

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

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AIFTP JOURNAL SUBSCRIPTION 2020-2021

The AIFTP Journal is the mouthpiece of the All India Federation of Tax Practitioners and 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 the 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.

Please note that AIFTP Journal subscription for the year 1st April, 2020 to 31st March, 2021 falls due for payment on 1st April, 2020.

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Yours sincerely,

For ALL INDIA FEDERATION OF TAX PRACTITIONERS

Chirag S. Parekh

Treasurer

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Subject – E-publication @ 50% discount to members

Dear Members,

We are pleased to announce that our first E-publication on 'Vivad se Vishwas' Scheme is now available in PDF downloadable format at very nominal contribution as follows:

Price – ₹ 590 (₹ 500/-+ GST at 18% ₹ 90)

Special discount at 50% for members of AIFTP – ₹ 295 (₹ 250/-+ GST at 18%-₹ 45)

It would be interesting to read the comments by Hon'ble Judge Bombay High Court and three Senior Advocates in preface of the book :

Finally, I hope that this publication will help the stakeholders in modifying and changing their approach towards litigation. The stakeholders must realize that professionals have taken out time from their otherwise busy schedule in bringing out this publication.

A perusal of this publication as a whole demonstrates that very few doubts and questions will remain if this publication is perused and read carefully.

— **Hon'ble Shri Justice S. C. Dharmadhikari**

This publication will be a useful reference to all those practicing in direct taxes.I am confident that this book will provide great clarity and be a useful guide to the Tax Practitioners, assesses as well as tax officials for better understanding of the Scheme.

Looking through this magnificent book, I am amazed at Mr. Joshi's talent and what he has achieved during these difficult times of pandemic crisis.

— **Dr. K. Shivaram, Sr. Advocate**

.....the book shall be of immense help to all the stakeholders, be it an advocate or a chartered accountant or a tax practitioner or an assessee or the Tax Administration.

— **Mrs. Prem Lata Bansal, Sr. Advocate**

He has raised several issues vis-à-vis the scheme and has tried to find the answers of issues with the help of clarifications issued by the Central Board of Direct Taxes on VSV Scheme.

— **Shri. Ganesh Purohit, Sr. Advocate**

Needless to add, Mr. Vipul Joshi and his team has tirelessly worked during complete lockdown to make this E-publication a MUST for all the stake holders.

We are also happy to share the unique features of the E-Book:

1. Word by word analysis - spreading over more than 400 pages - of the limited 12 sections of the Act.
2. Various tables have been prepared along with illustrations, wherever required, for easy understanding.
3. Grey areas have been pointed out at various places which may help the necessary authorities to bring further clarifications or make necessary amendments.
4. In-depth comparative analysis with other previous similar schemes, both under direct and indirect enactments, has been provided to show the similarities / differences between the present Scheme and the earlier schemes.
5. Various judicial pronouncements rendered under similar schemes have been analysed, which may assist in interpreting the corresponding provisions of the Scheme. Also, table of cases has been provided for easy access of the commentary where such judicial pronouncements are referred.

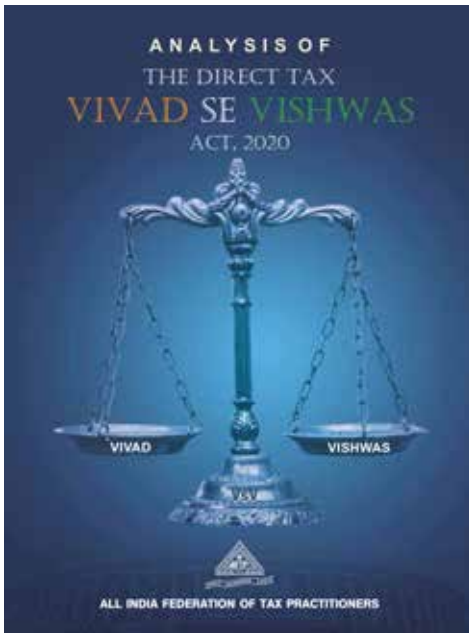
6. Most importantly, this E-Book is going to be constantly updated based upon the subsequent developments up to March 2021 at no extra cost for the members who subscribe.
7. The subscribers to this E-book will be able to raise query on the issues faced by them under VSV by a team of seniors headed by Dr. K. Shivaram, Sr. Advocate - Mumbai, Mrs. Prem Lata Bansal, Sr. Advocate-Delhi, Shri Ganesh Purohit, Sr. Advocate-Jabalpur, CA Pradip Kapasi-Mumbai, Shri Rajan Vora-Mumbai and of course the Author Shri Vipul Joshi, Advocate-Mumbai. The modalities are mentioned in the book.

