



AIFTP TIMES

Volume 9 – No. 4 • April 2018

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
16-21 April, 2018	International Study Tour, 2018	Hong Kong/Macau
5-5-2018	National Executive Committee Meeting	Indore
5, 6-5-2018	National Tax Conference	Indore
17-5-2018	One Day Tax Seminar	Puri
9-6-2018	Symposium on Income Tax	Kolkata
9-6-2018	Annual General Meeting of Eastern Zone	Kolkata
11-8-2018	National Executive Committee Meeting	Amritsar
11, 12-8-2018	National Tax Conference	Amritsar
8, 9-9-2018	Justice Dr. B. P. Saraf National Moot Court Competition	Kolkata
6-10-2018	National Executive Committee Meeting	Thane
6, 7-10-2018	National Tax Conference	Thane
21, 22, 23-12-2018	21st National Tax Convention, 2018	Guwahati

Comments from Members

- ☞ Nice greetings from AIFTP. – Nitin Gautam, STP, Nagpur
- ☞ Good of AIFTP to us for the birthday greetings. – CA. Sachin Romani, Mumbai
- ☞ Thanks for the wonderful birthday SMS and calls. – Pramod Kumar Mohanty, Adv., Bhubaneswar
- ☞ AIFTP – Keep the greetings going on. – Vinay R. Jolly, Adv., Jaipur

One Day Tax Seminar at Puri on 12th May, 2018

AIFTP (EZ) will organise one day Tax Seminar at Hotel Pride Ananya Resorts, VIP Road, Near Sadar P.S., Puri, Odisha from 9.30 a.m. onwards. CA. Arun Agarwal, CA. S. Venkataramani, Shri Subhas Agarwal, Advocate, Shri Rajiv Shankar Dvivedi, Advocate and Shri V. P. Gupta, Advocate have given the consent to deliver their respective lectures at the proposed seminar. You, along with the National Executive Committee Members and the National Office Bearers are cordially invited to attend the said Seminar at Puri, Odisha.

Odisha members have organised a special Jagannath Temple Darshan on Sunday, 13th May, 2018 and Prasad will be arranged for the Participants on 12th & 13th May, 2018. Accommodations are arranged at the same venue @ ₹ 2,750/- per day, all inclusive.

N. D. Saha
Chairman, AIFTP (EZ)

Two Day National Tax Conference at Amritsar on 11th & 12th August, 2018

AIFTP (NZ) will be organizing a two day National Tax Conference on 11th & 12th August, 2018. The venue has been zeroed down to Hotel MK, Ranjit Avenue, Amritsar. Wagah Border visit has been arranged on Friday, 10th August, 2018. Those members desired to visit the same are requested to reach Amritsar on 10th August, 2018 before 1.00 p.m. Hotel accommodation has been arranged at the venue at concessional rate i.e. ₹ 4,000/- per day with breakfast on double occupancy basis. For further details, please contact Dr. Naveen Rattan (Mob.) 9417311987 Email: rattanadvocates@gmail.com

V. P. Gupta Vice President M: 9810052890	Sanjay Kumar Chairman M: 9415216798	Jamuna Shukla Hon. Secretary M: 9450361366	Varinder Sharma Conference Convenors M: 9814008080	Sandeep Goyal M: 9814208142	Dr. Naveen Rattan Conference Chairman M: 9417311987
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International Study Tour, 2018

It is informed that more than 125 delegates are going for the International Study Tour to Hong Kong and Macua from 16th to 21st April, 2018. Overwhelming response has been received from the members. We thank to the members for their active participation.

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

Name	Mobile	Tel. (O)	Fax	E-mail
National President – Shri Ganesh Purohit, Sr. Adv.	9425154914	0761-2660402	4003074	purohitganesh@gmail.com
Deputy President – Dr. Ashok Saraf, Sr. Adv.	9864020679	0361-2529532	2460041	drashoksaraf@gmail.com
Secretary General – Shri Pankaj Ghiya, Adv.	9829013626	0141-2621679	2621679	pankajghiyajapur@gmail.com
Treasurer – Shri Vipul B. Joshi, Adv.	9820045569	022-66333736	22080951	vipulbjoshi@gmail.com

Two Day National Tax Conference – 2018

Organising Jointly with

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (CZ)
TAX PRACTITIONERS' ASSOCIATION, INDORE • TAX BAR AT TRIBUNAL, INDORE**

on Saturday & Sunday 5th & 6th May, 2018 at ICAI Auditorium, Scheme No. 78, Part-II, Indore, M.P.

