

All India Federation of Tax Practitioners






# AIFTP TIMES

Volume 12 – No. 1 • January 2021

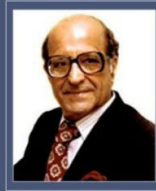
*We wish all our members and readers  
Happy New Year 2021*

## FORTHCOMING PROGRAMMES


Date & Month	Programme	Place
16th January, 2021	Lecture Meeting on Centenary Celebration of Padmavibhusan Late Dr. N. A. Palkhivala, Sr. Advocate - A Tribute - Remembering the Legend	Virtual Zoom Platform


**ALL INDIA FEDERATION OF TAX PRACTITIONERS**  
Organising  
an Virtual Program  
*"Birth Centenary Celebration of Padmavibhusan Late Dr. Nani A. Palkhivala, Senior Advocate"*



on Saturday, 16<sup>th</sup> January, 2021, from 4.00 p.m. to 6.00 p.m.  
Release of Special issue of the AIFTP Journal  
"Remembering the Legend - Padmavibhusan Late Dr. N. A. Palkhivala, Senior Advocate - A Tribute"  
followed by



Lecture by  
**Dr. M. V. K. Moorthy**  
Advocate, Hyderabad.  
"Constitution – Judge made Law".



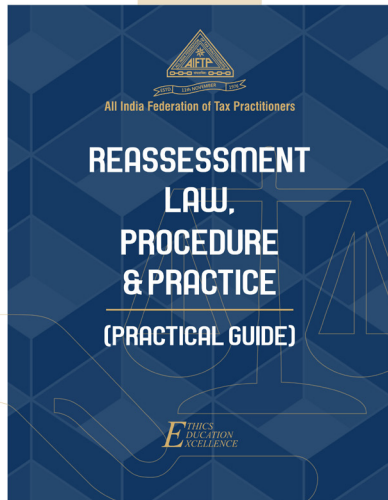
Lecture by  
**Shri. Arvind P. Datar**  
Senior Advocate, Chennai.  
"Tribute to Nani Palkhivala"

**Note : Zoom Meeting ID : 6850720567 and Passcode : 123456**

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## BOOK RELEASE ANNOUNCEMENTS



This publication is dedicated to  
Late Justice Dr. B. P. Saraf, Former Chief Justice, Jammu and Kashmir High Court

We are pleased to announce the release of the E-publication by the All India Federation of Tax Practitioners titled “**Reassessment – Law, Procedure & Practice (Practical Guide)**” by Hon’ble Mr. Justice Vineet Saran, Judge, Supreme Court of India at 23rd Virtual National Convention held on 5th December, 2020.

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.

This publication is edited by Dr. K. Shivaram, Sr. Advocate, Mumbai, who has shared his experience and knowledge. This publication is authored by Shri Ajay R. Singh, Advocate, Mumbai, who appears regularly before the ITATs and the Hon’ble High Courts across India.

This publication was designed taking feedback from the readers of the detailed article on “A Comprehensive Guide to the law of Reopening of assessments” published in the years 2012 and 2018 on AIFTP journal/ www.itatonline.org. It had received a great response that a updated article was again published in July 2020 in www.itatonline.org. Considering overwhelming response the publication committee of the AIFTP proposed a comprehensive publication for the benefit of tax professionals. This publication has 26 chapters.

This Print edition has taken shape after an extensive research on the subject undertaken by Ajay R. Singh, Advocate under guidance of Dr. K. Shivaram Senior Advocate.

It is a unique publication in simple language simplifying and explaining step wise various issues relating to reassessment, right from issuance of notice by the Assessing officer. The author has explained step wise procedure to be followed on receipt of such notice, remedies available and care to be taken while drafting reply to the notices. This publication covers the widest possible expanse of the subject in all its finer aspects.

The list of legal principle culled out from various decisions and independent chapter on each issue are immense value addition to this publication. The exhaustive contents of the book are aimed at providing research based comprehensive and issue wise write up on the subject of reassessment. The subject wise and section wise index will aid in swift search of case laws on the issue.

