



AIFTA TIMES

Volume 11 – No. 11 • November 2020



*National President and National Executive Committee Members
wishing a very Happy Diwali and Prosperous New Year*



FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
6th & 7th November 2020	Virtual National Tax Conference 2020	Virtual
5th & 6th December, 2020	23rd National Convention	Hyderabad

President's Communique

Happy Diwali.

The festive season has started. This year the celebrations would be different. The visits to relatives will have to be curtailed, in your and your family's interest. But then we have mobile and internet facilities to reach out to our friends and relatives. I wish a very joyful and healthy Diwali to the learned members of the Federation. The New Year ushers in hope for a brighter year ahead. The past eight months have been tough and trying for everyone in the profession and personally. We have withstood the same together, the new year would definitely be a better year. The three golden words you must ingrain in your mind, the three guards of your life HMS;

H – Multiple times Hand washing

M – Compulsory wearing of Mask

S – Social distancing

Follow them and enjoy your life. Adopt yourself to virtual world, virtual hearings, virtual meeting with clients etc. to remain safe and healthy

Mega event by Central Zone – Hon'ble Finance Minister to Inaugurate

The third virtual NTC is being organized by Central Zone on 6th and 7th November 2020. The Chief Guest to inaugurate the Virtual NEC is none other than the Hon'ble Smt Nirmala Sitharaman the Finance Minister of India.

It would indeed be an event of the year. We are thankful to Hon'ble Finance minister for sparing her valuable time for Federation.

We look forward to Madam's meaningful interaction and keynote address.

The rest of the program would enrich the members. I request each one of you to join us at 2 pm on 6th November 2020. Kindly visit the website for further details and link to the program.

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

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Light at the end of Tunnel

Although we are surrounded with the cases of Covid-19, the partial opening has started shaping the economy. The incoming festivals would bring hopes for a brighter year. The hustle-bustle of activities every where indicates the economy is slowly trying to revive. It's a very good sign. So friends, let's be part of the reviving economy.

Faceless Appeal under Income Tax Act

After faceless assessment, we have now faceless appeal proceedings under Income Tax Act. There is difference between faceless assessment and faceless appeal. A person files the appeal as he is aggrieved by the assessment order and he wish himself to be heard by higher authority. Appeal is a statutory right provided by the law. In the new Faceless Appeal Scheme, 2020, the right of being heard, even through the videoconferencing mode shall be subject to the approval of the Chief Commissioner or the Director General and therefore the same is discretionary, i.e. he "may" or "may not" provide a right of personal hearing in the matter. Such provision would not only result in injustice, but would promote corruption and malpractice. This would promote highhanded attitude of superior authorities. Such provisions take away the entire charm of scheme Faceless appeal. The Hon'ble Delhi High Court has directed the respondents in case of LAKSHYA BUDHIRAJA to file affidavit in reply.

The aforesaid mechanism was challenged as discriminatory, against the settled principles of law and in violation of the Article 14 of the Constitution of India. The right to provide or not to provide a hearing in the matter is also against the principle of *audi alteram partem* i.e. no person should be judged without a fair hearing in which each party is given an opportunity to respond to the evidence against them. The Faceless Appeal Scheme is contrary to sections 250(1), 250(2) and 250(5) of the Act, which specifically state that right of hearing shall be granted to an assessee at the appeal.

One more aspect I find missing in faceless appeal is with regard to right to the inspection of assessment and Investigation records. Federation would represent to the CBDT and FM about many such lacuna in the faceless appeal scheme. If required we may file writ petition challenging arbitrary and unjust provisions.

Extension of due dates

Federation had represented to the Chairman CBDT and CBIC to extend the dates for compliances of audit under income tax and under GST act. Considering the difficulties faced by the tax payers and professionals the Centre has extended the dates for both the compliances. I thank both the representation committee chairmen Shri S. R. Wadhwa and Shri H. L. Madan for taking prompt steps for making representations.

Release of Book - 151 landmark judgments of SC

On the second Virtual NTC, we have released a very important, informative and valuable book i.e. 151, land mark Judgments of SC. A rare book containing gist of 151 judgments of SC which are applicable as on today, along with special comment by the team of experts. We have made it available on our website free to all members. I request you all to down load the same for future reference. This book would be permanently helping the tax practitioners.

