



AIFTP TIMES

Volume 9 – No. 9 • September 2018

FORTHCOMING PROGRAMMES

| Date & Month | Programme | Place |
|----------------|--|-----------|
| 8, 9-9-2018 | Justice Dr. B. P. Saraf National Moot Court Competition (EZ) | Kolkata |
| 28-9-2018 | Annual General Meeting of AIFTP | Jaipur |
| 6-10-2018 | National Executive Committee Meeting (WZ) | Thane |
| 6, 7-10-2018 | National Tax Conference (WZ) | Thane |
| 24, 25-11-2018 | Two Day Conference (NZ) | Allahabad |
| 21-12-2018 | National Executive Committee Meeting (EZ) | Guwahati |
| 22, 23-12-2018 | 21st National Tax Convention, 2018 (EZ) | Guwahati |

Comments from Members

- ☞ Thank you very much for calling personally – CA. Jagdish P. Lakhani, Mumbai
- ☞ Feeling very happy to get a call from Head Office for personal greetings on my birthday. – Shri Shamim K. Ahmed, Adv., Mau (UP)
- ☞ Thank you and give my thanks to all Office Bearers for good initiative – Shri Kirti Nagda, Adv., Mumbai.
- ☞ Very Nice! Good to receive SMS and personal call from AIFTP – Shri N. Venkataraman, Adv., Mylapore (TN)

AIFTP's Newly Designed Website

AIFTP's website has been completely changed and it is now interactive with facilities of Online Membership, Journal Subscription, Online payments, Corrections of data for All Members' Directory, (to be published soon) etc.

Please visit website www.aiftponline.org for regular updates and changes. We request you to send your feedback.



AIFTP Online Membership

AIFTP Membership is now **ONLINE**. You can ask your professional friends to join the AIFTP by online filling the application forms, uploading documents. The membership fees can also be paid online.

Please log on to the following link www.aiftponline.org & click

AIFTP's Members' Directory

AIFTP is shortly coming out with its Members' Directory of all members. The online facility for checking and correcting of details is available.

All members are requested to visit AIFTP's website and check and correct the data. You can also upload your photo online.

Please visit www.aiftponline.org and click



Complaints regarding non-receipt of AIFTP Journal/Times

Now you can make an online complaint by clicking "Non-Receipt of Times / Journal", if you have not received the copy of Times or Journal and we will send you soft copy of the Times/Journal by email.

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 | pankajghiyajipur@gmail.com |
| Treasurer – Shri Vipul B. Joshi, Adv. | 9820045569 | 022-66333736 | 22080951 | vipulbjoshi@gmail.com |

