanmarg, Vishwamitra, Chhapte Chhapte, Bharat Mitra covered the news of the Seminar on TDS.

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## TWO DAY NATIONAL TAX CONFERENCE AT NASHIK

On Saturday and Sunday, 12th and 13th March, 2016

*Organised by*

**ALL INDIA FEDERATION OF TAX PRACTITIONERS – WESTERN ZONE**

*In association with*

**THE SALES TAX PRACTITIONERS' ASSOCIATION OF MAHARASHTRA  
NASHIK TAX PRACTITIONERS' ASSOCIATION and NASHIK BRANCH OF WIRC OF ICAI**

We are extremely happy to announce the Two Day National Tax Conference to be held, on Saturday and Sunday, 12th and 13th March, 2016, at the Taj Group Hotel, THE GATEWAY HOTEL, AMBAD, NASHIK. This joint effort aims at showcasing a seminar with unique features and topics, which are of interest to all tax practitioners, whether practising on direct taxes or indirect taxes, and gives a not-to-miss opportunity to all concerned.

The details are as under:

Days & Dates	:	Saturday & Sunday, 12th & 13th March, 2016
Time	:	10.00 am to 5.30 pm (Saturday); 9.30 am to 4.00 pm (Sunday)
Venue	:	The Gateway Hotel Ambad, Nashik (The Taj Group), P-17, MIDC Ambad, Mumbai-Agra Road, Nashik – 422 010 (Maharashtra)
Registration Fees	:	For Members ₹ 3,700/- (inclusive of Conference Materials, breakfast, lunch, tea on both days and Service tax) For accompanying Spouse ₹ 2,750/- For non Members ₹ 4,700/- (inclusive of Conference Material, breakfast, lunch, tea on both days and Service tax)

### PROGRAMME SCHEDULE FOR CONFERENCE IS AS UNDER

Day 1 – SATURDAY, 12TH MARCH, 2016		
08.30 am to 10.00 am	:	Registration, Fellowship & Breakfast <b>Inaugural Session</b>
10.00 am to 11.30 am	:	Chief Guest : Hon'ble Mr. Justice S. C. Dharmadhikari, Judge, Bombay High Court Guest of Honour : Eminent Personality
11.30 am to 11.45 am	:	Tea Break <b>Budget Session</b>
11.45 am to 01.15 pm	:	Budget Proposals Direct Taxes – Shri S. R. Wadhwa, Advocate, New Delhi Indirect Taxes – Shri Vikram Nankani, Sr. Advocate, Mumbai
01.15 pm to 02.15 pm	:	Lunch Break <b>First Technical Session</b>
02.15 pm to 03.15 pm	:	<b>Income Tax</b> <b>Topic – Recent Development in “Deemed Income” Section 56(2) &amp; Section 68 of Income-tax Act</b> Paper Writer – CA. Devendra Jain, Mumbai Chairperson – Smt. Premlata Bansal, Sr. Advocate, Delhi
03.15 pm to 03.30 pm	:	Tea Break <b>Second Technical Session :</b>
03.30 pm to 04.30 pm	:	<b>VAT &amp; CST</b> <b>Topic – Practical &amp; Intricate issues of Section 6(2) &amp; Section 6A of CST Act, 1956.</b> Paper Writer – CA. Janak Vaghani, Mumbai Chairman – Dr. Ashok Saraf, Sr. Advocate, Guwahati <b>Third Technical Session</b>
04.30 pm to 05.30 pm	:	<b>Service Tax</b> <b>Topic – CENVAT Credit Issues &amp; Controversies</b> Paper Writer – CA. Naresh Sheth, Mumbai Chairman – CA. D. Arvind, Chennai
06.00 pm onwards	:	National Executive Committee Meeting

**Day 2 – SUNDAY. 13TH MARCH, 2016**

**Fourth Technical Session**

09.30 am to 10.45 am : **Income Tax**  
**Topic – Recent Development w.r.t. Real Estate Transactions Under Income tax**  
Paper Writer – CA. Jagdish Punjabi, Mumbai  
Chairman – Shri S. K. Poddar, Advocate, Ranchi

**Fifth Technical Session**

10.45 am to 12.00 noon : **GST Update**  
**Topic – GST Update**  
Paper Writer – Shri Dilip Dixit (KPMG) – Pune  
Chairman – Shri P. C. Joshi, Advocate, Mumbai