All important concepts and propositions affirmed by various Courts and Tribunals has been analysed and discussed threadbare. All important Case laws on each issue are selected having precedent values which are very much relevant to the tax practitioners and tax payers across the country.

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.**

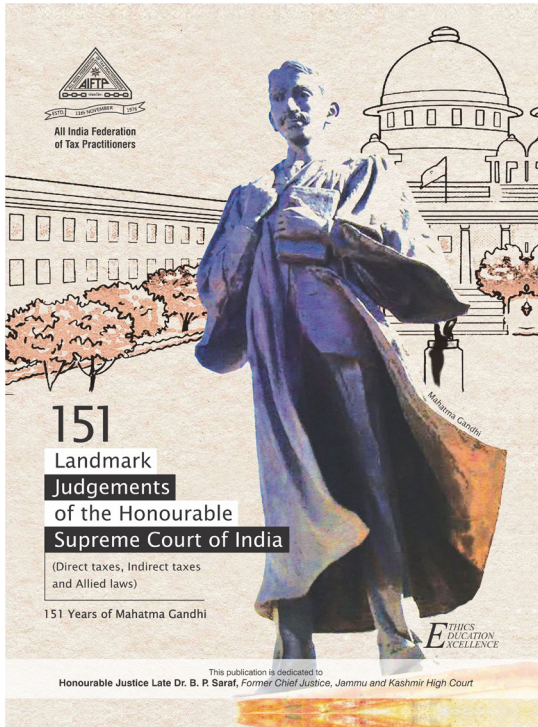
Please find below the link, from where you can download the pdf file of the said E-Publication and also view the same in flip format.

<https://aiftponline.org/wp-content/themes/the-bootstrap/reassessment/>

We are also pleased to announce that the author has agreed to answer issues relating Reassessment upto 31-1-2021. Questions may be e-mailed to aiftpho@gmail.com

Also hard copies are available in our Office and is given FREE to Members from office of the Federation. Outstation Members may send their request to the HO with the courier charges of Rs. 100/- only. The publication shall be supplied on First come first serve basis till the stock exists.

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.**



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.

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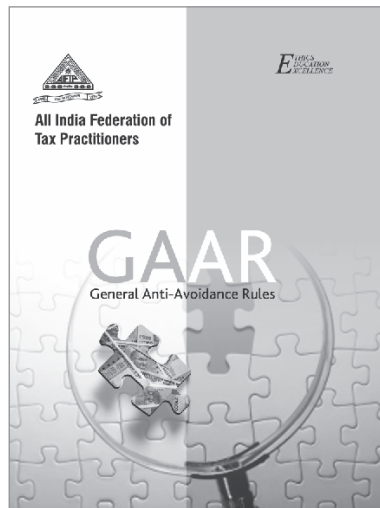
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are available



The price of publication is  
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For Members AIFTP and www.itatonline.org subscribers	For Others
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courier charges ₹ 100/-	courier charges ₹ 100/-
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## All India Federation of Tax Practitioners

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## Direct Taxes

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

### High Court :

- S. 10B : Export oriented undertaking (Splitting up or reconstruction) – new unit set up which was adjacent to old unit – no assets was from old unit to new unit – new unit separate and distinct, assessee eligible for exemption u/s. 10B.**

The Honorable Bombay High Court held that, assessee a 100 per cent Export Oriented Unit (EOU) had set up a new unit adjacent to old unit and raised its annual production capacity to 15 lakh tons from previous 2 lakh tons and there was no allegation on assessee of transferring assets from old unit to new unit and new unit was separate and distinct, assessee could not have been denied exemption u/s. 10B since there was no statutory requirement that there had to be separate approval for each unit as 100 per cent EOU to claim deduction u/s. 10B.