Activity Report of AIFTP (CZ) for the month of August 2018

| S. No. | Event | Details | Date | Place | No. of Participants | Other Remarks |
|--------|------------------|--------------------|---|--|-----------------------------|--|
| 1. | Seminar | GST IInd Migration | 10.8.2018 | Jodhpur, Noka & Bikaner | | GST Seminar with Joint.Commissioner (GST) for IInd Migraton on 10.08.2018 and huge number of delegates are attended the Seminar |
| 2. | Felicitation | | 21.8.2018 | Jodhpur | | Welcome of our Chairman, Bar Council of Rajasthan Shri Sushil Kumar Sharma, Shri G. D. Bansal, Vice-Chairman and all the elected members including Shri Suresh Shrimali representative of Bar Council of Rajasthan to represent with Bar Council of India. |
| 3. | Representation | | 5.8.2018 20.8.2018 21.8.2018 21.8.2018 | Jodhpur Jaipur Phalodi and Jodhpur | | <ol style="list-style-type: none"> 1. Representation was submitted to Shri Shiv Pratap Shukla, Central Finance Minister and Deputy Chairman GST Council by All India Federation for waiver of penalty and new requirement of 3CD Forms, so also Audit forms should be postponed and for the same purpose some amendment was accepted by the Government. 2. Representation has been submitted for extension of declaration form to the State Commissioner Shri Alok Gupta (IAS) Govt. of Rajasthan. 3. We have sent representation for change of GST Authority from Ajmer to Jodhpur and Bikaner separately. 4. Representation submitted to Chief Minister and Finance Minister, Govt. of Rajasthan for Amnesty scheme and Technical Problem under GST to be submitted before GST Council. |
| 4. | New Members | | | | | 4 new members from Rajasthan, Chhattisgarh and Madhya Pradesh were added. |
| 5. | Future Programme | | | | | <p>One day Conference with Rotary Club of Jodhpur in the month of October jointly with All India Federation of Tax Practitioners and Marudhara Tax Bar Association (Western Rajasthan).</p> <p>Half day seminar at Barmer and Jaisalmer and one day Tax Seminar at Bikaner with Bikaner Tax Bar.</p> |
| 6. | Others: | | 15.8.2018 | Jodhpur | | <ol style="list-style-type: none"> 1. On the occasion of Independence day function, it is first time in the history, Chief Commissioner of Jodhpur and Bikaner invited All India Federation to address the gathering and on this occasion, our so many members attended the function, which was organized by Income Tax Department and flag hoisted by Shri Narendra Kumar, Principal Commissioner of Income Tax. On this occasion our ex-chairman Shri D. C. Mali, Secretary Shri Devendra Kansara, Treasurer Shri Ashok Jangid were also present. 2. From our zone in Amritsar conference more than 15 delegates participated. 3. In the office of Chief Commissioner of Income Tax, Jodhpur range and in the office of Joint Commissioner (GST), Commercial Taxes Department, Jodhpur lift has been sanctioned, which will be provided soon. We are very thankful to Chairman CBDT and Chief Minister of Rajasthan. 4. Kerala Fund: In Kerala, from our Association, we have sent fund through Rotary Club of Jodhpur direct to the Chief Minister of Kerala as well as through GLP Social Circle. On request of Dr. Ashok Saraf, we got the contribution from so many members from our zone. We are very thankful to Marudhara Tax Bar of Western Rajasthan, ITAT Bar. 5. We have sent all the members to fill up the forms of Directory and Bio data. All Representations are published in the news papers. |
| 7. | Visit | | 24.8.2018 | | | Devendra Kansara, Secretary visited Jaipur on 24th August, 2018 and attended two days conference. |
| 8. | Obituary | | 18.8.2018 | | Expired on 16th August 2018 | On the death of former Prime Minister of India Shri Atal Bihari Vajpayee, condolence meeting was organized on 17-8-2018 with Rajasthan High Court Advocate Association, Rajasthan High Court Lawyers Association and Marudhara Tax Bar Association (Western Rajasthan) jointly, in which Adv. Ranjeet Joshi, Adv. Sunil Joshi and Adv. P. M. Chopra have addressed the gathering. |