Saturday, 5th May, 2018 – Day – 1st		
Schedule	Topic	Speaker
08.30 AM to 09.30 AM	Registration & Breakfast	
09.30 AM to 11.00 AM	Inaugural Session	Chief Guest
		Hon'ble Dr. Justice D. Y. Chandrachud,* Judge, Supreme Court of India
	Guest of Honour	Hon'ble Mr. Justice Hemant Gupta,* Chief Justice, MP High Court
	Guest of Honour	Shri Purushendra Kaurav, Advocate General of MP, Jabalpur
11.00 AM to 12.30 PM	Technical Session – I Tax Management through Will, Family Arrangement and Private Trust	Shri Samir Divatia, Advocate, Ahmedabad
	Session Chairman	Shri N. M. Ranka, Sr. Advocate, Jaipur
12.30 PM to 01.45 PM	Technical Session – II Taxability of works contract under GST on Real Estate Developers	CA. Sanjay Dhariwal, Bengaluru
	Session Chairman	Dr. M. V. K. Moorthy, Advocate, Hyderabad
01.45 PM to 02.30 PM	Lunch	
02.30 PM to 04.00 PM	Technical Session – III Recent Development in Taxation of undisclosed income with special reference to Section 115BBE	CA. Jagdish T. Punjabi, Mumbai
	Session Chairman	Shri N. P. Jain, Advocate, Kolkata
04.00 PM to 04.15 PM	Tea Break	
04.15 PM to 06.00 PM	Technical Session – IV Re-assessment of Income Tax cases – Interesting Issues	Shri Rakesh Gupta, Advocate, New Delhi
	Session Chairman	Hon'ble Mr. Justice Rajesh Bindal,* Punjab & Haryana High Court
06.00 PM to 07.00 PM	NEC Meeting	
Sunday, 6th May, 2018 – Day – 2nd		
10.00 AM to 11.30 AM	Technical Session – V Constitutional remedies under Income Tax laws with special reference to Prosecution & Recovery proceedings	Shri Firoz B. Andhyarujina, Sr. Advocate, Mumbai
	Session Chairperson	Hon'ble Dr. Justice Anita Sumanth,* Madras High Court
11.30 AM to 1.00 PM	Technical Session – VI Blocked Credit in GST, GST on reimbursement, GST on discount, GST on GTA, Challenges for Professionals	CA. Ankit Somani, Ajmer
	Session Chairman	Shri M. L. Patodi, Advocate, Kota
1.00 PM to 1.45 PM	Lunch	

* Confirmation awaited

1.45 PM to 3.30 PM	Brains' Trust Session	Shri N. M. Ranka, Sr. Advocate, Jaipur Shri Ganesh Purohit, Sr. Advocate, Jabalpur Shri Pankaj Ghiya, Advocate, Jaipur Shri V. P. Gupta, Advocate, New Delhi Smt. Nikita Badheka, Advocate, Mumbai Shri M. L. Patodi, Advocate, Kota Dr. Ashok Saraf, Sr. Advocate, Guwahati CA. Abhishek Singhania, New Delhi
3.30 PM to 4.00 PM	High-Tea	

**Delegate Fee : ₹ 2,300/-, For early birds (till 20th April, 2018) ₹ 2,100/-, For Accompanying Spouse ₹ 2,100/-
Cheque/DD/NEFT Payable in favour of Tax Bar at Tribunal
State Bank of India, Vallabh Nagar Branch, Indore A/c. No. 63008384581 IFSC : SBIN0030148**

