

All India Federation of Tax Practitioners



AIFTP TIMES

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FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
3/4 to 9/10-6-2017	International Tour-cum-Conference	Sri Lanka (Kandy & Colombo)

AIFTP JOURNAL SUBSCRIPTION 2017-18

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Yours sincerely,

For ALL INDIA FEDERATION OF TAX PRACTITIONERS

Vipul Joshi

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REPORT OF ACTIVITIES OF THE CENTRAL ZONE

By **D. C. Mali**, *Chairman, AFTP (CZ)*

1. Representation submitted to the Chief Minister and Principal Secretary (Finance) for extension of Amnesty Scheme, 2017 under VAT Act, And GST second enrolment will be extended up to 31st May, 2017, with certain new amendments submitted by Chairman, Representation for Extension of service tax Return up to 30th April Submitted and it is also extended up to 30th April 2017.
2. New members – Eight New members including one Marudhara Tax Bar of Western Rajasthan enrolled from 24th Feb to 20th April, 2017.
3. Facilitation of Tax Board Member – During visit at Tax Board Camp on 20th April, 2017 at Jodhpur we welcomed Mr. Madan Mohan Malviya jointly with Marudhara Tax Bar of Western Rajasthan, Pali Tax Bar, Jalore Tax Bar and Barmer Tax Bar and welcome by bouquets and presented memento to Mr. Malviya.
4. Tax Seminar – One Day Tax seminar on Central & State Budget and GST was organised by AIFTP (CZ) jointly with Rajasthan Stainless ReRollers Association, Income Tax Appellate Tribunal Bar Association and Marudhara Tax Bar Association of Western Rajasthan on 8th April, 2017, inaugural with Saraswati Vandana. In this seminar welcome addressed given by D. C. Mali Chairman AIFTP (CZ) and G. K. Garg President of Rajasthan Stainless ReRollers Association, Seminar Chairman Dr. S. L. Jain, Jaipur (Raj.) and CA. Rajesh Mehta, Indore (MP) taken Technical Session on amendments in IT Act and provision related to Cash transaction. in this session Suresh Ojha, Vice-Chairman also focus on above subject. In the Technical Session-II topic of presentation on GST in the Chairmanship of Retd. IRS K. L. Goyal and CA Pradeep Jain. Adv Gaurav Soni also taken very interesting session on basic on intellectual property rights. after that last session and high tea taken. In this seminar audience asked many questions and got solution from the specialists. In this Conference participants had come from Barmer, Pali, Hanumangarh, Bikaner, Ajmer, Indore, Jalore, Ladnun, Sujangarh, Balotra, Sumerpur, Sanchore.
5. In this seminar more than 150 members participated including young CA, Advocate and members of trade Chambers and local Tax Bar. More than twenty five young CAs & Advocates attended. in the last session vote of thanks given by Bhanwar Lal Bissa, Secretary AIFTP CZ & have thankful for providing facility of steel auditorium for this seminar.
6. This aforesaid conference/seminar published in all regional and local newspapers, seminar was conducted By CA. Piyush Chopra.
7. Future Programme – We will organize various seminars in Alwar, Makarana, Bhilai, Bhopal and Bilaspur in coming months May and June on Central Budget and GST.
8. Under the leadership of Shri Ganesh Purohit, Deputy President (AIFTP) 12 persons were attended the National Conference at Anand which was held on 22nd and 23rd April, 2017.

REPORT OF ONE DAY SEMINAR HELD ON JALPAIGURI ON 8-4-2017

By **D. K. Agarwal**, *Programme Chairman & Joint Secretary, AIFTP*

All India Federation of Tax Practitioners (AIFTP-EZ) in association with North Bengal Tax Advocate Association (NBTAA) and Siliguri Tax Advocate Bar Association (Sili-TABA) had organised a one day seminar on 8th April, 2017 at Lataguri Forest, Jalpaiguri.

