

## All India Federation of Tax Practitioners



# AIFTPT TIMES

Volume 11 – No. 2 • February 2020

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
08-02-2020	One Day Tax Seminar	Odisha
08-02-2020	National Executive Committee Meeting	Indore
08-02-2020 to 10-02-2020	AIFTPT-CZ Residential Refresher Course, 2020	Indore, Ujjain, Omkareshwar, Maheshwar

## ONE DAY TAX SEMINAR

We have the pleasure to inform you that we are organizing a One Day Tax Seminar in association with **Rourkela Tax Bar Association**, on Saturday, 8th February, 2020 at Rourkela, Odisha. This will be an intellectual gathering of its type aimed at taking up discussion on issues of Goods and Services Tax, including topics of utmost importance in present scenario, which will be of immense interest to the Tax Fraternity and all other stakeholders of the society.

The details are as under:-

Day & Date	: 08th February 2020	Time	: 8.30 a.m. to 5.00 p.m.
Venue	: BBA Hall, NIT Campus, Rourkela, Odisha		
Theme of Seminar	: GST LAW AND ITS PROXIMITY WITH NATIONAL GDP		
Delegation Fees	: ₹ 1,000/- (Rupees One Thousand Only), for Advocate/CA/Members and Accompanying Spouse.		
	: ₹ 600/- (Rupees Six Hundred only), for Students of Law and CA		
	: ₹ 1,500/- (Rupees One Thousand Five Hundred only), for Corporate Members		

### PROGRAMME SCHEDULE

8.30 a.m. to 10.00 a.m. – Registration & Breakfast

Time and Subjects	Faculties
10.00 a.m. to 11.30 a.m. <b>INAUGURAL SESSION</b>	Chief Guest: SJ. Hon'ble Justice Indrajit Mahanty*, Chief Justice Rajasthan High Court. Guests of Honour 1. Shri Sushil Kumar Lohani, IAS* (Commissioner of State Taxes (GST)) 2. Shri Vijay Rishi, IRS* (Commissioner of Central Taxes (GST))
11.30 a.m. to 1.30 p.m. <b>1st TECHNICAL SESSION</b>	Chairman : Speakers : 1. Shri Sujit Ghosh, Advocate, (Supreme Court, New Delhi) 2. Shri Jagabandhu Sahoo, Sr. Advocate (Odisha High Court, Cuttack) Moderator: Guest :
1.30 p.m. to 2.30 p.m.	<b>LUNCH BREAK</b>
2.30 p.m. to 4.30 p.m. <b>2nd TECHNICAL SESSION</b>	Chairman : Speakers : 1. Shri Jatin Harjai, Advocate* (Rajasthan High Court, Jaipur) 2. Shri Nitin Pasari, Advocate (Jharkhand High Court, Ranchi) Moderator: Guest :
4.30 p.m. to 5.30 p.m.	<b>Valedictory Session followed by Hi - Tea</b>

\* Confirmation Awaited

**Note:** Registration strictly on first come first serve basis. Delegates are requested to send their queries in advance to get experts views from Learned Speakers on E-mail: rtbaseminar2020@gmail.com

For further details kindly visit our website i.e. [www.aiftponline.org](http://www.aiftponline.org)

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

Name	Mobile	Tel. (O)	Fax	E-mail
<b>National President</b> – Smt. Nikita Badheka, Adv.	9821037885	022-22030011	—	aiftppresident.badheka@gmail.com
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<b>Treasurer</b> – Shri Chirag S. Parekh, Adv.	9821634128	022-26705006	26705006	chiragnp7@gmail.com

**Residential Refresher Course, 2020**  
**All India Federation of Tax Practitioners (CZ)**  
**on 08th-10th February, 2020, at WOW Hotel, Indore**  
**THEME – Present Economic Scenario – Role of Tax Professionals**  
**PROGRAMME**