Friends please hurry up and take benefit of this extraordinary offer by our Federation. The book is offered at 50% discount to our members.

You need to simply visit our website – aiftponline.org and you will be guided to payment gateway from the home page.

Mitesh Kotecha
Chairman, Publication Committee

Nikita R. Badheka
National President



**1st E-Publication of
All India Federation of Tax Practitioners
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Subject – Vivad Se Vishwas Act, 2020

Authored by

Vipul Joshi & Dinkle Hariya, Advocate

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Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of The Goods and Services Tax Practitioners' Association of Maharashtra for the year 2020-21.

- | | |
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| (1) Mr. Raj P. Shah | President |
| (2) CA Aalok K. Mehta | Vice President |
| (3) Mr. Pravin V. Shinde | Jt. Hon. Secretary |
| (4) CA Mahesh K. Madkholkar | Jt. Hon. Secretary |
| (5) CA Sunil G. Khushalani | Hon. Treasurer |

We wish them all the success

List of Webinars held by AIFTP and its various zones from 20th July, 2020 to 26th July, 2020

Sr. No.	Date	Day	Zone	Topic	Speaker
73	20/7/2020	Monday	Central	Revision of Orders U/s 263 and 264 of Act-Critical Issues	Adv. Kapil Goel, Delhi
74	21/7/2020	Tuesday	Central	Practical Aspect of filing form 35 & 36 & Appearance before CIT APPEALS & ITAT	Adv. V.P. Gupta, Delhi
75	22/7/2020	Wednesday	Central	Important Issues in Reassessment	CA Ajay R. Singh, Mumbai
76	23/7/2020	Thursday	Central	Penalty u/s 270A : Under reporting and Misreporting of Income	CA. Dhinal Shah, Ahmedabad
77	24/7/2020	Friday	Central	Taxation of Capital Gains under Income Tax : An analysis.	CA Rajesh Mehta, Indore
78	25/7/2020	Saturday	Southern	Virtual Webinar through CISCO WEBEX application	CA Hetal N Shah, Bengaluru CA Bharat Sachdev, Mumbai
79	25/7/2020	Saturday	Central	Non Resident Taxation & FEMA	CA Paresh Shah, Mumbai
80	26/7/2020	Sunday	Central	How to handle Income tax Survey Search & Seizure.	Adv. Narayan P. Jain. Kolkata

Note: Available YouTube links and PPTs are uploaded in our website i.e. www.aiftponline.org

Direct Taxes

Ms. Neelam Jadhav, Advocate, KSA Legal Chambers

Tribunal:

- S. 40(a)(ia) : Disallowance u/s.40(a)(ia) is correctly made as the Advertisement charges paid to News Paper Agency which is a franchisee of a newspaper, attracted TDS u/s.194C.**

The assessee is a new paper agency also is a franchisee of 'The Hindu', paid a certain amount to "The Hindu" newspaper for advertising for hiring staff. While completing the assessment proceedings, the Assessing Officer held that the said payment was not made by the assessee directly to 'The Hindu', but instead, it was made to New paper Agencies which is a franchisee of 'The Hindu' and accordingly, the assessee was liable to deduct tax at source u/s. 194C of the Act. The Assessee's claim was the payment is made to "The Hindu" newspaper for advertising for hiring staff and this payment was in the nature of one-time payment and no contract exists with the newspaper and accordingly, the provisions of s.194C of the Act would not be applicable.

While deciding the issue, the Tribunal observed that, the said payment was made towards advertisement charges to Agencies which is a franchisee of 'The Hindu'. As per the provisions of s.194 any person responsible for paying any sum to any resident for carrying out any work in pursuance of a contract shall deduct tax at source thereon. Here fact that assessee had given the advertisement material to Agencies constitutes a contract entered into by assessee and Agencies. The tribunal held that the advertisement charges paid to an agency which is a franchisee of a newspaper automatically attract TDS u/s. 194.

M/s. Mehra Eyetech Pvt. Ltd. v. Addl. CIT, ITA NO.1760/ Mum/2019, dt.13/07/2020 (Mum)(Trib.) Source : www.itat.nic.in

- S.40A(2)(b) : Section 40A(2)(b) cannot be invoked merely for Unregistered agreement.**

The assessee company was engaged in the business of manufacturing and trading of ignition coils for motor vehicle engines. For the year under consideration, the assessee filed return of income declaring total income under normal provisions as well as book profit u/s.115JB of the Act.