Refresher course for the legal concepts by West Zone

While we are grappling to digest GST and new schemes under Income tax Act, the West Zone has thought of a novel idea of having six work shops on some basic legal concepts the Subject selected are on law of writs, principles of Interpretation of statutes as applicable to tax laws (two lecture), law of precedents, evidence Act and Information technology acts, law of affidavits and doctrine of natural Justice.

The first workshop would be starting after Diwali, instead of from 11th as we have full-fledged two day NEC on 6th and 7th November. Kindly watch our website for the detail program.

AIFTP Journal

I am happy to say that the hard copy of AIFTP Journal for the Month of March 2020 till date is now printed and sent to all subscribers. Members who have not subscribed for the Journal so far, may do so immediately. We are now covering the articles, updates and news relating to both direct and Indirect tax. If you have subscribed and not received the past months copies, Please write immediately to HO.

But safety first. Mask, social distancing and regular hand wash should be the way of life. Stay safe and healthy.

Nikita R. Badheka
National President



Report on Virtual National Tax Conference – 2020 Held on 2nd & 3rd October, 2020

The **Virtual Tax Conference - 2020 (VNTC-2020)** was unique, rich in content and enchanting in experience. It was well attended by delegates from not only the length and breadth of the country but also from abroad. It had more than 3750 confirmed registrations and as per feedback of participants it was a great learning experience. The final touch of 'Aashirwahan' in the Valedictory Session attended by past presidents and super senior members of AIFTP was a novel initiative and took the participants down the memory lane. This was one of a kind, valedictory session flowing with emotions and sentiments.

Day-1 of VNTC-2020 - Inaugural Session of this VNTC-2020 – The Inaugural Session was a Unique program with six sitting High Court Judges in the role of Chief Guest and Guest of honour, each of whom are lifetime members of the federation. Chief Guest Hon'ble Justice Shri Rajesh Bindal Judge, Jammu and Kashmir High Court was closely associated with the Federation for many years before his elevation as Judge Punjab and Haryana High Court. The Guest of Honour Hon'ble Dr. Justice Anita Sumanth, Judge Madras High Court had been an active Zone Chairman of South Zone. Hon'ble Shri Justice Piyush Agarwal, Judge Allahabad High Court has been one of the active NEC member from North Zone. The rest three Hon'ble Guests of Honour are all from the East Zone. Hon'ble Shri Justice Ujjal Bhuyan, a Senior Judge of Bombay High Court is basically from Gauhati. Hon'ble Shri Justice Bhuyan has participated in many programs of the Federation. Hon'ble Shri Justice Kalyan Rai Surana, Judge Gauhati High Court and Hon'ble Shri Justice Soumitra Saikia, Judge Gauhati High Court have been members of our esteemed Association. The presence of such distinguished galaxy of High Court Judges, all members of AIFTP family were highly motivational and inspiring for the members of the Federation. The Inaugural Session was graced by the speeches of Chief Guest Hon'ble Justice Shri Rajesh Bindal, Guests of Honour Hon'ble Shri Justice Ujjal Bhuyan, Hon'ble Dr. Justice Anita Sumanth, Hon'ble Shri Justice Kalyan Rai Surana, Hon'ble Shri Justice Piyush Agarwal, Hon'ble Shri Justice Soumitra Saikia, Respected Smt Nikita Badheka, National President, Shri M. Srinivas Rao, Dy. President Shri A. K. Srivastava, Vice President-NZ, Shri Asim Zafar, Chairman NZ and Shri Sanjay Kumar, Conference Chairman. The highlight of this session was unveiling of rare book titled as 151 Landmark Judgments of Hon'ble Supreme Court of India as well as an e-souvenir published on the occasion of VNTC-2020.

The **First Technical Session** on the topic - *Charitable Trust, Educational Institutions, Hospital and Discretionary Trusts under IT Act* had the star speaker of the country CA Dr. Girish Ahuja as our keynote speaker. The session was aptly complimented by the presence of Chairman Dr. Ashok Saraf, Immediate Past President.

The **Second Technical Session** was on the topic – *SCN, Adjudication/Assessment and Appeals under GST* with Session Chairman Advocate Shri P. C. Joshi, Past President and Shri Tarun Gulati, Senior Advocate from Delhi High Court was keynote speaker.