The seminar was inaugurated by lighting of lamp by Shri Arvind Kumar Sharma, Advocate (Guest of Honour), Shri Mukul Gupta, Advocate (Speaker), CA. Vipin Garg, (Speaker) and Shri R. D. Karka, Chairman AIFTP (East Zone), Shri Gajanand Agarwal, Advocate, Shri G. S. Agarwal, Advocate, Shri Sanjay Kumar, President of (NBTAA), Shri Samar Das, President of (Sili – TABA) along with other dignitaries.

We then observed two minutes silence for the departed soul of Dr. Saradindu Biswas, Ex-Chairman of Bar council of West Bengal.

Shri R. D. Karka, Chairman AIFTP (East Zone) welcomed the delegates & Shri Arvind Kumar Sharma, Advocate addressed the gathering as Guest of Honour.

Shri Mukul Gupta, Advocate delivered his educative power-point presentation on Goods and Services Tax (GST) and explained the different provisions of GST. This session was chaired by Shri Satish Singh, Advocate, from Jamshedpur. CA. Vipin Garg made his deliberation on “Union Budget 2017” & “Recent Amendments in Income Tax” in a befitting manner. This session was chaired by Shri Gajanand Agarwal, Advocate, Siliguri.

The queries of the delegates addressed to in the Question & Answer Session. Smt. Ruchi Agarwal, Advocate conducted the programme very well.

It's a pleasure to conclude that the overall programme was successful.

DIRECT TAXES

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

Unreported Decisions

1. S.48: Computation of capital gain – Developed land – Cost of the land to be considered as per market value as refer in Ready Reckoner at the time when land was transfer

Though the property in question cannot be considered as land and building but in the sale deed it would show that the land in question would fall within the scope of ‘development land’ and not “undeveloped land”. Though the structure made on the property may not fall in definition of building for which separate rates have been mentioned in the Ready Reckoner. The property can fall within the scope of developed vacant land. Therefore, while computing the capital gains the market value of the property as on transfer of land have to take as per the ready reckoner value for developed vacant land.

Shri Avan J. Mistri v. ITO 7460/Mum/2013, dt. 3-2-2017 (Mum)(Trib.) Source : www.itat.nic.in

2. S.80-IB(10): Deductions – Profits and gains from industrial undertakings developments and building [Housing projects] – Sale of TDR derived from housing project – Eligible for deduction

AO observed that FSI sold formed part of the project under development, the project could not be completed and, therefore, deduction u/s. 80-IB(10) was not allowable. The CIT(A) upheld the same stating that the rehabilitation building and sale of buildings are part of the same project, profit claimed as deduction u/s.80-IB(10) was attributable to and not derived from sale of unutilised FSI and sale component of the housing project.

The ITAT held that there is no difference between the Transferable Development Rights (TDR) and Floor Space Index (FSI), both represent permissible construction area. TDR/FSI was received as a consideration for construction carried out by the assessee in respect of rehabilitation

building. Therefore, assessee is eligible for 80-IB(10) deduction for sale of TDR.

M/s. Aarti Projects and Constructions v. DCIT, ITA No. 4190/Mum/2016 dtd. 5-1-2017 (Mum)(Trib.) Source : www.itat.nic.in

3. S.147: Reopening of Assessment –Assessee participated in proceedings pursuant to notice u/s. 148 does not obviate that the mandatory requirement of to issue a notice u/s. 143(2) before finalising reassessment

Initially the return was processed u/s. 143(1), later on a notice for reopening was issued, there is no evidence of service of notice u/s. 143(2) on the assessee. The CIT(A) held that provisions of s. 292BB were applicable to the case.

The ITAT held that assessment order passed u/s. 147 r.w.s. 143(3) has to be preceded by issue of notice u/s. 143(2), without said notice the assessment proceedings is invalid.