Sr. Adv. Ganesh Purohit President AIFTP Mob.: 94251 54914 purohit_ganesh@yahoo.co.in	Adv. Pankaj Ghiya Secretary General AIFTP Mob.: 98290 13626 pankajghiyajipur@gmail.com	CA. Rajesh Mehta Chairman AIFTP-CZ Mob.: 98270 36956 rajeshmehta_indore@yahoo.com	Adv. P. M. Chopra Vice-President AIFTP Mob.: 94135 23820 chopraassoc@gmail.com	CA. Devendra Kansara Secretary AIFTP-CZ Mob.: 94141 28665 kansara_devendra@yahoo.co.in
Adv. Rajesh Joshi Conference Convenor Mob.: 98272 66933	CA. Vikram Gupte Conference Co-Chairman Mob.: 98260 27717	Sr. Adv. Sumit Nema Conference Co-Chairman Mob.: 97131 63667	CA. Abhay Sharma Conference Chairman Mob.: 98270 67732	Adv. Manoj Dwivedi Conference Co-Convenor Mob.: 98260 57711

Contact Persons

Sr. No.	Name	Designation	Mobile No.	E-mail
1.	CA. Abhay Sharma	Conference Chairman	9827067732	+sharmaabhayca@gmail.com
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6.	CA. Vijay Bansal	Conference Treasurer	9826063435	vijaybansal@yahoo.co.in

Pl. send your mails/queries at aiftptncindore2018@gmail.com

Hotel Tariff Comparison

Particulars	Sayaji		Effotel		Lemon Tree		Amarvilas		WOW 5 Star Hotel		Surya	
	Single	Double	Single	Double	Single	Double	Single	Double	Single	Double	Single	Double
Room Type							Delux					Executive
Room Tariff	₹ 3,720	₹ 4,300	₹ 2,600	₹ 3,300	₹ 2,800	₹ 3,400	₹ 2,500	₹ 2,900	₹ 5,000	₹ 5,750	NA	₹ 2,200
	Plus Taxes 20.95%	Plus Taxes 20.95%	Plus Taxes 18%	Plus Taxes 18%	Plus Taxes 18%	Plus Taxes 18%	Plus Taxes 18%	Plus Taxes 18%	Plus Taxes 28%	Plus Taxes 28%		Plus Taxes 18%
Room Type							Executive					
Room Tariff							₹ 2,900	₹ 3,400				
							Plus Taxes 18%	Plus Taxes 18%				

Preferred Hotel

Effotel

Delegates may contact CS. Kamlesh Joshi 94250 58456 / e-mail : kamleshjoshifcs@gmail.com
In-charge Travel Committee

AIFTP JOURNAL SUBSCRIPTION 2018-19

Request by Shri Vipul Joshi, Treasurer

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and it is also a source of information for updating our subscribers with the latest developments on Direct and Indirect Taxes.

The unique feature of our Journal is that every quarter, we publish 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. Therefore, we take this opportunity to emphasise that subscription to the journal is highly recommended.

Please note that AIFTP Journal subscription for the year 1st April, 2018 to 31st March, 2019 falls due for payment on 1st April, 2018.

Life Member

Members are requested to remit the amount of either ₹ 800/- for one year or ₹ 2,100/- for three years by Cheque/ Demand Draft by **20th April, 2018**. You are also requested to fill in all the details in the Renewal Notice.

Non-Member

Non-members are requested to remit the amount of either ₹ 1,000/- for one year or ₹ 3,000/- for three years by Cheque/Demand Draft by **20th April, 2018**. You are also requested to fill in all the details in the Renewal Notice.

Notes :

1. Payment should be made by Account Payee Cheque/Demand Draft in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
2. OUTSTATION MEMBERS are requested to send payments only by either at par cheque or Demand Draft payable at Mumbai drawn in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
3. An early payment of the subscription would be highly appreciated.
4. **Member who requires the AIFTP Journal to be couriered separately at their communication address, should add ₹ 300/- per year as courier charges.**
5. Please download and send the subscription form from AIFTP's website duly filled in all respects along with the payment.
6. Please write your name on the reverse of Cheques/D.D.