The scrutiny assessment was completed u/s. 143(3) making certain additions/disallowances. One of the disallowances made u/s. 40A(2)(b) on account of the excessive royalty payment made to the related party. The CIT(A) upheld the said addition. The ground taken by the AO for invoking s. 40A(2)(b) is the agreement between the parties has not been registered. When the assessee claimed that in AY 2013-14 the transaction of the royalty expenses was subjected to transfer pricing provisions and the average royalty payment was 2.99% of the sales in AY 2013 - 2014, which was accepted by the revenue then no disallowance would come in the year under consideration, where the royalty expenses are only 2.77% of the sales.

The Tribunal rejected the contention of the assessee on the grounds that the fair market value of the expenses has to be identified for the relevant year and percentile of the earlier year cannot be made the basis for comparison. The tribunal held that an unregistered agreement cannot be a ground for invoking provisions of s.40A(2)(b) in absence

of requirement of law. If the expenses are not incurred wholly and exclusively for the purpose of the business, then disallowance could be made u/s.37(1). The tribunal further held that for invoking the provision of s. 40A(2)(b), the Assessing Officer has to form an opinion of expenses more than the fair market value or not according to the legitimate needs of the business or no benefit derived. Under transfer pricing provisions the arm's-length price is compared with similar transactions,". Therefore, the provisions of s.40A(2)(b) are general provision as compared to the specific provisions of the transfer pricing. The Tribunal held that, the AO was required to compare the royalty expenses paid in case of the similar product by other companies during the relevant period.

DE Diamond Electric India Pvt. Ltd. v. ACIT, ITA NO. 7167/Del/2019, dt.23/07/2020. (Del)(Trib.), Source : www.itat.nic.in

3. S.147 : Assessing Officer cannot reopen assessment merely on the basis of change of opinion

The assessee company is engaged in the business of manufacturing and trading of pharmaceutical products had filed its return of income for AY 2012-13. Original assessment was completed u/s.143 (3). Subsequently, the case of the assessee was reopened u/s.147 of the act on the basis of the change of the opinion and issued notice u/s.148, against the said notice the assessee filed its return of income. The assessee had assailed the reassessment order primarily on two grounds i.e. AO reopened assessment merely on the basis of a change of opinion and secondly, the AO had disallowing the sales promotion expenses by wrongly bringing the said expenses within the realm of the "Explanation" to S.37(1) of the Act.

While dealing with the issue, the Tribunal observed that, as the reopening in the case had been re-sorted to by the AO on the basis of a "change of opinion" as regards the allowability of deduction of the sales promotion expenses, on the same set of facts and material as were there before AO during original assessment who had framed the regular assessment u/s.143(3). Tribunal further observed that, the A.O while singling out the expenses incurred for giving gifts to doctors, was disallowed the same u/s.37(1), had consciously formed an opinion that the other expenses were not liable to be disallowed. As this is not even the case of the revenue that the assessee had withheld the details as regards the nature of the remaining expenses incurred by the assessee, or that the same were not there before the A.O in the course of the original assessment proceedings. The complete bifurcated details of the sales promotion expenses were filed by the assessee in the course of the original assessment proceedings, and the A.O after perusing the same in the backdrop of the Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002 (as amended by the MCI on 14.12.2009), and also the CBDT Circular No.5, dated 01.08.2012, had consciously chosen to restrict the disallowance only to the extent the same pertained to such expenses which were incurred by the assessee on giving gifts to doctors.

The Tribunal held that the Assessing Officer cannot reopen the assessment merely on the basis of change of opinion. (r.w.s.37(1))

M/s. Medley Pharmaceuticals Ltd. v. Dy. CIT, ITA No.2344/Mum/2018 dt.22/7/2020 (Mum)(Trib.) Source : www.itat.gov.in



Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of The Chamber of Tax Consultants for the year 2020-21.

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| (5) CA Parag S. Ved | Hon. Treasurer |

We wish them all the success

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Chartered Accountants Association, Ahmedabad for the year 2020-21.

- | | |
|-------------------------|----------------|
| (1) CA. Ketan G. Mistry | President |
| (2) CA. Monish S. Shah | Vice President |
| (3) CA. Mihir H. Pujara | Hon. Secretary |
| (4) CA. Rushabh M. Shah | Hon. Secretary |

We wish them all the success

Indirect Taxes

Tanmay Mody, GST Practitioner

1) GST – Refund of ITC on Input Services

Challenge to validity of amended Rule 89(5) of the CGST Rule, 2017 to the extent it denies refund of input tax credit relating to input services. Only the “inputs” is referred to in explanation (a) to Rule 89(5) of CGST Rules 2017 and therefore, “input tax credit” on “input services” are not eligible for calculation of the amount of refund by applying Rule 89(5), which results in violation of provision of sub-section 3 of Section 54 of the CGST Act, 2017, which entitles any registered person to claim refund of “any” unutilised input tax credit.