(P. M. Chopra)
Vice President

(Devendra Kansara)
Secretary

(Rajesh Mehta)
Chairman

(Ashok Jangid)
Treasurer

(Sudheer Bhansali)
Vice Chairman

Activity Report of AIFTP (EZ) for the month of July 2018

| Sl. No. | Event | Details | Date | Place | No. of Participants | Remarks |
|-----------|---------|-------------|-----------|---|---------------------|---|
| 1. | A.G.M. | For 2017-18 | 9-6-2018 | Rotary Sadan, Kolkata | 42 | Annual General Meeting of Eastern Zone for the year ended 31st March, 2018 was held. Audited Accounts as on 31.03.2018 was placed and passed by the house. M/s. A.K.Jalan & Co, Chartered Accountants were appointed as auditors for 2018-19 |
| 2. (a) | Seminar | | 12-5-2018 | Puri, Odisha | 112 | <p>AIFTP, Eastern Zone organised One-day Tax Seminar at Puri, Odisha on 12th May, 2018 in association with Tax Bar Association of Odisha at Hotel Pride Ananya Resort, V.I.P Road, Puri, Odisha from 10.30 a.m. to 5.30 p.m. Thereafter second Managing Committee Meeting was held at 5.30 p.m. at the same venue.</p> <p>Justice Dr. B. R. Sarangi, High Court at Odisha inaugurated the ceremonial opening in presence of Shri Sarat Kumar Dash IRS, Commissioner of Income Tax, Bhubaneswar, Guest of Honour. Justice Sarangi in his deliberation emphasised on the GST at length and Mr. Dash elaborately discussed on natural justice under the Income-tax Act. Other Speakers C.A. Arun Agarwal discussed on works contract under GST Act, Shri Subhas Chandra Agarwal discussed on Benami Transaction Prohibition Act. Shri V. P. Gupta, Advocate, Delhi discussed on Penalty under section 270A from the year 2017-18 and Shri Anand Satapathy, Addl. Commissioner GST discussed on ITC and refund under GST Act. Deliberations of all the Learned Speakers were enjoyed by the 112 delegates who attended the Seminar. I being the Chairman of the Zone conducted the Seminar and the Managing Committee Meeting. At end of the day Mr. R. K. Dhal and his associates arranged Maha Prasad from Lord Jagannath Temple. All were excellent.</p> |
| (b) | Seminar | | 9-6-2018 | Rotary Sadan, Kolkata | 45 | After Annual General Meeting, Half Day Seminar on Benami Transactions (Prohibition) Act, 2016 and Section 148 of the Income-tax Act, 1961 was held at the same venue. Shri Nirmal Kumar Poddar, Senior Advocate, High Court at Calcutta was the sole speaker. Members present were delighted with the deliberations of Shri Poddar. Entire deliberations were recorded (audio only). If any requirement of the same, we are ready to send for the benefit of our members. |
| (c) | Seminar | | 30-6-2018 | Singhbhum Chamber of Commerce and Industry, Bistupur, Jharkhand | 86 | <p>On 30th June, 2018 we have organised a Half day Seminar jointly with the Commercial Tax Bar Association, Jamshedpur, on GST. Shri C. L. Sharma, D.C.S.T., Urban Circle, Jamshedpur inaugurated the Seminar as Chief Guest. Conference Chairman was Shri K. L. Mittal. Subjects have latest legal pronouncement before the higher Court under GST Act. Speaker was Shri Vikash Mittal, Legal head, Tata Steel Co. Ltd.</p> <p>AND</p> <p>Shri Sandip Choraria, Advocate, Kolkata delivered on the subject: Implication of GST on Works Contract & Real Estate. Both the sessions were chaired by our Senior Hon'ble Member Shri Murali Dhar Kedia. Members present in the Seminar have gathered a great knowledge. Local members have organised the Seminar in a dignified manner. An executive meeting was held at Jamshedpur, at same venue at Jamshedpur.</p> |

| Sl. No. | Event | Details | Date | Place | No. of Participants | Remarks |
|---------|------------------|---------|----------------------|-----------------|---------------------|---|
| 3. | Felicitation | | 9-6-2018 | Kolkata | | 1. Felicitation of Shri Nirmal Kumar Poddar, Senior Advocate, Kolkata 2. Felicitation of Justice Mrs. Mousumi Bhattacharya and Justice Mr. Rajarshi Bhardwaj two newly appointed Judges of High Court at Calcutta. 3. Shri R. D. Sharma, Respected past National Secretary and Shri C. K. Chatterjee, Zone Secretary. |
| | | | 30-6-2018 | Jharkhand | 82 | Felicitation of Shri Murali Dhar Kedia, Senior Advocate and member of Jharkhand. |
| 4. | Representation | | 27-6-2018 | CTPA, Kolkata | 60 | Jointly with CTPA, Kolkata at 14, Beliaghata Road, Kolkata-700015. Mr. Bharat Swami, National Executive Member from Gujarat was present in the meeting and mooted the representation for the right of audit to the professionals and tax practitioners under the GST Act, 2017. |
| 5. | Future Programme | | 8th & 9th Sept. 2018 | WBNUJS, Kolkata | 24 Teams | Dr. Justice B. P. Saraf National Moot Court Competition 2018 is scheduled to be held jointly with the WBNUJS, Kolkata at Ambedkar Bhavan, Salt Lake on 8th & 9th September, 2018. 24 Teams shall participate in the moot court competition this year |
| 6. | New Members | | | | | As per data with the H.O. |
| 7. | Others | | | | | N.A. |
| 8. | Visits | | | | | Chairman along with other members visited Jharkhand on 30th June, 2018 to attend the seminar at Singbhum Chamber of Commerce and Industry, Jharkhand and Amritsar, Punjab and attended the NEC on 11th August, 2018 with other members. |