Day-2 of VNTC-2020 – Third Technical Session started with deliberation on the topic of *Restrictions on Cash Transactions and New Penalties Regime Under IT Act*. The Session Chairperson was Smt. Prem Lata Bansal, Senior Advocate Delhi High Court with star speaker Shri Ajay Vohra, Senior Advocate practicing in Supreme Court of India. The address was followed by Panel Discussions and Questions from audience. The Panelists were Shri K. Shivaram, Past President & Senior Advocate of Bombay High Court, Shri Ganesh Purohit, Past President & Senior Advocate of Jabalpur High Court and Shri S.R. Wadhwa, Ex-Chairman, Income tax Settlement Commission, besides the aforesaid two learned Advocates namely Smt. Prem Lata Bansal and Shri Ajay Vohra.

The **Fourth Technical Session** on the topic - *GST Implications on Healthcare, Education Sector, Charitable Institutions & CSR related Activities*. Session was Chaired by Advocate Dr. M. V. K. Moorthy, Past President with CA S. Venkataramani as keynote speaker and Panelists Advocate Shri M. L. Patodi, Past President and Ms. Nikita Badheka, National President.

The **Concluding Session** 'Aashirwahan' provided the rare opportunity to hear in person some of the great stalwarts of the Federation. The emotional program was highly appreciated and even the participants congratulated for organizing such a beautiful interaction. This event was attended by Shri P. C. Joshi, Dr. K. Shivaram, Shri Bharat Ji Agrawal, Shri M. L. Patodi, Shri J. D. Nankani, Shri M. V. K. Moorthy, Smt Prem Lata Bansal, Shri Ganesh Purohit, Shri P. S. Sarin, Dr. Ashok Saraf, Shri S. R. Wadhwa and Shri R. D. Sharma.

Another Unique Initiative in the VNTC-2020 was the supply of meals to 600 Needy and Poor people each day during the Two days of the conference through Roti Bank, Varanasi. This effort and initiative was highly appreciated by all.

This program was possible with the untiring efforts of Conference Committee and Office-Bearers of NZ namely Shri Arvind Shukla, Shri A. K. Srivastava, Shri Sanjay Kumar, Shri Asim Zafar, Shri Puneet Kumar Singh, Shri Arvind Mishra, Shri D. K. Gandhi, Shri Arvind Gupta, Shri O. P. Shukla, Shri Sanjay Sharma, Shri Varinder Sharma, Shri Sunil Sharma, Shri Tayyab M Khan and some other active members. Taxsutra and Anil Kumar Singh Memorial Charitable trust gave financial support to the program. Shri Puneet Kumar Singh, Secretary NZ played active role as MOC in the program and Shri Vijay Kewalramani, Shri Bharat Sachdev, Shri Girish Rathi, Shri M. N. Waghela, CA Sanjay Nikam and Shri Ravindra Patade gave technical support to the program which were highly appreciated by the audience and the seniors in AIFTP.

Asim Zafar
Chairman AIFTP-NZ

Puneet Kumar Singh
Secretary AIFTP-NZ

23rd National Convention, Hyderabad

MEDHO MADHANAM

5th and 6th December, 2020

Theme : “Improvise Tax Reforms - Immunise Tax Professionals”

Organised by

All India Federation of Tax Practitioners - SZ

Jointly with

Institute of Tax Practitioners of India • Telangana Tax Practitioners Association • Andhra Pradesh Tax Practitioners and Consultants Association • Karnataka State Tax Practitioners Association • Kerala Tax Practitioners Association and Federation of Tax Practitioners, Tamilnadu

Chief Guest	Guests of Honour	
Hon'ble Mr. Justice Sharad A. Bobde * Chief Justice of India	Hon'ble Mr. Justice Vineet Saran Judge, Supreme Court of India	Her excellency Dr. Tamilisai Soundararajan* Hon'ble Governor of Telangana