Dear Members,

ITAT Bar Associations' Co-ordination Committee desired to send suggestions to the Tax Force for Rewriting of Income-tax Act on following:-

- | | | |
|----------------------------------|--|-------------------------------------|
| 1. Law and Procedure before ITAT | 4. Authority for Advance Ruling | 7. Any other conceptual issue which |
| 2. Appeals before CIT(A) | 5. Prosecution matters relating to Direct Taxes | you may consider. |
| 3. Settlement Commission | 6. Reduction of appeals before High Court and Supreme Court or | |

Sir, we request you to send your suggestions on or before 30th April, 2018.

Thanking you,

For ITAT Bar Associations' Co-ordination Committee

A. K. Srivastava and Paras S. Savla
Convenors

Note: Readers may send their valuable suggestions to AIFTP at aiftp@vsnl.com or may add their comments to www.itatonline.org in INFO having heading as New Income-tax Act: CBDT Invites Suggestions, Tax Expert Offers Many Valuable Suggestions

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 29-3-2018 Life Members					
	Associate	Individual	Association	Corporate	Total
Central	0	986	24	3	1013
Eastern	4	1393	36	3	1436
Northern	0	1120	17	0	1137
Southern	1	1211	19	7	1238
Western	4	2274	37	4	2319
Total	9	6984	133	17	7143

Report of Jammu Tax Conference, 2018 & Moot Court held in Varanasi

By CA. Jamuna Shukla, Secretary, AIFTP (NZ)

The Jammu Tax Conference was convened at Jammu on 24th February, 2018 jointly organised by All India Federation of Tax Practitioners (NZ) and Tax Bar Association, Jammu. The main objective and theme of Conference was "Role of Tax Professionals".

It was inaugurated by Chief Justice of J&K High Court, Justice Badar Durrez Ahmed by lighting the traditional lamp in presence of Guest of Honour Addl. CIT, Jammu Shri S. K. Sharma, Addl. Commissioner SGST Jammu Ms. Anu Malhotra, ACIT Jammu Ms. Ruveda Salam, AIFTP National President Shri Ganesh Purohit, AIFTP Secretary General Shri Pankaj Ghiya, President Tax Bar Association Advocate Sunil Sharma, AIFTP NZ Chairman of the North Zone of AIFTP Mr. Sanjay Kumar Advocate, the President of the Jammu High Court Bar Association and delegates and guests at K. C. Residency, Jammu.

Hon'ble Chief Justice emphasised on the role of Tax Practitioners in the new era of tax reforms in India. He put more stress on the role and working of Advocates and CAs in the society to help people navigate the constantly evolving taxation system. He mentioned that holding such Conference indicates that the city is doing well financially. He further said "It is an indication that Jammu is developing as a commercial hub". He hoped that similar events will also be held in Srinagar to develop tax professionals in both the capital cities.

Before the address of the Chief Guest the President TBA Jammu, Advocate Sunil Sharma while addressing stated that the responses from the local professionals was overwhelming, it is for the first time that national level Conference on role of tax professionals has been held in Jammu due to the initiative of the current Team of Office Bearers of the North Zone of AIFTP. The Chairman of the Zone Mr. Sanjay Kumar assured the Jammu Tax Bar that after this Conference more events shall follow and if the Jammu University takes initiative we shall organise a Moot Court in near future. Secretary General Mr. Pankaj Ghiya in his address informed the gathering about the objectives of the Federation and the National President in his address informed the house about the achievements of the Chief Guest who has more than 277 reported decisions in Income Tax matters only and later requested the members of the Tax Bar Jammu to become the members of the Federation.

The first Technical Session was chaired by Past President AIFTP Sr. Advocate Mrs. Prem Lata Bansal, who emphasised on the technical issues and solutions available to tax professionals. The panellists were FCA A. K. Srivastav from New Delhi, Arvind Shukla, Advocate from Varanasi, V. P. Gupta, Advocate from Delhi. The topics discussed were on current amendments proposed by Finance Bill, 2018, Re-opening and Reassessment and Penalties & Prosecution under Income-tax Act, 1961.

Second session of Conference was chaired by Advocate Nikita Badheka from Mumbai, held panel discussion on GST issues like ITC, E-Way Bill by Advocate Pankaj Ghiya from Jaipur and Advocate D. K. Gandhi from Delhi. The local advocates were more than happy to get replies to their queries then and there.