N. D. Saha
Chairman

Arvind Agarwal
Vice-Chairman

Kamal Kumar Jain
Secretary

Bhaskar Sinha Roy
Jt. Secretary

Vivek Agarwal
Jt. Secretary

Date : 25th August, 2018

Activity Report of AIFTP (SZ) for the month of July, 2018

| Sr. No. | Event | Details | Date | Place | No. of Participants | Other Remarks |
|---------|--------------|---|------------|------------------------------|---------------------|---|
| 1 | Seminar | One Day Seminar conducted in association with ATPV, Vellore | 04-07-2018 | Vellore, Tamil Nadu | 125 | The seminar was for tax professionals on GST audit by Authorities Shri JMJ Rao, Dy. Commissioner (ST), Telangana |
| 2 | Seminar | One Day Seminar conducted in association with VTPCA, Vizianagaram | 14-07-2018 | Vizianagaram, Andhra Pradesh | 160 | The seminar was for tax professionals on GST audit by Authorities Shri JMJ Rao, Dy. Commissioner (ST), Telangana and CA. Ashish Kumar Agrawal |
| 3 | Seminar | One Day Seminar conducted in association with APTPCA, Guntur and Chittoor District TPCA, Tirupati | 22-07-2018 | Tirupati, Andhra Pradesh | 180 | The seminar was for tax professionals on GST audit by Authorities Shri JMJ Rao, Dy. Commissioner (ST), Telangana |
| 4 | Felicitation | Senior Tax Practitioner | 04-07-2018 | Vellore, Tamil Nadu | | |

Sd/-
C. Sanjeeva Rao,
Secretary, AIFTP (SZ)

Sd/-
B. S. Seetapathi Rao,
Chairman, AIFTP (SZ)

National Tax Conference

Organised by



Jointly with



**ALL INDIA
FEDERATION OF
TAX PRACTITIONERS (WZ)**

**TAX PRACTITIONERS'
ASSOCIATION,
THANE**

**GOODS AND SERVICES TAX
PRACTITIONERS' ASSOCIATION OF
MAHARASHTRA, MUMBAI**

**TAX FRIENDS
MUMBAI**

on Saturday, 6th October, 2018 and Sunday, 7th October, 2018
at Hotel Satkar Residency, Pokhran Road No. 1, Next to Cadbury, Opp. Singhania School, Thane (West) – 400 606



Day 1 : 6th October, 2018 (9.00 a.m. to 05.30 p.m.)

| | |
|---|---|
| 9.00 a.m. to 10.00 a.m. | Registration & Breakfast |
| 10.00 a.m. to 11.00 a.m. | Inaugural Session Chief Guest : Hon'ble Mr. Justice Abhay S. Oka, Judge, Bombay High Court |
| 11.00 a.m. to 11.15 a.m. | Tea Break |
| 11.15 a.m. to 01.00 p.m. | First Technical Session – Income Tax – Issues in Section 56(2) Chairman : Shri S. K. Poddar, Advocate, Ranchi; Speaker : CA. Pradip Kapasi, Mumbai |
| 01.00 p.m. to 01.45 p.m. | Lunch Break |
| 01.45 p.m. to 03.30 p.m. | Second Technical Session – GST – Intricate Issues of Valuation (Other than relating to Real Estate) Chairman : Shri Vikram Nankani, Sr. Advocate, Mumbai; Speaker : CA. S Venkataramani, Bengaluru |
| 03.30 p.m. to 03.45 p.m. | Tea Break |
| 03.45 p.m. to 05.30 p.m. | Third Technical Session – GST – Audit of Accounts and reconciliation with Books Chairman : CA. Ashok Chandak, Nagpur; Speaker : CA. Rajat Talati, Mumbai |
| NEC Meeting to be held from 6.00 p.m. to 7.30 p.m. (same venue) | |
| Day 2 : 7th October, 2018 (08.30 a.m. to 06.00 p.m.) | |
| 08.30 a.m. to 09.30 a.m. | Registration & Breakfast |
| 09.30 a.m. to 11.15 a.m. | Fourth Technical Session – Impact of GST and Issues under GST on Real Estate Transactions Chairman : Dr. Ashok Saraf, Sr. Advocate, Guwahati; Speaker : Shri Kuntal Parekh, Advocate, Ahmedabad |
| 11.15 a.m. to 11.30 a.m. | Tea Break |
| 11.30 a.m. to 01.15 p.m. | Fifth Technical Session – Penalties and Prosecutions under the Income-tax Act, 1961 Chairman : Shri N. M. Ranka, Sr. Advocate, Jaipur; Speaker : Shri V. P. Gupta, Advocate, New Delhi |
| 01.15 p.m. to 02.00 p.m. | Lunch Break |
| 02.00 p.m. to 03.30 p.m. | Sixth Technical Session – RERA – Transformation and Balancing of Rights and Obligations Chairman : Shri K. K. Ramani, Advocate, Mumbai; Speaker : CA. Ashwin Shah, Thane |
| 03.30 p.m. to 03.45 p.m. | Tea Break |
| 03.45 p.m. to 05.30 p.m. | Panel Discussion – GST Moderator : Shri D. K. Gandhi, Advocate, Ghaziabad Panellists : Shri P. C. Joshi, Advocate, Mumbai; CA. Parind Mehta, Mumbai Panel Discussion – Income Tax Moderator : Shri Vipul Joshi, Advocate, Mumbai Panellists : CA. Pinakin Desai, Mumbai; Dr. K. Shivaram, Sr. Advocate, Mumbai |
| 05.30 p.m. | Vote of Thanks |