SATURDAY, 08th FEBRUARY, 2020	
12.00 noon to 1.00 p.m.	<b>Inaugural Session</b> <b>Guest of Honour –</b> <b>Sh. Manish Borad, Member ITAT, Indore Bench</b>
1.00 p.m. to 2.00 p.m.	<b>LUNCH</b>
2.00 p.m. to 6.30 p.m.	<b>Special Outing for Ladies for Shopping, etc. – Co-ordinator – Mrs. Kiran Mehta</b>
2.00 p.m. to 3.00 p.m.	<b>First Technical Session – Income Tax – Finance Bill 2020</b> <b>Chairman – CA Manoj Gupta, President TPA, Indore</b> <b>Speaker – Mr. Sant Saran, IRS, CIT (Appeals), Indore, Mr. Mahendra Gargieya, Advocate</b>
3.00 p.m. to 3.45 p.m.	<b>Second Technical Session – GST – Survey &amp; Summons</b> <b>Chairman – Mr. M. L. Patodi, Advocate, PP, AIFTP</b> <b>Speaker – Mr. Pankaj Ghiya, Advocate</b>
3.45 p.m. to 4.30 p.m.	<b>Third Technical Session – RERA – Recent Issues</b> <b>Chairman – Mr. Ganesh Purohit, Sr. Advocate, PP, AIFTP</b> <b>Speaker – CA. Himanshu Goyal</b>
4.30 p.m. to 5.15 p.m.	<b>Fourth Technical Session – IPR – Recent Issues</b> <b>Chairman – Dr. M. V. K. Moorthy, Advocate, PP, AIFTP</b> <b>Speaker – Mr. G. D. Bansal, Advocate</b>
5.15 p.m. to 6.00 p.m.	<b>Fifth Technical Session – IBC – Recent Issues</b> <b>Chairperson – Mrs. Prem Lata Bansal, Sr. Advocate, PP, AIFTP</b> <b>Speaker – CA. Anil Mathur</b>
6.00 p.m. to 6.45 p.m.	<b>Brains' Trust –</b> <b>Chairman – Mr. P. C. Joshi, Advocate, PP, AIFTP</b> <b>Panel – CA. Pankaj Shah, Chairman ICAI, Indore, CA. A. K. Shrivastava,</b> <b>Mr. V. P. Gupta, Advocate, Mr. Vipul Joshi, Advocate, Mr. Vinayak Patkar, Advocate,</b> <b>CA. Milind Vijay, CA. Neeraj Jain</b>
7.00 p.m.	<b>NEC Meeting at Conference Hall at WOW Hotel, Indore</b>
8.30 p.m. Onwards	<b>Dinner</b>
MONDAY, 10th FEBRUARY, 2020	
10.00 a.m. to 10.45 a.m.	<b>Sixth Technical Session – GST – Recent Changes and Returns</b> <b>Chairperson – Mrs Nikita Badheka, Advocate, Speaker – Mr Vikram Gogra, Advocate</b>
10.45 a.m. to 11.30 a.m.	<b>Seventh Technical Session – Income Tax – Ghost of Demonetisation</b> <b>Chairman – CA. Ratan Goyal, Speaker – CA. Rajesh Mehta</b>

**Tour Cost :**

₹ 11,000 Per Person on Twin Share Basis Excluding Train Ticket

₹ 2,000 Per Person Appx. for Train Ticket (3rd AC). Difference if any to be paid separately.

**Payment Details**

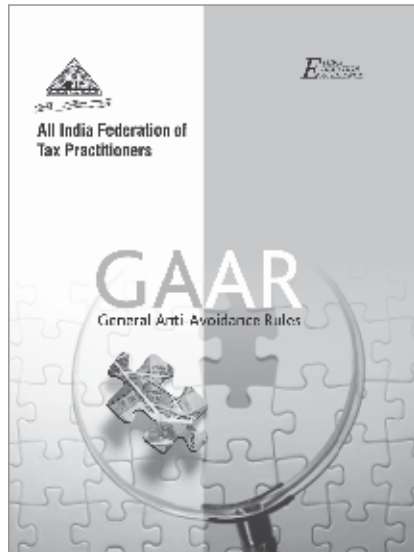
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**Notes :**

1. Join RRC of AIFTP CZ. Details in circular enclosed
2. Charges for the Non Resident Participation – ₹ 6,000/-
3. Above is only a tentative itinerary and is subject to change.
4. Limited Seats. Pl reserve asap
5. **Central Zone Executive Meeting also on 8th February 2020**
6. **National Executive Meeting also on 8th February 2020 at 7 p.m.**
7. **Conference details circulated separately**