12.00 noon to 12.15 pm : Tea Break

**Sixth Technical Session**

12.15 pm to 01.15 pm : **VAT**  
**Topic – ITC Updates, Amendments & Issues under MVAT Act**  
Paper Writer – Shri Suhas Padhye, STP, Pune  
Chairman – Smt. Nikita R. Badheka, Advocate, Mumbai

01.15 pm to 02.15 pm : Lunch Break

02.15 pm to 04.00 pm : **Brains' Trust Session**  
Co-ordinator – Eminent Personality"  
Trustees :  
Shri C. B. Thakar, Advocate, Mumbai (VAT & CST)  
Shri Vinayak Patkar, Advocate, Mumbai (VAT & CST)  
CA. Sagar Shah, Pune (Service Tax)  
Shri Vipul Joshi, Advocate, Mumbai (Income-tax)

Please send your enrollment along with a cheque/demand draft of ₹ 3,700/- for Members and ₹ 4,700/- for Non-Members in favour of "All India Federation of Tax Practitioners – Western Zone".

- Note: 1) Only limited participants will be enrolled on first come first served basis.  
2) Delegates are requested to send queries for Brains' Trust/Technical sessions by 1st March, 2016 by email at aiftp@vsnl.com.  
3) The above charges do not include dinner cost on 1st day i.e., 12th March 2016.

**Interesting places to visit:**

- 1) Shirdi: Sai Baba Temple which is approx. 85 Kms from Nashik
- 2) Shani Shingnapur: Popular Temple of God Shani, the Hindu God associated with The planet (graha) Saturn, which is approx 130 kms. from Nashik.
- 3) Trimbakeshwar: Ancient Hindu Shiva Temple and is one of the twelve Jyotirlingas, which is approx. 30 kms. from Nashik.

The delegates who are interested in visiting the above places, special arrangements can be made for transportation, if intimation is received well in advance.

**Shri Chirag Parekh**  
*Chairman*  
AIFTP (WZ)  
(Mob.: 9821634128)

**Shri Ashvin Acharya**  
*Chairman*  
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(Mob.: 7208005055)

**Shri Sachin Gandhi**  
*Convenor*  
Education Committee  
(Mob.: 9821482020)

*For further information, please contact the following members*

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- 2) Shri Pravin Shah (Mumbai) – 9821476817
- 3) Shri Tushar Joshi (Mumbai) – 9821135246
- 4) Shri D. V. Phad (Mumbai/Nashik) – 9821343762

## SEMINAR ON UNION BUDGET WITH FOCUS ON TDS

Saturday, the 19th March, 2016 from 3.15 pm to 5.15 pm  
followed by High Tea

Venue : Aaykar Bhawan, Multipurpose Hall, First Floor,  
P-7, Chowringhee Square, Near Paradise Cinema, Kolkata 700 069

*Organised jointly by*  
**INCOME TAX DEPARTMENT, AIFTP (EZ)**  
and  
**CALCUTTA CITIZENS' INITIATIVE**

Speakers include:

Mr. Rakesh Goyal, Commissioner of Income Tax (TDS), Kolkata

Mr. Narayan Jain, Advocate, National Vice President, AIFTP

After the presentation by speakers there will be Question-answer session.

Please confirm your participation to

**Shri R. D. Kakra**, Chairman, AIFTP (EZ), 98310-52151  
or

**Shri Arvind Agarwal**, Zone Secretary,

before 15th March, 2016 as the Seats are limited.

### Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Western India Regional Council of the Institute of Chartered Accountants of India for the period 2016-2017.

Sr. No.	Name	Designation
1	CA Shruti Shah, Mumbai	Chairperson
2	CA Hardik Shah, Surat	Vice-Chairman
3	CA Kamlesh Saboo, Thane	Secretary
4	CA Shilpa Shinagare, Mumbai	Treasurer
5	CA Pradeep K. Agrawal, Baroda	Chairman of WICASA

We wish them all the success.

### Advertisement Tariff for AIFTP Journal (W.e.f. 15th July, 2013)

	Particulars	Per Insertion
1.	Quarter page	₹ 1,500/-
2.	Ordinary half page	₹ 2,500/-
3.	Ordinary full page	₹ 5,000/-
4.	Third cover page	₹ 7,500/-
5.	Fourth cover page	₹ 10,000/-
There shall be Discounts on bulk advertisements.		