CONFERENCE SCHEDULE

9.30 am to 11.00 am	Inaugural Session	
11.00 am to 11.30 am	Break	
First Technical Session 11.30 am to 1.00 pm	Topic	Intricacies in ITC and Place of Supply under GST
	Chairman	Shri. P. C. Joshi, Advocate, Mumbai
	Speaker	CA Bimal Jain, New Delhi
1.00 pm to 1.45 pm	Break	
Second Technical Session 1.45 pm to 3.15 pm	Topic	Applicability of Stamp Value Rate to Income Tax Act, 1961
	Chairman	Dr. K. Shivaram, Senior Advocate, Mumbai
	Speaker	Shri. Kapil Goel, Advocate, New Delhi
3.15 pm to 3.30 pm	Break	
Third Technical Session 3.30 pm to 5.30 pm	Topic	Important Advance Rulings and Judicial Pronouncements under GST
	Chairman	Dr. MVK Moorthy, Supreme Court Advocate, Hyderabad
	Speaker	Shri. Vikram Nankani, Senior Advocate, Mumbai
Fourth Technical Session 9.30 am to 11.00 am	Topic	Joint Development Agreements under GST
	Chairman	Shri. M. L. Patodi, Advocate, Kota
	Speaker	CA S. Venkataramani, Bengaluru
11.00 am to 11.15 am	Break	
Fifth Technical Session 11.15 am to 12.15 pm	Topic	Indian Economy - Need for Structural Reforms
	Chairman	Shri. Ganesh Purohit, Senior Advocate, Jabalpur
	Speaker	Dr. M.R. Venkatesh, Advocate, Chennai
Sixth Technical Session 12.15 pm to 1.45 pm	Topic	Latest Judicial Pronouncements on Business Income under Income Tax
	Chairperson	Hon'ble Dr. Justice Anita Sumanth, Judge, Madras High Court
	Speaker	Shri. K. K. Chaitanya, Advocate, Bengaluru
1.45 pm to 2.30 pm	Break	
Seventh Technical Session 2.30 pm to 4.00 pm	Topic	Faceless Assessments - e-Appeals under Income Tax
	Chairperson	Smt. Premilatha Bansal, Senior Advocate, New Delhi
	Speaker	Dr. Girish Ahuja, New Delhi
4.00 pm to 4.15 pm	Break	
Valedictory session 4.15 pm to 5.00 pm	Chief Guest Shri. K. Chandrashekar Rao* Hon'ble Chief Minister of Telangana	

* Confirmation awaited.

Zoom meeting link will be shared to the registered e-mail id by 3rd December 2020

NATIONAL CONVENTION COMMITTEE

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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 Saturday, the November 28, 2020 at 11.30 a.m. at AIFTP's Office at 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020 and also on Virtual Zoom Platform to transact the following business:-

A G E N D A

- To read and approve the minutes of last Annual General Meeting held on September 27, 2019 held at Mumbai.
- To receive and adopt the Annual Report of the National Executive Committee of AIFTP for the year 2020.
- To consider and adopt the Audited Accounts of AIFTP for the year ended 31st March, 2020.
- To appoint Auditors for the year 2020-21 and to fix their honorarium.
- To transact any other business with the permission of the Chair.

Samir Jani
Secretary General

Place: Mumbai

Date: October 28, 2020

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, 2020 and the report of the National Executive Committee can be asked by email from November 20, 2019 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 11.30 a.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.



Announcement

All the zone chairmen are hereby requested to file their bids/nominations for the Award of the year 2020 as per the All India Federation of Tax Practitioners Award Rules.

The last date to file the bid/nominations for the awards of the year 2020 is 20-11-2020.

The Awards are as follows:

1. AIFTP BEST CONFERENCE AWARD
2. AIFTP BEST SEMINAR AWARD
3. AIFTP BEST ZONE CHAIRMAN AWARD
4. AIFTP MAXIMUM PARTICIPATION AWARD
5. AIFTP BEST ZONE VICE-CHAIRMAN AWARD
6. AIFTP OUTSTANDING CONTRIBUTION TO THE DEVELOPMENT OF TAX PROFESSION AWARD
7. AIFTP BEST UPCOMING SPEAKER AWARD
8. AIFTP BEST ZONE AWARD
9. AIFTP MEMBERSHIP DEVELOPMENT AWARD
10. AIFTP MAXIMUM PARTICIPATION IN THE CONFERENCE AWARD
11. AIFTP BEST SOUVENIR AWARD
12. AIFTP BEST ARTICLE IN AIFTP JOURNAL AWARD
13. AIFTP BEST ARTICLE IN SOUVENIR AWARD
14. AIFTP MAN OF THE YEAR AWARD
15. AIFTP AWARD TO CHARTERED ACCOUNTANT HAVING MORE THAN 50 YEARS OF PRACTICE
16. AIFTP AWARD TO THE TAX PRACTITIONER HAVING MORE THAN 50 YEARS PRACTICE
17. AIFTP AWARD TO AN ADVOCATE HAVING MORE THAN 50 YEARS OF PRACTICE

Note: That considering the COVID-19 pandemic, as the physical Conferences and Seminars are not possible, wherever the word Conference or Seminar occurs, it shall be read as Seminar or Conference physical or virtual.