<b>Pankaj Ghiya – 9829013626</b>	<b>Sandeep Agrawal – 9414142195</b>	<b>Gautam Sharma – 9829032565</b>	<b>Vinay Jolly – 9414043300</b>
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# BOOK RELEASE ANNOUNCEMENT



The price of publication is  
**₹ 800/-**

For Members AIFTP and www.itatonline.org subscribers	For Others
₹ 640/- courier charges ₹ 100/-	₹ 720/- courier charges ₹ 100/-
<b>₹ 740/-</b>	<b>₹ 820/-</b>

Please make all cheques /  
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"All India Federation of Tax  
Practitioners".

We are pleased to announce the release of the publication by the All India Federation of Tax Practitioners titled  
"General Anti-Avoidance Rules".

Hon'ble Mr. Justice Ujjal Bhuyan, Judge, Bombay High Court released the said publication on 14th December, 2019 in Mumbai at the 22nd National Tax Convention organised by the AIFTP (WZ) and other local associations.

This is a unique publication which is dedicated to the fond memory of late Dr. N. M. Ranka, Senior Advocate, Jaipur and late Shri S. K. Poddar, Advocate, Ranchi, both having served as the Past National Presidents for AIFTP.

The Editorial Board for the publication consists of Dr. K. Shivaram, Sr. Adv. and CA. Pradip Kapasi, who have shared their experience and knowledge. This publication is authored by professionals across the country, who appear regularly before the ITATs and the Hon'ble High Courts across India viz. Ajay Vohra, Sr. Adv., CA. Anish Thacker, CA. P. V. S. S. Prasad, Samir N. Divatia, Adv., CA. Sanjay R. Parikh, Manish J. Shah, Adv., V. P. Gupta, Adv., V. S. Jayakumar, Adv., CA. Kishor Phadke, CA. Vivek Newatia, ACS Khushboo Jain, Neelam C. Jadhav, Adv. and CA. Siddharth Banwat.

Since, it is a new subject, the learned authors have made an honest attempt to explain the provisions in simple language so that the tax practitioners would be able to understand the provisions and guide the assesseees. This publication is divided into twelve chapters viz. General Anti-Avoidance Rules – The Saga Continues? ; Operational Framework of GAAR; General Anti-Avoidance Rules (GAAR) – Implications of implementation; Place of Effective Management: Concept and Impact; Procedure, Redressal and Appeal under GAAR; GAAR and SAAR; Applicability of GAAR and Controversies; BEPS and GAAR - Comparison of USA and UK GAAR systems; Judicial Anti-Avoidance Rules (Judicial GAAR) vs. Statutory Anti-Avoidance Rules (Statutory GAAR); GAAR–Case laws–India & International; References to GAAR Circulars and Articles & Circulars.

This publication will serve as a useful reference to the tax professionals in their day-to-day practice.

This publication would be an invaluable treasure in the library of tax professionals.

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## Direct Taxes

Ms. Neelam Jadhav, Advocate, KSA Legal Chambers

### High Court

#### 1. S. 54 : Capital gains deduction is allowable to DDA allotted flats

The assessee is an individual, earning income from house property, business and profession, capital gains and other sources. He filed his return of income for AY 2012-13 including long term capital gains from sale of property. The said property was purchased in FY 2001-02, as per sale deed, after indexation, the cost of acquisition was claimed by the assessee as deduction u/s. 54 for investment in a new house property. The AO made disallowance of deduction u/s. 54 on the ground that the assessee entered into an agreement and the said date of the agreement is to be treated as date of acquisition, which falls beyond the one year period provided u/s. 54 and is also prior to the date of transfer. The CIT(A) observed that the benefit u/s. 54 required an assessee to purchase a residential house property either one year before or within two years after the date of transfer of long term capital asset; or if an assessee within a period of three years after the said date has constructed a residential house. Since the construction has been completed within three years of the sale of original asset, a fact accepted by the AO, the assessee was entitled to relief u/s. 54. The appeal was filed by the Revenue and the Tribunal upheld the order of CIT(A) and confirmed the deletions.