*CIT v. Sociedade De Fomento Industrial (P) Ltd., Tax Appeal Nos. 23 & 25 Of 2012 & 69 To 74 Of 2014, Dtd.20/10/2020 (Bom.)(HC) Source : www.bombayhighcourt.in*

### Tribunal :

- S. 54B(1) : Purchased new agricultural land – Transfer within period of two years from date of sale of earlier agricultural land - exemption u/s. 54B could not be denied.**

The Dispute is the denial of claim of exemption u/s. 54B, the assessee, purchased a new agricultural land on 26-8-2013. The authorities below have denied the assessee's claim on the ground that the Assessee did not deposit the amount of capital gain in the designated capital gain account maintained with a bank before the due date of filing return u/s.139(1) and hence benefit of exemption u/s. 54B(1) was denied.

The Honorable Tribunal observed that, the time u/s. 139(4) was available up to 31-03-2014, the assessee opened a bank account under the designated Capital gain account scheme on 03-08-2013 and purchased a new property on 26-08-2013. Thus, the assessee complied with the requirement of s. 54B(2) seen in the light of the time limit as per s.139(4) of the Act. Further s. 54B(1) requires purchasing of new agricultural land within the period of two years from the date of sale of earlier agricultural land. The original agricultural land was sold on 12-10-2011 and new agricultural land was purchased on 26-08-2013, which is well within the given period of two years from the date of transfer. Tribunal held that the assessee has complied with the conditions for availing exemption u/s. 54B,

therefore benefit u/s. 54B as claimed by the Assessee could not be denied. (AY. 2012 – 2013)

*Uddhav Krishna Bankar v. ITO, ITA No. 617 to 620/Pune/2018, dt.27/10/2020 (Pune)(Trib.) Source : www.itat.nic.in*

- S.56(2) : Sale consideration received by Assessee on sale of property, which belongs to the children, same is neither capital receipt nor income from other sources in the hands of Assessee, it is only a gift received from children, which is exempt u/s.56(2).**

The assessee received a sum of ₹ 1,20,00,000/- from sale of plot of land situated at Pune. The assessee reflected the said receipt as share of sale consideration on sale of plot, after claiming the benefit of indexation of cost of purchase, the assessee reported long term capital gains and made investment in Rural Electrification Corporation (REC) bonds claimed deduction u/s.54EC as well as capital gains account scheme for the purpose of re-investment in another residential house property and consequently claimed deduction u/s.54/54F. The AO observed that as per the Agreement for Sale of the said immovable property, the owners/vendors were the four children of the assessee and the assessee was the consenting party. According to the AO, the assessee was not having any ownership right in the immovable property as her name nowhere appeared amongst the owners; she has no rights of whatsoever nature in the said property.

Issue before the Tribunal was whether Sale Proceeds of land should be treated as Capital Gain receipts or Income from Other Source in the hands of Assessee?

While deciding the issue, the Honorable Tribunal held that, the total sale consideration of the property of ₹ 6 Crores should be divided equally among the four children of the assessee, whereas ₹ 1,20,00,000/- paid by the purchaser to the assessee was over and above the total sale consideration of ₹ 6 Crores, it could be concluded that the amount received by the assessee would be the gift received by the assessee from her four children in the interest of substantial justice. Further the said receipt of ₹ 1,20,00,000/- is neither sale consideration on sale of property nor it could be taxed as income from other sources and it is only a gift received from 4 children which is exempt u/s.56(2) of the Act. (AY 2012-2013)

*Mrs. Asha Arun Gawli v. ITO, ITA No. 4220/Mum/2017, dt.11/12/2020 (Mum.)(Trib.) Source : www.itat.nic.in*



## Indirect Taxes

Tanmay Mody, GST Practitioner

### 1) Maharashtra AAR – ITC on capital goods and promotional material given as gifts

Whether promotional materials and marketing items, which are used in brand promotion and marketing qualify as inputs as defined in section 2(59) of the CGST Act 2017?