### Membership of AIFTP as on 29-2-2016 Life Members

	Associate	Individual	Association	Corporate	Total
Central	0	847	23	3	873
Eastern	3	1196	36	3	1238
Northern	0	1001	17	0	1018
Southern	1	1000	15	7	1023
Western	4	1779	34	18	1835
Total	8	5823	125	31	5987

## DIRECT TAXES

Ms. Neelam Jadhav, Advocate  
KSA Legal Chambers

### HIGH COURT

#### 1. **S.68: Addition – Not able to discharge initial onus of providing credit worthiness – addition confirmed**

Assessee was not in a position to establish the credit worthiness of the parties to the extent that they had any regular source of income or capability for advancing the loans. Further circumstances indicated that the bank accounts of these parties were utilised only to justify the loans advanced to the assessee. The assessee had not discharged the onus of establishing the creditworthiness of the lenders. The mere fact that the assessee had produced the bank account statements of the lending parties would not per se relieve it of the burden particularly if these bank accounts gave rise to further questions regarding the creditworthiness of the lenders. The amounts advanced as loan to the assessee were disproportionately large. One of the parties advanced a loan of ₹ 1.40 crore free of interest. It is in these circumstances and upon a thorough analysis of the bank accounts of the lenders that their creditworthiness was not established. The question was not one of demonstrating the sources of the income of the lenders as much as establishing their financial capacity to advance the sums in question to the assessee.

*Sanraj Engineering Pvt. Ltd. vs. CIT ITA 79/2016 dtd. 17-2-2016 Source : delhihighcourt.nic.in*

### TRIBUNALS

#### 2. **S.32: Depreciation on goodwill in connection with takeover of unit is allowable**

The Assessee purchased Ductron Castings Unit from M/s. Ashok Leyland Ltd. and has paid over the value of net asset to the extent of ₹ 147.57 lakhs and claimed the same as cost of the goodwill. However, the A. O. disallowed the claim of the assessee on the ground that the payment does not fall within the meaning of know-how, patent or copyright. The A. O. has not considered the provisions of Explanation 3 to Section 32(1) found that the word any other business or commercial rights of similar nature in clause (b) of Explanation 3 indicates that goodwill will fall under the expression any other business or commercial rights of similar nature. Therefore the Hon'ble ITAT had allowed depreciation at the applicable rate on the payment relatable to goodwill.

*M/s. Hinduja Foundries Ltd.(formerly known as M/s. Ennore Foundries Ltd.) vs. ACIT, ITA Nos.1590/Mds/2015 dtd. 19-2-2016*

#### 3. **S.2(22)(e) : Loans or advances to a non-shareholder cannot be taxed as Deemed Dividend**

The assessee had received loan from M/s Jet Age Finance Limited (JAFL), the A. O. was of the view the said amount received as loan should be treated as deemed dividend u/s. 2(22)(e). The assessee submitted that it was not a shareholder in JAFL and consequently the amount could not be held to be deemed dividend. The Hon'ble ITAT observed that the ordinary and natural meaning of the term dividend would be a share in profits to an investor in the share capital of a limited company. To the extent the meaning of the word Dividend is extended to loans and advances to a shareholder or to a concern in which a shareholder is substantially interested deeming them as Dividend in the hands of a shareholder the ordinary and natural meaning of the word Dividend is altered. To this extent the definition of the term Dividend can be said to operate. If the definition of Dividend is extended to a loan or advance to a non-shareholder the ordinary and natural meaning of the word dividend is taken away. The intention behind the provisions of Sec. 2(22)(e) and in the absence of indication in Sec. 2(22)(e) to extend the legal fiction to a case of loan or advance to a non-shareholder also, loan or advance to a non-shareholder cannot be taxed as Deemed Dividend in the hands of a non-shareholder. Since the assessee is not a shareholder in the lender company.

*M/s. Jet Age Securities Pvt. Ltd. vs. D.C.I.T., ITA No.405/Kol/2015 (Kol.)(Trib.) Source : itat.nic.in*

#### 4. **S.263 : Revision – unrecorded purchases – distinction between lack of enquiry and inadequate enquiry**

AO failed to make proper enquiry which he ought to have made before completing the assessment. There is a distinction between lack of enquiry and inadequate enquiry. If there is an enquiry, even inadequate, that would not by itself give occasion to the CIT to pass order under S. 263, merely because he has a different opinion in the matter. Such a course of action is open only in cases of lack of enquiry. Although apparently the assessment does not give any reasons why purchases were not being added as income, that by itself would not be indicative of the fact that the