That for the purpose of Award no.4, i.e. The Maximum Participation Award, the criteria will be "attended by maximum participants on Zoom meeting app on a particular day".

Santosh Gupta
Convener
Award Committee

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of Tax Practitioners Association Thane for the year 2020-22

President : CA Bharat Sachdev

Vice President : CA Girish Rath

Hon. Secretary : Shri Kiran Savar

Treasurer : CA Arvind Ramani

Jt. Secretary : CA Krunal Davda

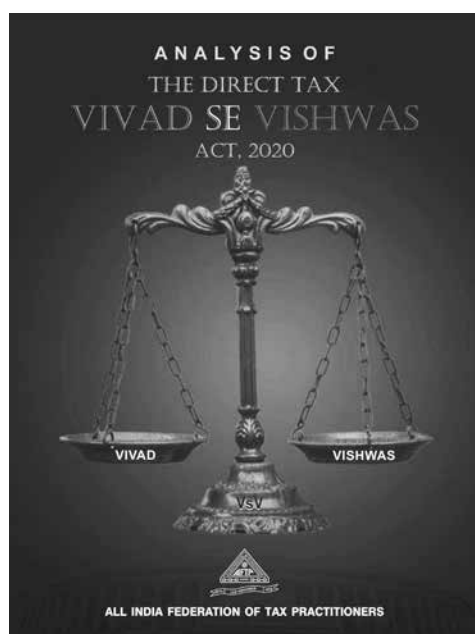
Jt Treasurer : CA Arvind Jain

We wish them all the success

List of Webinars held by AIFTP and its various zones from 29th September, 2020 to 18th October, 2020

Sr. No.	Date	Day	Zone	Topic	Speaker
104	26/09/2020	Saturday	Eastern	Works Contract in VAT and GST Regime	Mr. P. Purushotham, Advocate Chennai
105	26/09/2020	Saturday	Western	Felicitation Programme and Technical Session on Challenges and Critical Issues in GSTR 9 and 9C	CA Aditya Khandelwal
106	26/09/2020	Saturday	Northern	Annual Return Concept, Preparation and Filing with Practical Approach	Mr. Anuj Bansal, Advocate
107	30/09/2020	Wednesday	Eastern	Faceless Assessment and Appeals under Income Tax Act	Dr. Girish Ahuja Delhi
108	10/10/2020	Saturday	Southern	Audit in GST – Intricacies	Sri. V Srinivasa Rao Sri. S Suresh Kumar
109	11/10/2020	Sunday	Northern	Gyan Jyoti & Liberation Series Webinar on New TCS Provisions	Sh. Rajesh Mehta CA Sh. DK Gandhi, Advocate
110	17/10/2020	Saturday	Southern	Capital Gains issues in Joint Development Agreements – Income Tax	CA Rama Subramanyam, Bengaluru Sri. G Basker, Advocate, Chennai
111	18/10/2020	Sunday	Northern	Gyan Jyoti & Liberation Series Webinar on GSTR-9 & 9C	Ms. Aanchal Kapoor, CA Sh. Sunil Maheshwari, Advocate

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



1st E-Publication of All India Federation of Tax Practitioners Now available in Downloadable Format

Subject – Vivad Se Vishwas Act, 2020
(Regularly Updated with latest Notifications & Circulars)

Authored by

Vipul Joshi & Dinkle Hariya, Advocate

Price ₹ 500 + GST ₹ 90 = ₹ 590/-

Special 50% discount to members

@ ₹ 250 + GST ₹ 45 = ₹ 295/-

BOOK RELEASE ANNOUNCEMENT



We are pleased to announce the release of the E-publication by the All India Federation of Tax Practitioners titled **“151 Landmark Judgements of the Honourable Supreme Court of India (Direct Taxes, Indirect Taxes and Allied Laws) – 151 years of Mahatma Gandhi”**.

The E-publication was released by Hon'ble Mr. Justice Rajesh Bindal, Judge, Jammu and Kashmir High Court alongwith Hon'ble Mr. Justice, Ujjal Bhuyan, Judge, Bombay High Court, Hon'ble Dr. Justice Anita Sumanth, Judge, Madras High Court, Hon'ble Mr. Justice Kalyan Rai Surana, Judge, Guahati High Court, Hon'ble Mr. Justice Piyush Agrawal, Judge, Allahabad High Court and Hon'ble Mr. Justice Soumitra Saikia, Judge, Guahati High Court at Virtual Two Day National Tax Conference on 2nd October, 2020 organised by AIFTP (NZ).