Both the Technical Sessions were highly educative and full of learning. The total registration in the Conference was around 200 delegates including spouses and family. About 30 new members have been introduced from Jammu. The hospitality of the hosts were appreciated by one and all; and the food and other arrangement for marketing and Maa Vaishno Devi darshan was excellent, around 40 members had darshan of Maa Vaishno Devi in next morning.

On the same day the Conference was followed by 2nd Executive Committee Meeting of North Zone at 6.00 pm at Hotel K. C. Residency, Jammu, which continued till 6.45 pm.

The Conference was conducted by Advocate Sachin Sharma who also proposed the Vote of Thanks.

Report of Moot Court held in Varanasi for Law Students of Mahatma Gandhi Kashi Vidyapith

We are pleased to share that the North Zone in Varanasi has organised a MOOT COURT Competition on 23rd March, 2018, amongst the final year Law students of college, Mahatma Gandhi Kashi Vidyapith (MGKVP). The competition witnessed a remarkable participation of eighteen (18) participants and was a very successful academic endeavour for this quarter of activities of NZ.

The inaugural ceremony of the competition was in morning at 11.00 am in Mahamanaa Moot Court Hall of MGKVP Varanasi. Hon'ble Vice-Chancellor of MGKVP Dr. Prithvish Nag Ji consented to be Patron while Shri Sunil Mathur Ji; Principal Commissioner of Income Tax Varanasi graciously consented to be Chief Guest and Professor Chaturbhuj Nath Tiwari, Dean of Faculty of Law, MGKVP was kind enough to head the programme. The court started with welcome address of Prof. Chaturbhuj Nath Tiwari, Sr. Advocate Shri Arvind Mishra; Jt. Secretary NZ, Sr. Advocate Shri Arvind Shukla; Past Chairman NZ, CA Jamuna Shukla; Secretary NZ, Sr. Advocate Shri Anand Pandey; Past Treasurer NZ and Vice-Chairman GST Bar Association, Varanasi. Dr. Keshary Nandan Sharma, Shri Arvind Shukla and Shri Anand Pandey were the jurists of Court. The main observers were Advocate Shri O. P. Shukla, Adv. Shri Brijgopal Das, Adv. Shri Nigam Ji, Adv. Shri Prakash Gupta, Adv. Shri Asim Zafar, Adv. Shri Nageshwar Singh, Adv. Shri Mahendra Upadhyay, Adv. Shri Ajay Singh, Adv. Shri Sanjay Verma, Adv. Shri Pawan Ji, CA Jamuna Shukla and the Professors of Law Faculty.

Chief Guest delivered a very impressive and motivational address to all law students. Patron of the ceremony blessed all students and assured them many more such academic programmes of practical knowledge in future too. The ceremony concluded with the vote of thanks by CA Jamuna Shukla.

There were three rounds held for arguing the direct and indirect taxes case laws/facts in the court room of MGKVP. The preliminary round was judged by Shri Arvind Shukla, Chairman, GST Bar Association Varanasi, eminent professors, advocates and chartered accountants. In first round facts of international taxation on section 9 and double taxation issues were argued in length with all intricacies by six participants; three in favour and three against the case. Second round was on VAT issues case laws in which six students participated; three in favour and

three against the case. The facts and arguments raised by participants were highly appreciated by all tax professionals and observers present there. In third round the topic was capital gains issues for NRIs. Which was again argued by six participants very brilliantly citing the related case laws. All the observers, experts, professors and jurists were highly impressed by the presentation of students. The jurists kept guiding them on shortfalls all through the three rounds. All three rounds took more than three hours.

The result of winner was finally decided by the Jurists. The first prize went to Heena Agrawal, second prize to Ashutosh Kumar and Archana Kumari and third prize went to Swati Malviya.

The whole programme was moderated and convened by Shri O. P. Shukla; Past Secretary, NZ and Secretary, GST Bar Association, Varanasi.