While dismissing the appeal of the revenue, the Court observed that that CBDT in its circulars No. 672 dated 16-12-1993 has made it clear that the acquisition of flat through allotment by DDA has to be treated as construction of flat and deduction capital gains u/s. 54 is allowed, as the assessee has fulfilled the conditions laid down u/s. 54(1) of the Act. The presumption drawn by the AO for making the addition was patently false, based on conjectures and surmises, without appreciating the records and making an inquiry to discredit the evidence and confirmation placed on record by the assessee. Hence the deduction claimed u/s. 54 is allowable. (AY 2012-13)

*Pr. CIT vs. Akshay Sobti, ITA No. 991 of 2019, dt.19/12/2019 (Delhi)(HC) source : www.delhihighcourt.in*

### Tribunal

#### 2. S. 37: Business expenditure - onetime payment of the annual rent as per the lease deed paid by the assessee is allowable as revenue expenditure.

The assessee purchased a hotel constructed on leased land obtained from Jaipur Development Authority (JDA) from Vishnu Apartments Pvt. Ltd. vide agreement dated 05-11-2008 and as per clause 28 of the sale agreement, the assessee was under an obligation to pay to the seller, Government rate taxes and cess etc., from the date of agreement. Vide letter, JDA required Vishnu Apartment Pvt. Ltd. to pay a cumulative sum on account of annual lease rent up to Year 2011-12 and lump sum payment of annual lease rent. Proportionately the share of the assessee out of that payment was computed. The assessee claimed the said payment as business expenditure u/s. 37. The AO disallowed the same on the ground that it is a capital expenditure relating to land. The CIT(A) confirmed the action of the Assessing Officer.

While allowing the appeal of the Assessee, the Tribunal held that, assessee paid the said annual lease rent at one time, but that does not lose the character of the annual rent. Thus, the expenditure incurred was for the business purpose only and therefore, it cannot be held as capital in nature. Expenditure which brings about some kind of an enduring benefit to the company as a revenue expenditure when the expenditure did not brings into existence any capital asset for the company are expenditure of the said company. The expenses have been looked upon as having been made for the purpose of conducting the business of the assessee more profitably or more successfully. Hence, the onetime payment of the annual rent as per the lease deed is correctly allowable as revenue expenditure. (AY 2012-13)

*M/s. Multitude Infrastructure Pvt. Ltd. vs. Dy. CIT, ITA No. 2722/ Mum/ 2017 dt.13/12/2019, (Delhi)(Trib.) Source : www.itat.nic.in*



## Indirect Taxes

Tanmay Mody, GST Practitioner

#### 1) GST – Validity of RCM on Ocean Freight

Challenge to levy of IGST on Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from applicants as the importer of the goods. Constitutional validity of Notification No. 8/2017 – Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017 – Integrated Tax (Rate) dated 28th June 2017.

**Held:** The issue in the present case is when the statutory provision empowers collection of tax from the recipient of goods or services, then whether the delegated legislation

by way of notification can stipulate imposition of tax on a person who is neither the supplier nor the recipient of service. No tax is leviable under the IGST Act, 2017, on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned notifications is not permissible in law. Under the IGST Act, the integrated tax is leviable only on inter-state supplies made or agreed to be made, the supply of services provided by a person in a non-taxable territory to

a person in a non-taxable territory by way of transportation of goods in a vessel from a place outside India to the place of customs station of clearance in India is not an inter-state supply as per the provisions of Section 7 of the IGST Act. Further, as per Section 5(3) of the IGST Act, the Government is only authorized to specify the categories of supply on which the tax is to be paid by the recipient of the supply under the reverse charge basis. The Government cannot further specify the person liable to pay tax as other than the recipient of the supply. The impugned Notification No. 8/2017 – Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No. 10/2017 – Integrated Tax (Rate) dated 28th June 2017 are declared as *ultra vires* the Integrated Goods and Services Tax Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional.

*(Source: Order by the Gujarat High Court in Special Civil Application No. 726 of 2018 clubbed with others in the case of M/s. Mohit Minerals P. Ltd. & Ors. vs. Union of India dt. 23rd January, 2020)*

## 2) CST Act, 1956 – Sales from Bonded Warehouse

Whether the sale of goods, imported from foreign country and after unloading the same on the landmass of the State of West Bengal, kept in the bonded warehouse without payment of customs duty, to foreign bound ships as “ship stores” can be regarded as sale within the territory of the State and amenable to sales tax under the WBST Act, 1954 or the WBST Act, 1994?