This is a unique publication which is dedicated to the fond memory of Honourable Justice Late Dr. B. P. Saraf, Former Chief Justice, Jammu and Kashmir High Court.

The Editorial Team for the publication consists of various seniors in the profession, who has shared their experience and knowledge. This publication is authored by various professionals across the country, who appears regularly before the ITATs and the Hon'ble High Courts across India.

This publication is divided in to two parts. First part of the publication deals with 101 landmark judgements of the Hon'ble Supreme Court of India on direct taxes which are digested section

wise. Some of the judgments which are dealing with Indian Income-tax, 1922, still holds good while interpreting the Income-tax Act, 1961. For ready reference corresponding reference of, Income-tax, 1961 are referred on the second part 50 land mark judgements of the Honourable Supreme Court are digested on Indirect taxes and Allied laws. The digested cases on indirect taxes will be relevant for the interpretation of Goods and Services taxes.

In this publication Land mark of Judgements from 38 Acts are digested. Speech of Honourable Prime Minster of India Shri Narendra Modi, to mark 150 Birth Anniversary of Mahatma Gandhi at UN. on 25-9-2019, Messages from Honourable Judges and 151 Quotations of Gandhiji Bapuji which are cited in this publication will serve as an inspiration to the readers.

Editorial note by the editorial team on each case are immense value addition to this publication.

Cases laws digested on Allied laws are selected on the basis of important Acts which are very much relevant to the tax practitioners and tax payers across the country.

The index to case laws s prepared in alphabetical order. For instance the revenue is the petitioner/applicant the index is shown as under:

Case: Presented in index case laws as:

*CIT v. Raja Benoy Kumar Sahas Roy - Raja Benoy Kumar Sahas Roy; CIT v.**

*UOI v. U.A.E. Exchange Center - U.A.E. Exchange Center; UOI v.**

Kale Khan Mohammad Hanif v. CIT - Kale Khan Mohammad Hanif v. CIT

The subject wise and section wise index will aid in swift search of case laws on the issue. This publication will serve as a useful reference to tax professionals, tax payers and also tax administration.

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.

The publication is free to all.

Please find below the link, from where you can download the pdf file of the said E-Publication and also view the same in flip format.

https://www.aiftponline.org/wp-content/themes/the-bootstrap/151-landmark-judgements/151_landmark_judgements.pdf

Few hard copies are available only for members of AIFTP on first come first serve basis.

Local/Outstation members requiring delivery of the book are requested to pay ₹ 100/- per publication as courier charges. Please make all cheques / draft payable to **"All India Federation of Tax Practitioners"**. **Kindly get confirmation of availability of the publication from the office of the Federation before sending the courier charges.**

General Anti-Avoidance Rule

Few copies
are available



The price of publication is
₹ 800/-

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courier charges ₹ 100/-
₹ 740/-

For
Others

₹ 720/-
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₹ 820/-

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MODE OF PAYMENT

You may transfer your payment through NEFT to our below mentioned a/c & send us the transfer / deposit receipt for checking with our bank statement. Our bank details are as under:-

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Bank Details : Ground Floor, Navsari Building, Dr. D. N. Road, Fort, Mumbai - 400 001
Account Name : All India Federation of Tax Practitioners
Account Number : 623501161215
Account Type : Saving Bank Account
RTGS / NEFT Code : ICIC0006235



For further details please contact:

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Direct Taxes

Shashi Ashok Bekal, Advocate

Supreme Court

1. **S. 12AA: Procedure for registration – Trust or institution - Charitable purpose — Objects of Trust and activities are in furtherance of objects -Newly formed trust - Registration cannot be refused on the ground that no activities were carried on - Remand of matter for fresh disposal of matter – Order of High Court is affirmed.**

The Supreme Court held that where the assessee-trust had not spent any amount of its income for charitable purposes. This was a case of not carrying out the objects of the trust, and not of carrying on activities contrary to its objects. These circumstances may arise for many reasons including not finding suitable circumstances for carrying on activities. Undoubtedly the inaction in carrying out charitable purposes might also become actionable depending on other circumstances but it was for the Commissioner to consider the issue by exercising his powers under section 12AA(3) of the Act, if the facts justified such actions.