Registration fee:

| | |
|-------------|--------------------|
| Members | ₹ 4,500/- per head |
| Spouse | ₹ 4,250/- per head |
| Non members | ₹ 5,250/- per head |

There will be 2 lucky draws in every session

For registration please contact: ntctthane2018@gmail.com / +91 22 25372532 / AIFTP Office : +91 22 22006342

Bank details for sending registration is : TAX PRACTITIONERS ASSOCIATION, THANE
TJSB BANK, Panch Pakhadi, Thane; Savings Account
A/C NO. 008110100007709; IFSC CODE NO. TJSB0000008

***Hotel Room* charges at Hotel Satkar Residency excluding GST
(50% Advance to be remitted directly to hotel with intimation to NTC email)**

Double Occupancy ₹ 5,200/- + GST 18%; Single Occupancy ₹ 4,250/- + GST 18%; Suite ₹ 11,200/- + GST 28%
NEFT details are as under:

| | |
|-----------------------|---|
| NAME OF BANK ACCOUNT: | HOTEL SATKAR RESIDENCY |
| CORPORATE ADDRESS: | Pokhran Road No.1, Next to Cadbury Co., Opp. J. K. Singhania High School, Thane (W). |
| BANK NAME: | HDFC Bank Ltd. |
| BANK ADDRESS: | Shop No. 1-6, Devdaya Park, Opp. Raymonds Ltd. Gate, Pokhran Rd. No.1, Vartak Nagar, Mumbai – 400 606 |
| BANK BRANCH: | Vartak Nagar, Thane |
| BANK A/C NO. | 04882560000360 |
| ACCOUNT TYPE: | Current Account |
| NEFT / IFSC CODE. | HDFC0000488 |
| SWIFT CODE: | HDFCINBB |
| MICR CODE | 400240069 |
| BRANCH CODE | 0488 |

For any query or assistance relating to room booking please contact :

Hotel Satkar Residency – +91 22 25985858 – banquet@satkarresidency.in

***For any further enquiries relating to NTC, please contact* :** ntctthane2018@gmail.com

| | |
|---|--|
| Mr. Ganesh Purohit, National President, AIFTP, 9425154914 | Mr. Vijay Kewalramani, Conference Chairman, 9820073165 |
| Mr. Pankaj Ghiya, Secretary General, AIFTP, 9829013626 | Mr. Bharat Sachdev, Conference Secretary, 9820232910 |
| Mr. Deepak R. Shah, Chairman, AIFTP (WZ), 9820148536 | Mr. C.L. Bhanushali, TPA, Thane, 9821296400 |
| Mr. Salil Lodha, Hon. Secretary, AIFTP (WZ), 9820149302 | Mr. Kamlesh Saboo, TPA, Thane, 9819195333 |
| Mr. Pradip Kapadia, President, GSTPAM, 9821029082 | Mr. Parag Chitnis, TPA, Thane, 9987032650 |
| Mr. Sunil Joshi, Convenor, GSTPAM, 9821540031 | Mr. Girish Rathi, TPA, Thane, 9867617989 |
| AIFTP Office Mr. Ravi 022 22006342 / 49706343 | Mr. Hari Dudani, Hon. Secretary, Tax Friends, 8007777257 |