Report of Jaipur and Kishangarh Tax Conference

By CA. Rajesh Mehta, Chairman & CA. Devendra Kansara, Secretary

Jaipur Conference

Tax seminar was organised on 10th March, 2018 at Hotel S. K. Paradise, Lal Kothi Shopping Centre, Tonk Road, Jaipur by All India Federation jointly with Jaipur Tax Bar Association. Conference was inaugurated by Hon'ble Member, Rajasthan Tax Board, Ajmer, Shri Omkar Singh Ashiya first by lighting of lamp and Saraswati Vandana.

Welcome address was given by Shri P. M. Chopra, Vice-President and also by Chairman, Central Zone, Shri Rajesh Mehta and Mr. Pradeep Sharma, President, Jaipur Tax Bar in the inaugural session. Shri P. M. Chopra addressed how to develop personality and maintain the importance of this noble profession for new comers in this profession. On this occasion Imm. Past Chairman Shri D. C. Mali felicitated Shri M. M. Sharma, Shri P. C. Bafna, Shri Manohar Puri, ex-member Tax Board, Shri R. P. Sharma, Shri M. L. Agarwal, Shri D. P. Ojha, Shri Deendayal Chhipa, Shri Pankaj Jain, Shri Ramlal Dadhich and Shri Nitesh Mathur.

In this Conference, speakers on Income-tax were CA Rajesh Mehta from Indore and Dr. S. L. Jain Advocate from Jaipur. And on GST speaker was Shri Abhishek Singhania. There was open discussion on the GST and on E-way Bill. Queries were raised by various participants and replies were given to queries and discussions were also made on amendments in Union Budget and also on provisions of Charitable Trust.

Programme was conducted by Shri Devendra Kansara and Sudhir Bhansali. Mementos was also presented by Jaipur Tax Bar Association to all guests and office bearers of Central Zone. In this Seminar on GST & Income Tax, about 75 members had participated. Vote of thanks was given by Shri Mukesh Bhardwaj.

Kishangarh Conference

On the same day, Seminar was also organized at Kishangarh by AIFTP jointly with Institute of Chartered Accountants of India, Kishangarh. President Shri C. M. Agarwal and Secretary, R. K. Inani and all the members of ICAI were present. In this conference also discussions were organised on GST and Income-tax bill.

In this conference also speakers were same s those of above mentioned Jaipur conference.

The Seminar was covered by all the renowned newspapers of Rajasthan. The seminar was also covered by the local news channels.

Future Programmes

April : Nokha and Bikaner – Half day seminar – with Nokha Tax Bar

May : Indore Conference – 5th and 6th May, 2018

Programme of promotion of Judges from Additional to Permanent of Rajasthan High Court

This programme was attended by Adv. P. M. Chopra, Adv. Hari Shankar Tak, Adv. S. K. Asopa and Adv. Prahlad Singh Bhatti were present. Programme was published by all newspapers and media.

Congratulation to Mr. K. R. Meghwal becoming Chief Commissioner of Income Tax Department at Kolkata. Shri Anil Bhansali becoming the Chairman of Umaid Club.

Full Court Reference

Full Court Reference on the occasion of Superannuation of Shri B. P. Jain, Hon'ble Accountant Member on 28th March, 2018 (Wednesday), which was held at Income Tax Appellate Tribunal, Jodhpur Bench, 27-A, Hanwant Vihar, Rai-ka-Bagh, Jodhpur. Programme jointly organised by ITAT Bar, All India Federation of Tax Practitioners (CZ), Tax Bar Association, Jodhpur, Rajasthan High Court Advocates' Association and Rajasthan Tax Consultant Association and Marudhara Tax Bar Association (Western Rajasthan) and Jodhpur Branch of CIRC of ICAI. On this occasion Mr. G. D. Agarwal, Hon'ble President ITAT was present and Shri Sudanshu Srivastaw, Judicial Member and Shri R. C. Sharma Accountant Member. In Full Court Reference from all over the Rajasthan Advocates, Chartered Accountants and different Bar Associations i.e., Jaipur, Jodhpur, Bikaner, Jalore, Nokha, Udaipur Nagaur, Bhilwara were present. On this occasion welcome address was given by Shri P. M. Chopra, President, ITAT Bar and on behalf of Department Shri S. K. Madhuk, Commissioner, Income Tax, Shri K. L. Soni on behalf of RTCA and Shri Mahaveer Bohara TBA, Jodhpur. Also addressed to the Full Court reference and Shri B. P. Jain, Accountant Member, Shri R. C. Sharma, Accountant Member and Shri Sudhanshu Shrivastava, Judicial Member also shared their views. On this occasion Shri P. K. Ambastha, Chief Commissioner of Income Tax and Officer of the Department, Press, Media were also present. And programme was conducted by Shri CA Amit Kothari, Convenor and Shri D. C. Mali, Ex.Chairman and Co-Convenor of the programme. Programme was concluded by singing National Anthem.