(DIT v. Foundation of Ophthalmic and Optometry Research Education Centre (2013) 355 ITR 361 (Delhi) (HC) (Delhi) affirmed. CIT v. R. S. Bajaj Society (2014) 222 Taxman 111 (All) (HC) approved. Self-Employers Service Society v. CIT (2001) 247 ITR 18 (Ker) disapproved.)

DIT (E) v. Foundation of Ophthalmic and Optometry Research Education Centre (2020) 426 ITR 340 (SC)

High Courts:

2. **S.145: Project competition method – On money receipt – Addition can be made in the year of completion project and not in the year of search and seizure Action.**

In course of search, note book and loose paper were found and seized. The assessee did not offer the unaccounted cash receipts as found recorded in the seized documents. The Assessee followed project completion method of accounting and offered it to tax in the year of completion of project.

It was held, the receipts in question cannot be brought to tax in A.Y. 2003-04. These receipts have already been accounted for in the books of account can be taxed only in the year in which project is complete and income from the project is offered for tax. Upheld Tribunal Order in ITA No.5121-23/Mum/08 dt. 28-4-2009 9 (Mum) (Trib) (AY 2003-04 to 2005-06). (ITA No. 4104 of 2009 dt 22-11-2010)

CIT v. Jalaram Jagruti Development Pvt. Ltd (Bom) (HC) (UR)

Tribunal:

3. **S. 23: Income from house property - Annual value - Remained vacant throughout relevant year - No addition can be made on account of notional rent.**

Assessee, engaged in business of trading in shares and commodities, owned a property. The said property remained

vacant throughout relevant year due to obstruction caused by ongoing Metro Project just before entrance of premises. Tribunal held that addition on account of notional rent is held to be not justified Followed. *Sachin R. Tandulkar v. Dy. CIT (2018) 172 ITD 266 (Mum) (Trib) (AY. 2014-15)*

Empire Capital (P) Ltd. v. ACIT (2020) 181 ITD 173 (Mum) (Trib.)

4. **S.45: Capital Gains - Shares Transfer vs. Loan Pledge - No transfer of shares but only a pledge of shares for purposes of a loan - No capital gain could be charged on notional / hypothetical basis. [S. 2(47)]**

Tribunal held that where there was no transfer of shares but only a pledge of shares for purposes of obtaining a loan and revenue not disputed the fact of return of loan and also receipt of pledged shares creditor, no capital gain could be charged. Only income was actually received or accrued upon sale of shares has to be taxed and not any contingent deferred income, notional or hypothetical income taxed as capital gain income in the hands of the Assessee. Followed *Reliance Communication Infrastructure Ltd. (2012)254 CTR 251(Bom.)(HC) and Hemal Raju Shete (2016) 239 Taxman 176 (Bom)(HC) (ITA No. 4566/MUM/2013, dated 07/10/2020. (AY 2001-2002)*

ACIT v. Safari Mercantile Pvt. Ltd., (Now Vahanvati Conlft. Pvt. Ltd.) (Mum) (Trib.) (UR)

5. **S. 45(3): Capital gains - Transfer of capital asset to firm – AOP – BOI –TDR transferred to AOP – Deemed transfer – Not sale - Section 50C will not apply – Specific provision will prevail over general provisions [S. 50C]**

Where the assessee purchased development rights, entered into a Joint Venture agreement, and agreed to contribute the said development right as 'capital contribution' at an agreed consideration to the AOP. The Assessing Officer while framing assessment treated transfer of the development rights under Section 50C of the Act.

The Tribunal held that the introduction of development rights by way of capital contribution under section 45(3) of the Act by the assessee is even though a transfer but it is not a sale because there neither any receipt nor any accrual of any consideration, as held by the Hon'ble Supreme Court in the case of *Sunil Siddharthbhai v. CIT (1985) 156 ITR 509 (SC)*. Further this Tribunal case of *Voltas Ltd v. ITO [2016] 74 taxmann.com 99 (Mumbai)*, wherein it is held that the provisions of section 50C of the Act could not be applied to sale development rights of land owned by the assessee. Therefore, the provisions of section 50C of the Act are not applicable in the instant case and provision of section 45(3) of the Act will be applied. ITA No. 2279/MUM/2017 dt 11-8-2020 (AY. 2012-13)

Network Construction Company v. ACIT (Mum) (Trib.) (UR)

Indirect Taxes

Tanmay Mody, GST Practitioner

1) GST – Refund of ITC of input services under Inverted Duty Structure

Whether the expression “inputs” in Section 54(3)(ii) of the CGST Act and in the definition of “Net ITC” in Rule 89(5) of the CGST Rules, is liable to be read as encompassing both input goods and input services? Whether the words input services may be read into Section 54(3)(ii) as an exception to the general rule of casus omissus?