AO has not applied his mind to the issue. AO is not required to give detailed reason in respect of each and every item of deduction in the assessment order. He had called for explanation regarding suppressed sales and the assessee had furnished his explanation. It cannot be said that it is a case of lack of enquiry. Further, even the CIT is not clear as to whether entire purchases has to be added or peak purchases has to be added or the entire sales has to be added as income. Therefore, the view taken by the AO was one of the possible views and the assessment order passed by the AO could not be held to be prejudicial to the Revenue. The grievance of the CIT was that the AO

should have made further inquiries as to whether any addition has to be made on account of unrecorded purchases or whether the entire suppressed sales had to be regarded as income of the assessee rather than accepting the explanation. Therefore, it cannot be a case of 'lack of inquiry'. The jurisdiction u/s. 263 was not properly exercised by the CIT as the condition precedent for invoking the same, the order of the AO is erroneous and prejudicial to the interest of the revenue.

*Ritesh Kumar Boyed vs CIT ITA No.2299/Kol/2013 dtd. 15-1-2016 source : itat.nic.in*

## INDIRECT TAXES

CA. Janak Vaghani

### 1. F Form for Dispatch of Goods by Agent who purchased goods on behalf of principal situated outside the State

The purchase of Goods by Commission Agent within the State and dispatch of it to his Principal outside the State, no F form is required for such dispatches as it is a purchase covered by section 3(a) of The CST Act. The judgment of Tribunal cannot be faulted.

*CCT UP, v. M/s. Vimal Prasad Mahendra Kumar and others, 2015 NTN (Vol. 59) – 287 (All.)*

### 2. Luxury Tax – Auditorium within premises of temple or not

Under the Kerala Tax on Luxuries Act exemption is given to Halls and Auditorium located within the premises of places of worships owned by such institutions. An Auditorium situated opposite side of the Road in a different plot owned by such institutions is eligible for exemption from payment of tax although it is separated by the road subject to conditions that usage of Auditorium is for the requirement of Temple also.

*Sree Narayana Dharma Samajam v. Comm. Tax Officer & Ors. (2015,) 23 KTR 593 (Kar.)*

### 3. Penalty for Non-Registration and filing of returns – Not valid

The High Court condemned the growing tendency among Intelligence Officers under the Kerala VAT Act to invoke penal proceedings against assessee without first having ascertained whether they would come under the coverage of the Act in respect of the activities carried on by them where there is an uncertainty with regards to the real nature of transaction in question. The Intelligence Officer

ought, ideally, to refer the matter to the Assessing Officer concerned to arrive at finding regarding liability to tax before taking recourse to the penal provisions of the Act. The Revenue Authority must realise that tax administration is not just about collecting revenue from citizens. They have to bear in mind the fundamental Constitutional Precept under Article 265 that no tax shall be levied or collected except by authority of law.

*M/s. Flikpart Internet Pvt. Ltd. & Ann v. State of Kerala & Ors., (2016) 24 KTR 46 (Ker.)*

### 4. Penalty u/s. 10A of the CST Act

Purchase of 'hut material', against Form C for use in construction of Bridge, is covered by the meaning of expression "stores, material and consumable, etc." appearing in CST registration certificate as such the dealer has not falsely represented that goods are covered by registration certificate so as to attract penalty u/s. 10A of the CST Act. The levy of penalty was set aside.

*M/s. Yundai Engineering v. CTT, UP, (2015) 27 STJ 887 (All.)*

### 5. Input Tax Credit on Purchase of DEPB

The tax paid purchase of DEPB for reducing the incidence of custom duty should be held to constitute as use of such DEPB scrip for the purpose of sale of imported commodity eligible for input tax credit although dealer does not deal in such goods. As long as it is shown that use of the DEPB scrip has impacted the cost of the product that is sold, either directly or indirectly, the credit of input tax paid on DEPB scrip cannot be denied.

*M/s. Jagriti Plastics Ltd. v. CTT (2015), 27 STJ 891 (Del.)*

## 6. Classification of Goods – Electrical Insulated Press Board commonly known as High Density Board – Not all kinds of paper

Sale of Electrical Insulated Press Board commonly Known as High Density Board is not covered by entry 69 of the Third Schedule of the Act relating to all kinds of paper but covered by residual entry taxable at 12.5%. The goods in question is excessively used in an electrical industry and not used in common persons who are in trade, may be aware that the process undergone, similar to which is used for manufacturing paper, they are clear in their mind that it is not a paper but is an electrical insulation press board which is used in the electrical transformers as conductor wrapping and insulation barriers between winding coils. In the trade parlance it is understood as electrical goods. The term paper of all kinds in Entry 69 is comprehensive and an inclusive definition. But it is not possible to treat the goods in question as a paper.