**Held:** For a sale or purchase to qualify as a sale or purchase in course of import, the essential conditions are that such sale shall occur before the goods had crossed the customs frontiers of India and the import of the goods must be effected or the import is occasioned due to such sale or purchase. In the present case, the sales in question did not occasion import. It is not the case of the appellant that the goods in question were being exported. Since the goods are to be consumed on board the foreign going ship and the same would be consumed before reaching a destination, it does not fall under the definition of ‘export’. The sale cannot qualify as a sale occasioning export unless the goods reach a destination which is a place outside India. Further, since the goods have been sold from the bonded warehouse and had crossed the customs port/land customs station prior to their sale, it cannot qualify as a sale in course of export within the meaning of Section 5(1) read with Section 2(ab) of the CST Act. The stated sales or appropriation of goods kept in bonded warehouse within the landmass/ territory of the State of West Bengal are neither in the course of import or export and more so, were effected beyond the customs port/land customs station area. The subject sale is amenable to levy of sales tax under the 1954 Act and the 1994 Act, as the case may be, read with Section 4 of the CST Act.

*(Source: Order by the Supreme Court in Civil Appeal No. 7863 of 2009 and Ors. in the case of Nirmal Kumar Parsan and Ors. vs. Commissioner of Commercial Taxes & Ors.)*

## 3) GST – Denial of export refunds due to Duty Drawback claim

Petition challenging denial of IGST refund paid on goods exported during the transitional period after introduction of GST Regime i.e. from 01-07-2017 to 30-09-2017 – rejection of refund on ground of simultaneous availment of duty drawback of customs portion and refund of IGST paid on export of goods.

**Held:** During the transitional period, the petitioners have inadvertently claimed benefit of duty drawback, since there was lack of clarity with respect to the refund of IGST. The concept of zero-rated exports envisaged under GST is designed to achieve this objective. In the current scenario, exporters pay IGST and apply for refund. Thus, for wrong input given at the time of claiming drawback should not deprive them of this valuable right. We can't be immune to the fact that taxpayers have faced difficulties in understanding the complexity of GST procedures. Revenue needs to realise the inefficient implementation of the law has had adverse fallout on the taxpayer. Government would have to embrace initiatives that would help the taxpayers in the transformation to the new regime. This would require understanding the difficulties faced by the industry which would be crucial step for success of GST law. Instant case is one such example where petitioners have been victim of technical glitches on account of confusion during transitional phase. The taxpayers like the petitioners should not be denied the substantive benefit of the IGST paid by them on exports.

*(Source: Order by the Delhi High Court in Writ Petition No. W.P.(C) 2694/2019 in the case of M/s. TMA International P. Ltd. & Ors. vs. Union of India dated 26th November, 2019)*

## 4) GST – Tamil Nadu AAAR

When IGST is paid on inter-state movement of cranes by the supplier (i.e. SML Maharashtra), whether the recipient-Appellant (i.e. SML Tamil Nadu) receiving such cranes for further supply on hire charges would be eligible to avail input tax credit of IGST charged?

**Held:** The HO being distinct person in the eyes of law and the transaction is in the course of furtherance of business, the supply is taxable supply for which SML HO has adopted a value agreed under the ‘Pricing’ clause of the MOU and paid the tax on the value declared in the Invoice. There is no reason to restrict the Input Tax Credit of the tax paid by the SML HO, in the hands of the appellant as it has been substantially brought out that the ‘consideration’ stands paid to the SML HO either by the customer of the Appellant or by setting off against the payables of the appellant to SML HO, in respect of lease/hire of Cranes etc., which is as per the established accounting principles. The appellant is eligible to avail full Input tax credit of tax paid by SML HO on the lease/hire of cranes to them for furtherance of business, subject to other conditions of eligibility to such credit as per Section 16 of CGST Act 2017.

*(Source: Order-in-Appeal No. AAAR/08/2019(AR) against the Order of the Tamil Nadu AAR dt. 13/11/2019 in the case of M/s. Sanghvi Movers Ltd.)*



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