Held: The proviso to Section 54(3) does not merely set out the two cases in which registered persons become eligible for a refund of unutilised input tax credit, the proviso performs the larger function of also limiting the entitlement of refund to credit that accumulates as a result of the rate of tax on input goods being higher than the rate of tax on output supplies. Once the amended Rule 89(5) is analysed in the context of Section 54(3)(ii), it is clear that Net ITC has been re-defined in the amended Rule 89(5) so as to provide for a refund only on unutilised input tax credit that accumulates on account of input goods, whereas, as per the unamended Rule 89(5), Net ITC covered not only input tax credit availed on input goods but also on input services. Hence, Rule 89(5) of the CGST Rules, as amended, is intra vires both the general rule making power and Section 54(3) of the CGST Act. The Court is unable to subscribe to the conclusions in VKC Footsteps on the ground that the Gujarat High Court failed to take into consideration the scope, function and impact of the proviso to Section 54(3). It is held that – (1) Section 54(3)(ii) does not infringe Article 14. (2) Refund is a statutory right and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power. (3) There is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii). (4) Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also the imposes a source-based restriction on refund entitlement and, consequently, the quantum thereof. (5) Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii). Consequently, it is not necessary to interpret Rule 89(5) and, in particular, the definition of Net Input Tax Credit therein so as to include the words input services.

(Source: Order by the Madras High Court in WP Nos. 8596 & Ors. of 2019 and 2020 dt. 21st September, 2020 in the case of M/s. Transtonnelstroy Afcons JV v. Union of India & Ors.)

2) GST – Frivolous Litigation

Revenue appeal against Single Bench Order directing the Authorities-Appellants to do the needful to enable the assessee

to upload the requisite Form Tran 1 in order to avail the unutilized credit under the GST regime.

Held: The learned Single Judge had merely directed the Authorities to do the needful forthwith to enable the Assessee to upload the requisite Form Tran 1. Against the said innocuous order, what ought to have been complied with by the Authorities in letter and spirit, they have chosen to file the present Writ Appeal, which is a frivolous litigation, totally unnecessary and a sheer wastage of time and money of the State. The appeal seems to have been filed by the ill-conceived advices given to the Appellants for filing the intra court Appeal in such a manner. the Revenue Department, cannot be permitted to file such frivolous appeals by way of intra court appeals. Instead of complying with the order of the Id. Single Judge, the Department is seeking to raise all kinds of technical and hyper technical pleas in the present intra-court appeal. The Court strongly deprecate such practices of the Revenue Authorities.

(Source: Order in Appeal no. 788 of 2020 dt. 23rd September, 2020 by the Madras High Court in The Commissioner of GST & Central Excise & Ors. v. M/s. Checkpoint Apparel Labeling Solutions P. Ltd.)

3) GST – Refund of ITC distributed by ISD

Whether the petitioner is entitled to the refund of unutilized input tax credit, distributed by ISD, by virtue of being an SEZ unit?

Held: Rule 89 of the CGST Rules provides for procedure for refund of tax, interest, penalty, fees and prescribes that in respect of supplies to a SEZ unit, the application for refund has to be filed by the supplier of goods or services. The contention of the respondents that as the petitioner is not the supplier of the goods and services, the petitioner would not be entitled to file application for refund is not tenable because in facts of the present case, input service distributor as defined under section 2(61) of the CGST Act is an office of the supplier of goods and services which receives tax invoices issued under section 31 of the CGST Act towards the receipt of input services and issues a prescribed document for the purpose of distributing the credit of GST paid on such goods or services. Therefore, it is not possible for a supplier of goods and services to file a refund application to claim the refund of the input tax credit distributed by ISD. The stance of the department that the petitioner is not entitled to seek the refund of the ITC paid in connection with goods or services supplied to SEZ unit is not tenable. The petitioner is entitled to claim refund of the IGST lying in the Electronic Credit Ledger as there is no specific supplier who can claim the refund under the provisions of the CGST Act and the CGST Rules as input tax credit is distributed by the input service distributor.

(Source: Order in Special Civil Application No. 15473 of 2019 dt. 11th March, 2020 by the Gujarat High Court in the case of M/s. Britannia Industries Ltd. v. Union of India)

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