*M/s. Raman Board Ltd. v. State of Karnataka, 2015-16(20) KCTJ 185 (Kar.)*

## 7. Sale of car co-terminus with registration

In order to satisfy the requirement of law noticed above, the dealer can deliver possession and owner

can take possession and present the vehicle for registration only when it reaches the office of Registering Authority. With the handing over of the possession of a specific motor vehicle just prior to registration, the dealer completes the agreement of sale rendering it a perfected sale. The purchaser as an 'owner' under the Motor Vehicles Act is thereafter obliged to obtain certificate of registration which alone entitles him to enjoy the possession of the vehicle in practical terms by enjoying the right to use the vehicle at public places, after meeting the other statutory obligations of Insurance etc. Hence, technically though the registration of a motor vehicle is a post-sale event, the event of sale is closely linked in time with the event of registration. Neither the manufacturer nor the dealer of a motor vehicle can permit the intended purchaser having an agreement of sale to use the motor vehicle even for taking it to the registration office in view of the statutory provisions already noticed. Hence lawful possession with the right of use is permissible to be given to the intended owner only after reaching the vehicle to the office of Registering Authority. Thus seen, in practical terms though sale precedes the event of registration, in normal circumstances and as the law stands, it is co-terminus with registration of a new motor vehicle.

*CCT. Kerala v. KTC Automobiles, Civil Appeal No. 2446 of 2007, dated 29th January, 2016 SC.*

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### STATEMENT AS PER PRESS AND REGISTRATION OF BOOKS ACT

#### FORM IV

[See Rule 8]

### AIFTP TIMES

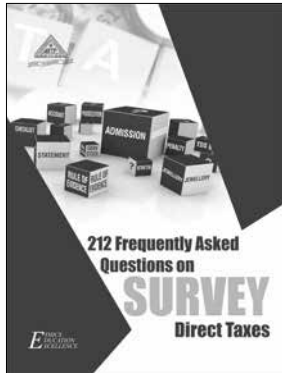
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I, Shri Kotecha Mitesh Ashwin, hereby, declare that the particulars given above are true to the best of my knowledge and belief.

Date : 27-2-2016.

**KOTECHA MITESH ASHWIN**  
Signature of the Publisher

## BOOK RELEASE ANNOUNCEMENT



We are pleased to make the announcement of the release of publication of the All India Federation of Tax Practitioners titled “212 Frequently Asked Questions on Survey – Direct Taxes” by Dr. K. Lakshaman, Member of Legislative Assembly, Hyderabad on 26th December, 2015 at Hyderabad in a 18th National Convention organised by the AIFTP in association with local associations.

This is a unique publication in a questions-answers format explaining the provisions and various controversies relating to Survey under Direct Taxes. In this publication 212 Questions of practical importance are answered in a simple and lucid language. It is divided into XX Chapters and deals with all important issues relating to survey, such as specific functions or ceremonies, Business Premises, Authorities, Powers and Provisions, TDS Survey, Survey of Premises, Recording of Statement, Admission by an assessee and Retraction by an assessee, Consequent Proceedings, Rules of Evidence, Penalties and Prosecutions, Settlement of Survey Cases, Allied Revenue Laws (Sales Tax / VAT / Central Excise), Accounting Aspects, Practical Issues, Circulars issued by the CBDT, Precautions necessary for presurvey, Checklist, etc.

This publication will be a useful guide to tax consultants, tax payers as well as tax department.

This publication is authored by CA. M. V. Purushottam Rao, Hyderabad and edited by Shri N. M. Ranka, Sr. Advocate, Jaipur, Dr. K. Shivaram, Sr. Advocate, Mumbai and Shri S. R. Wadhwa, Advocate, Delhi.

The price of publication is ₹ 300/-.

For members of the Federation and subscribers of [www.itatonline.org](http://www.itatonline.org), the same is available at a price of ₹ 240/- and for others, the same is for ₹ 270/-.

Local/Outstation members not collecting from office are requested to add ₹ 60/- per publication as courier charges.

Please make all drafts payable to “All India Federation of Tax Practitioners”.

*For further details please contact:*

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**Associate Editor of AIFTP Times : Mr. Deepak R. Shah**

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