DIRECT TAXES

Ms. Neelam Jadhav, Advocate, KSA Legal Chambers

Tribunal

1. S.40(a)(ia) : Payment made for import of software is a Royalty, TDS applicable for said transaction

The assessee had imported software and made payment for the same without deducting TDS. The AO disallowed the entire payment while invoking the provisions of s. 40a(ia) of the Act. Before the CIT(A), assessee submitted that he paid customs duty for import treating it as goods and also forms part of Ministry of Finance, Government of India. Further, assessee submitted, that sale of goods got completed in the country from where it was purchased hence no income accrues or arises in India. Payment for transfer of computer software was brought under the definition of royalty under Finance Act of 2012 which has a retrospective effect from 1976-77. The CIT(A) confirmed the disallowance.

The ITAT held that payments for importing software from non-resident are a payment towards royalty and the assessee is required to deduct the TDS. Before the amendment, the jurisdictional High Court, made it very clear that payments for importing software from non-resident are a payment towards royalty and the assessee is required to deduct the TDS. When the High Court has clarified the legal position with regard to nature of payment on account of import of software, the assessee was required to deduct the TDS on making the payment towards import of software as it was payment of royalty.

Telecomone Teleservices India Private Limited. v. Dy. CIT, ITA No.1237/Bang/2016 dt.23-3-2018 (Bang)(Trib.) Source : www.itat.nic.in

2. S.49(1) : Rights in property acquired and recognised through memorandum of family arrangement-cum-compromise is allowed for computing capital gains and claimed deduction u/s. 54. (r.w.ss. 48, 49(1))

The assessee had declared receipt of 30% share of sale consideration in respect of property, claimed a benefit of indexed cost of acquisition and shown long term capital gains. The assessee also claimed a deduction u/s. 54 in acquiring a new residential property. The AO noticed that the assessee has neither acquired the property by purchase, nor by way of gift, Will or succession or inheritance. The acquisition of property was by way of family arrangement-cum-compromise. Therefore, provision of s. 48(ii) or 49 cannot apply for determination of cost of the assets. The CIT(A) held that the amount was not received in connection with any transfer of any asset, therefore, the same was taxed as 'Income from other sources' and no deduction u/s. 54 was allowed to the assessee.

The ITAT held that, when parties entered into family arrangement, the validity of the family arrangement is not to be judged with reference to whether the parties raised disputes or rights or claimed rights to certain properties. The family arrangement was genuine and distribution of sale consideration according to the same therefore it is assessed as capital gains and consequential benefits and deductions are allowed as per law.

Kunal R. Gupta v. ITO ITA No. 5768/Mum/2017 dt. 28-2-2018 (Mum.) (Trib.); Source : www.itat.nic.in

3. S.68 : Share application money – If there existed material to implicate assessee in collusive arrangement with person who is self-confessed accommodation entry provider, it can be concluded that assessee fully discharged its onus u/s. 68 and no addition shall be made in respect of share application money

Assessee received total share capital from 19 shareholders; the AO drew adverse remarks in respect of 4 shareholders as according to him he did not receive replies from these 4 shareholders. He added sum as share capital received from 4 shareholders under section 68. CIT(A) upheld the addition.

The ITAT observed that from the assessment order, no adverse material was available with AO, no allegation against any of 4 shareholders of doing anything wrong on record. AO drawn adverse inference as he did not receive any reply from the 4 shareholders in response to notice issued u/s. 133(6).