Conference Secretariate

M/s. V. N. Kewalramani & Associates 108/109, Paradise Tower, Gokhale Road, Naupada, Thane – 400 602,
Maharashtra • Tel.: 022-25372532 • Mobile: 9820073165

Notice of Annual General Meeting

Notice is hereby given that the Annual General Meeting of the All India Federation of Tax Practitioners will be held on Friday, September 28, 2018 at 3.30 p.m. at Kar Salahkar Bhavan, (RTCA Office) B-145/B, Kalyan Path, Mangal Marg, Bapu Nagar, Jaipur – 302 015 (Rajasthan) to transact the following business:

A G E N D A

- To read and approve the minutes of last Annual General Meeting and Adjourned Annual General Meeting held on September 2, 2017 and October 11, 2017 held at Kolkata and New Delhi respectively.
- To receive and adopt the Annual Report of the National Executive Committee of AIFTP for the year 2018.
- To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2018.
- To appoint Auditors for the year 2018-19 and to fix their honourarium.
- To transact any other business with the permission of the Chair.

Place: Mumbai
Date: August 25, 2018

Note:

- The Annual Report and the Audited Profit and Loss Account and Balance Sheet will be circulated to the National Executive Committee Members by e-mail.
- Accounts for the year ended 31st March, 2018 and the report of the National Executive Committee can be collected from the office of the Federation from September 20, 2018 onwards between 11.30 a.m. to 5.00 p.m. The accounts and reports can be made available to the members through email on request to the office.
- If there is no quorum by 3.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

Sd/-
Pankaj Ghiya
Secretary General

Direct Taxes

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

High Court

1. S.32 : Depreciation cannot be disallowed on ground that IPR was not used for manufacturing activities

The assessee had purchased products from one company and thereafter sold these products with the acquired and purchased trademarks. Sales were through chain of dealers and retailers. Trademarks acquired and owned by the assessee were advertised for sale promotions. For the year under consideration, the assessee had claimed depreciation on the said block of assets. The AO disallowed the claim on the ground that the capital asset in form of intellectual property rights was not used for manufacturing activities. The CIT(A) and Tribunal granted relief. The department approached the High Court. The High Court observed that the intellectual property rights purchased by the assessee included trademarks, further noted that the rights to reference and use of registration data in support of product registration, benefits of business contracts. Use of intellectual property rights for sales and marketing was not questioned. Depreciation was disallowed as the asset had not been put to use for manufacturing activities. The High Court held that this is not a ground to hold that the assessee had not "put to use" the intellectual property rights assets in the year in question. Mere purchase of the products, from third party or assessee was not engaged in manufacturing activity, would not make any difference, *CIT v. Sinochem India Co. Pvt. Ltd. ITA No.768/2018, dt. 25--2018 (Delhi)(HC) Source : www.delhihighcourt.nic*

2. S.282 : Presumption of service of notice is not applicable if department had correct address at the time of issuing notice u/s.148

The assessee had filed his return by mentioning a new address, and the return was rejected by the AO on ground of failure to prove the genuineness of purchase and sale of shares. The notice for assessment was sent to an old address, which he had left two years back.

The Hon'ble High Court held that when the department had correct address of the assessee at the time of issuing notice, sending notice at incorrect address and again drawn presumption that service of notice is wholly erroneous, was not correct. Since notice was not received back as unserved, it would be deemed to be service of notice this presumption cannot be sustained.

Suresh Kumar Sheetani v. ITO, ITA No.413 of 2011 (All)(HC)

Tribunal – Unreported Decision

3. S.2(22)(e) : Provisions of deemed dividend applicable only to the extent of accumulated profits at the beginning of the relevant financial year

The assessee was a substantial shareholder in a Company and the said company had taken a Keyman Insurance Policy in the name of the assessee. Subsequently, the company took a loan from LIC against the Keyman Insurance Policy and said sum was advanced to the assessee. The AO observed that the loan was taken on the premium paid for the Keyman Insurance Policy, he opined that since the nexus between the loan and advance to the assessee is established and there is accumulated profit of the company available to such an extent, the same is taxable as deemed dividend u/s. 2(22)(e).