Khanna Industrial Pipes Pvt. Ltd. v. ITO, ITA No. 1845/Mum/2013, dtd. 8/2/2017 (Mum)(Trib.) Source : www.itat.nic.in

4. S.271(1)(c): No penalty u/s. 271(1)(c) – Notice does not specify penalty levied for what allegation

Proceedings for levy of penalty u/s. 271(1)(c) can be initiated only if the AO is satisfied that any person has ‘concealed particulars of income’ or has ‘furnished inaccurate particulars of income’; only then can be held that such person shall pay by way of penalty u/s. 271(1)(c)(iii). Notice issued for penalty proceedings u/s. 271(1)(c) was defective as it was not mentioned / specify whether penalty is levied for furnishing inaccurate particulars of income or concealment of income. Therefore same was issued without application of mind and is invalid and bad in law.

Chandru K. Mirchandani v. ITO ITA No. 5368/Mum/2014 dtd. 5-4-2017 (Mum)(Trib.) Source : www.itat.nic.in

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Eastern	4	1319	36	3	1362
Northern	0	1052	17	0	1069
Southern	1	1134	19	8	1165
Western	4	2223	37	18	2290
Total	9	6638	133	32	6833

IMPORTANT CASE LAWS IN SERVICE TAX, CENTRAL EXCISE

S. S. Satyanarayana, *Tax Practitioner*, Hyderabad.

Central Excise : The Appellant had leased their factory premises to an 100% EOU. Since lessee had defaulted in payment of confirmed excise duty and penalty, the recovery proceeding of the said amount was initiated from the appellants initially by attaching the said property but later with direction of Hon'ble Gujarat High a Notice was issued to them, which on adjudication was confirmed for attachment of the property belonging to the appellants. The said attachment order was challenged before the learned Commissioner (Appeals), who in turn, upheld the said order. Held : An 100% EOU vacated the premises before fulfilment of the export obligations. Recovery of outstanding dues of ED cannot be made from the Lessor by attachment of the property. [Madhusudan Textiles and Others v. CST, Surat I – 2016 (12) TMI 1511 – CESTAT, Ahmedabad].

Service Tax : The petitioner company provides various kinds of services i.e., Cellular, Fixed Line and Broadband services which includes roaming facilities, STD and ISD and other various value added services to its subscribers. The petitioner is rendering a service. The contention of the petitioner is that Central Government by Finance Act of 1994 has imposed "Service tax" on the said service of the petitioners and the petitioners are being assessed to the said tax and the petitioner is paying the requisite tax w.e.f. May 14, 2004. Held : Leasing of Broadband Lines is not liable for VAT since a subscriber of a lease line does not become the owner of the line either by control or by possession and hence such charges are only for services rendered and there is no element of sale therein. [Idea Cellular Ltd., and Others v. AC(CT), Indore – 2017(1) TMI 336-Madhya Pradesh HC].

Central Excise : Adjudicating Authority passed original order on 31-10-2012. Thereafter some mistake was noticed in above order and corrigendum was issued on 31-12-2012 for correcting mistake in order. Subsequently assessee filed appeal before Commissioner (Appeals) on 27-2-2013. Commissioner (Appeals) dismissed appeal on ground that same was not filed within limitation. Held : Where after passing original order corrigendum was issued for correcting mistake in order, limitation for filing appeal before Commissioner (Appeals) would be counted from date of corrigendum. [Arihan Telecommunications v UOI – [2017] 77 taxmann.com 81 (Mumbai)]

Service Tax : The appellants are engaged in providing electrical wiring, fittings and related services to various organisations viz. CGHS, CPWD, DJB and NDMC in terms of written contracts. The impugned order confirmed the service tax liability on the appellant on the ground that on 80% of the consideration received the appellant failed to discharge service tax under the category of management, maintenance and repair services. It was held that the appellants artificially split-up the consideration received in two components – 80% towards supply of materials and 20% towards rendering of services. The lower authority found such arrangements as legally not tenable and accordingly, confirmed service tax on full consideration value received by the appellant. Held: Split-up of works contract into 80% towards supply of materials and 20% towards value of taxable service is allowed as such split was based on the work orders received from autonomous bodies like CPWD, etc. and VAT was paid on supply of goods. Demand set aside and appeal allowed. [Gogia Brothers v. CST, Delhi – 2017 (1) TMI 163-CESTAT, New Delhi].

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