The ITAT held that it was not case of AO that notices received came back as unserved or these shareholders were not available at address, no adverse inference could be drawn against assessee merely because reply had not been received in response to notice issued u/s. 133(6). There existed material to implicate assessee in collusive arrangement with person who was self-confessed accommodation entry providers, no such material to implicate assessee, assessee has fully discharged its onus u/s. 68.

Umbrella Projects Pvt. Ltd. v. Income Tax Officer ITA No.5955/Del/2014 dt.23-2-2018 (Delhi)(Trib.) Source : www.itat.nic.in

4. S.147 : Reopening – Initiation of reassessment proceedings u/s. 147 without application of appropriate mind is untenable in law

Assessee filed return of income, which was processed u/s. 143(1). The AO issued notice u/s. 148 to reopen assessment on ground that certain income chargeable to tax had escaped assessment. The AO's view was that consequent to search action in case of share broker and its group concerns, assessee was found to have obtained profit on account of share transactions which were not carried out in actuality, but were mere accommodation entries, he made addition on account of profit on account of sale transactions with company treating it as accommodation entries. The CIT(A) upheld order of AO.

The ITAT observed that the reopening initiated as a consequence of search in the case of share broker M/s. "M" and its group concerns. The said reasons were made available to the assessee by the AO, on perusal of the reasons, it clearly transpires that there is a variation in the facts noted by the AO. Whereas in the reasons recorded, assessee is stated to have undertaken transactions with M/s. "G" while in the assessment order, it is stated that the transactions have been carried out through M/s. "M". The ITAT held that, the reasons recorded as well as in the assessment order, the AO has not tabulated the transactions which are reflected, simply on the basis of the material on record that for the said year no transaction has been entered into.

◀ AIFTP Times • April, 2018 ▶

The AO while recording reasons has failed to apply his mind and has merely referred to the report of the Investigation Wing. This clearly implies that at the time of recording of reasons even the minimum required application of mind was absent, which obligated the AO to establish a crucial link between the information made available to him and his belief about escapement of income. Therefore, initiation

of reassessment proceedings u/ss. 147/148 is without application of appropriate mind and, thus, untenable in law.

Leela Bhanji Gada & Anr. v. ITO, ITA No. 2801/Mum/2014 dt. 9-3-2018 (Mum.)(Trib.), Source : www.itat.nic.in

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SERVICE TAX CASES

S. S. Satyanarayana, *Tax Practitioner*

1. Extended period of Limitation

The demand raised on the assessee was primarily founded on the sales practices contained in the sales policy and sales agreement entered into with the buyers. Benefits of deduction passed on to the buyer under the sales policy and sales agreement have not been allowed to the assessee. Held : Extended period of limitation: Where material on the basis of which demand had been raised against assessee was before the revenue at all material points of time, extended period of limitation provided under proviso to section 11A of the Central Excise Act, 1944 is not available. Revenue's appeal dismissed.

[CCE, Indore v. Raymond Limited - [2017] 88 taxmann.com 234 (SC)]

2. CENVAT Credit

The assessee was claiming CENVAT credit in respect of service tax paid on outward transportation from its factory to the premises of customers. As per the revenue, outward transportation engaged for removal of goods from factory to customer's premises cannot

be considered as an input service, since premises of customer is not recognised as a place of removal under the Central Excise Act. To put it differently, the revenue contends that the outward transportation provided beyond the place of removal is not eligible for input service for availing CENVAT credit.

Held

Having regard to the definition of 'input service' that was prevailing at the relevant time, i.e., prior to 1-4-2008, the aforesaid contention of the revenue cannot be accepted. As per the said definition, service used by the manufacturer of clearance of final products 'from the place of removal' to the warehouse or customer's place, etc. was exigible to CENVAT credit. This stands finally decided by the Supreme Court in the case of *CCE v. Vasavadatta Cements Ltd.* [Civil Appeal No. 11710 of 2016, dated 17-1-2018]. The matter is squarely covered by the Board's Circular dated 23-8-2007. Revenue's appeal dismissed.

[CCE, Guntur v. Andhra Sugars Ltd. - [2018] 90 taxmann.com 265 (SC)]

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