The Tribunal held that "there is a nexus between the loan taken from the LIC and the premium paid for the Keyman Insurance Policy. Since the Keyman Insurance Policy is for the benefit of the assessee

and it was taxable as deemed dividend u/s. 2(22)(e). The provisions of s.2(22)(e) applicable only to the extent of accumulated profits of the company available at the beginning of the relevant financial year.

Sri Srikant Maru v. ITO, ITA No.68/Hyd/2018. dt.10-8-2018 (Hyd.)(Trib.) source : www.itat.nic.

4. S.37(1) : Business Expenditure : Medical insurance premium paid for family members of employees is business expenditure

The AO disallowed the amount paid in relation to medical insurance premium paid for the family members of the employees of the company. The AO was of the view that such expenditure, though incurred in terms of contractual obligations entered into with the employees, cannot be stated to have been incurred wholly and exclusively for the purposes of business.

The Hon'ble ITAT observed that the lower authorities had not brought any evidence to substantiate that the payments so made had no nexus with the business. Even otherwise, it is not necessary that all the payments/expenditure incurred should have direct bearing on earning of income, but some payments are also made under certain business expediency. The payments claimed for the insurance premium of such members who have attained the age of 21 years or more or who are the remote relations of assessee have already been offered by the assessee to tax. The lower authorities rejected the claim of the assessee that these payments were in the nature of perquisites to the employees as contemplated under sub-clause (iv) of section 17(2) of the IT Act. Therefore, in view of provisos (iii) & (iv) appended to this section clearly prohibit the application of section 17(2) in certain eventualities as contained in these provisos,". Hence, Tribunal held that the medical insurance premium paid for the family members of the employees is allowable as business expenditure u/s. 37.

Loesche India Pvt. Ltd. vs. Addl. CIT, ITA No. 295/Del/2016 dt.13-8-2018 (Del)(Trib.) Source : www.itat.nic.

5. S.50B : Sale of a running Hotel is 'Slump Sale'

The assessee had sold land and building. The AO considered the same as a 'slump sale' and invoked the provisions of s.50B. The CIT(A) decided the matter in favour of the assessee stating that "slump sale" is an exclusive definition (using the word "means" instead of "includes"), it can be considered as a slump sale only when both assets and liabilities of undertaking are transferred for a lump sum consideration. Here only the land and building have been sold for separate amounts of sale consideration and the assets and liabilities, available in the balance-sheet, have not been sold at all, therefore said transaction cannot be held to be a slump sale.

The Tribunal noted that as per the sale deed, the assets of the assessee, including the licence for boarding, lodging, bar etc. were also transferred to the purchaser along with land and building as a going concern. The entire business was sold for a total consideration consisting of land and building which includes furniture, equipment, kitchen equipment, telephone instruments, television, computer, etc. Consequent to the sale of the hotel premises, the business of assessee was closed down. Therefore, the intention of the parties was to sell the hotel business as a going concern and the same is nothing but a slump sale. Therefore, the provision of s. 50B is applicable to the assessee.

ACIT v. M/s. Ooty Gate Hotel, ITA No.384/Coch/2017, dt. 14-8-2018 (Cochin)(Trib.) Source : www.itat.nic.

Announcements

SAARTHI

21st NATIONAL CONVENTION 2018

Organised by

All India Federation of Tax Practitioners (EZ)

on 22nd & 23rd December, 2018 at GMCH Auditorium, Guwahati

Theme

Globalisation and Changes in Tax Laws – Role and Responsibilities of Tax Professionals in Nation Building

For further details, please visit website i.e. www.aiftpphyconvention2018.com

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 11-8-2018 Life Members

| | Associate | Individual | Association | Corporate | Total |
|----------|-----------|------------|-------------|-----------|-------|
| Central | 0 | 1016 | 25 | 3 | 1044 |
| Eastern | 6 | 1472 | 36 | 3 | 1517 |
| Northern | 0 | 1142 | 17 | 0 | 1159 |
| Southern | 1 | 1249 | 19 | 7 | 1276 |
| Western | 4 | 2292 | 37 | 4 | 2337 |
| Total | 11 | 7171 | 134 | 17 | 7333 |

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215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020. • Tel.: 22006342/49706343
Telefax: 22006343 • E-mail: aiftp@vsnl.com • Website: www.aiftponline.org