**Held: Distributable Goods** - The Input Tax Credit on GST paid on the procurement of the “distributable” products which are distributed to the distributors, franchisees is allowed as the said distribution amount to supply to the related parties which is exigible to GST. In the case of issue of “distributable” goods to the retailers, since the persons to whom the distributable goods are given are not related parties and are distinct persons and are not employees of the applicant, the transaction is not coming under the scope of supply and hence the applicant is not eligible to claim input tax credit on the same.

**Non-Distributable Goods:** The non-distributable goods given to the distributors, franchisees and retailers are not transferred out of the accounts of the applicant and remain in the accounts of the applicant as assets. The applicant is capitalizing these goods and on the day of their disposal, the said goods are destroyed. Since the applicant is retaining the ownership on these materials and are not a direct cost of the products sold, they can be treated as capital goods and hence needs to be capitalized in his books of accounts. Since the applicant has used or intended to use the goods and services procured in the course or furtherance of business, the applicant is entitled to take input tax credit, subject to other provisions of the Act. The non-distributable goods are used by the applicant for the purpose of their business and at the time of such writing off or loss or destroyed, the input tax credit claimed under section 16 needs to be reversed as per Rule 43 of the CGST Rules, 2017.

**Goods Distributed for Free:** The Franchisees of the applicant are associated in the business of one another and hence are related persons. Applicant disposes the distributable goods by way of gifts and free supplies to promote business and hence are to be treated as supplies in terms of para 2 of Schedule I to the CGST Act 2017. The applicant is liable to discharge applicable GST on such supplies and thereby is entitled to avail input tax credit on the said supply of goods. Retailers and all brands stores

do not fall under the related persons to the applicant. Since the persons to whom the distributable goods are given are not related parties and are distinct persons and are not employees of the applicant, the transaction is not coming under the scope of supply and hence the applicant is not eligible to claim ITC on the same.

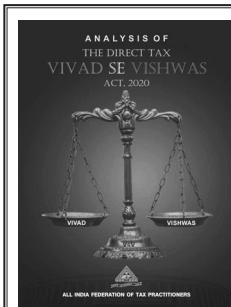
*(Source: Order by the Maharashtra AAR in the case of M/s. Page Industries Ltd. (citation awaited))*

### 2) GST – Refund of Excess TDS from Electronic Cash Ledger

Challenge to rejection of refund on the ground that there was no excess deduction or erroneous deduction by tax deductor under GST.

**Held:** The respondent has completely misunderstood the nature of the claim made by the petitioner as also the scope and ambit of Sections 51 and 54 of the CGST Act. The proviso to Section 54(1) deals with claim for refund of any balance in the Electronic Cash Ledger, this claim has to be read in the backdrop of the provisions of Section 49(6) of the Act, which provides that the balance in the Electronic Cash Ledger or Electronic Credit Ledger after payment of output liabilities may be refunded in accordance with the provisions of Section 54. In terms of provisions of Sections 51 and 54 of the CGST Act, whenever there are amounts credited into the Electronic Cash Ledger and a situation arises where, after the payment of tax, interest, penalty, fee or other amounts payable by an assessee, there remains a balance in the Electronic Cash Ledger, it is open to the assessee to claim a refund of that balance under the first proviso to Section 54 of the Act. The respondent has misdirected himself and treated the claim for refund preferred by the petitioner as one relating to Section 51(8) of the Act. The respondent is directed to ascertain the excess amount lying to the credit of the petitioner’s Electronic Cash Ledger after making provision for any known and determined liability of the petitioner and thereafter refund the said excess amount to the petitioner.

*(Source: Order in WP(C) No. 22593 of 2020 dt. 18th December, 2020 by the Kerala High Court in M/s. Royal Edible Company v. The Commissioner of State GST & ors.)*



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

(Regularly Updated with latest Notifications & Circulars)

**Authored by Vipul Joshi & Dinkle Hariya, Advocate**

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Eastern	6	1876	37	0	1919
Northern	0	1348	18	1	1367
Southern	1	1567	21	5	1594
Western	5	2687	37	6	2735
<b>Total</b>	<b>12</b>	<b>8639</b>	<b>138</b>	<b>12</b>	<b>8801</b>

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