Held: By prescribing the formula in Sub-rule 5 of Rule 89 of the CGST Rules, 2017 to exclude refund of tax paid on “input service” as part of the refund of unutilised input tax credit is contrary to the provisions of Sub-section 3 of Section 54 of the CGST Act, 2017 which provides for claim of refund of “any unutilised input tax credit”. ‘Input’ and ‘input service’ are both part of the ‘input tax’ and ‘input tax credit’. Therefore, as per provision of sub-section 3 of Section 54 of the CGST Act, 2017, the legislature has provided that registered person may claim refund of “any unutilised input tax”. Moreover, clause (ii) of proviso to Sub-section 3 of Section 54 also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST, Rules 2017. In view of the provisions of the Act and Rules keeping in mind scheme and object of the CGST Act, the intent of the Government by framing the Rule restricting the statutory provision cannot be the intent of law as interpreted in the Circular No.79/53/2018-GST dated 31.12.2018 to deny the refund of tax paid on “input services” as part of refund of unutilised input tax credit. Explanation (a) to Rule 89(5) which denies the refund of unutilised input tax paid on input services as part of input tax credit accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act, 2017.

(Source: Order by the Gujarat High Court in SCA No. 2792 of 2019 and others dt. 24th July, 2020 in M/s. VKC Footsteps India P. Ltd. & Ors. v. Union of India & Ors.)

2) Service Tax – Service Tax on Foreclosure Charges

Whether foreclosure charges levied by the banks and non banking financial companies on premature termination of loans are leviable to service tax under the head “banking and other financial services”?

Held: With reference to the concept of ‘consideration’, the “consideration” must flow from the service recipient to the service provider and should accrue to the benefit of the service provider and that the amount charged has necessarily

to be a consideration for the taxable service provided under the Act. There is marked distinction between “conditions to a contract” and “considerations for the contract”. A service recipient may be required to fulfil certain conditions contained in the contract but that would not necessarily mean that this value would form part of the value of taxable services that are provided. Foreclosure charges are recovered as compensation for disruption of a service and not towards “lending” services. Foreclosure is anti thesis to lending and, therefore, cannot be construed to be “in relation to lending”. The phrase “in relation to lending” cannot be so stretched so as to bring within its ambit even activities which terminate the activity. Foreclosure charges should not be viewed as ‘alternative mode of performance’ of the contract because they arise upon repudiation of specified terms of contract and are intended to compensate the injured party banks and non banking financial companies. The contract cannot be understood to be providing an option to the parties to either perform or not perform/violate, the foreclosure charges are nothing but damages which the banks are entitled to receive when the contract is broken.

(Source: Order no. 40053/2020 dt. 8th June, 2020 by the Larger Bench of the CESTAT, Chennai in Commissioner of Service Tax, Chennai v. Repco Home Finance Ltd.)

3) GST – TN AAR

Whether the services provided by the applicant to the foreign client through the Principal shall be treated as export of services or local services?

Held: There is also no mention anywhere in the consultancy agreement that the applicant has to provide services to the clients of the customer - Doyen. Merely because, the applicant is in email correspondence with the employees of clients of Doyen does not mean that he is ‘carrying on the business of supply of services’ on behalf of Doyen, as is required as per definition of ‘agent’ in Section 2(5). In the instant case, the applicant provides IT software related consulting services in the area of Oracle FRP w.r.t Oracle Financials to Doyen for a consultancy fee laid down in the consultancy agreement. Therefore, the said activity satisfies the conditions of Section 7(1)(a) and is a supply under GST. As per Para 5 of Schedule II read with Section 7(1A), this supply is a supply of services. Therefore, the applicant is liable to pay GST at appropriate rates on the supply of consultancy services to Doyen.

(Source: Order No. 20/AAR/2020 dt. 24th April, 2020 by the TN AAR in the case of Rajesh Rama Varma)



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Sr. No.	Name of Publication	Edition	Rate (₹)		
			Members	Non-Members	Courier Charges
1.	GAAR General Anti-Avoidance Rules	Dec., 2019	640.00	720.00	100.00
2.	311 – Frequently Asked Questions on Survey – Direct Taxes	Dec., 2018	600.00	675.00	100.00
3.	Income Tax Appellate Tribunal – A Fine Balance – Law, Practice, Procedure and Conventions – Frequently Asked Questions	Dec., 2017	1,000.00	1,050.00	100.00

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	Associate	Individual	Association	Corporate	Total
Central	0	1137	25	0	1162
Eastern	6	1839	36	0	1881
Northern	0	1311	18	1	1330
Southern	1	1503	20	5	1529
Western	5	2617	37	6	2665
Total	12	8407	136	12	8567

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