

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

Volume 12 – No. 7 • July 2021

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
11th July 2021	Webinar on Taxation of Distribution of Assets on Retirement or Dissolution of partnership or otherwise	Zoom Platform
August, 2021	National Executive Committee Meeting & National Tax Conference	Thrissur/Ernakulam
1st, 2nd, 3rd October, 2021	National Executive Committee Meeting & National Tax Conference	Katra (Jammu)
11th, 12th & 13th November, 2021	Foundation day Celebration	Pune

APPEAL

Dear Members,

The Federation has formulated a Financial Support Scheme for its members who have been affected by this pandemic Covid-19 and need financial assistance.

Since the implementation of Scheme from 17th of May 2021, almost 250 members have contributed to this Fund for helping the fellow Professionals and keeping the names confidential in more than 10 cases we have disbursed the requisite amount within 48 hours of the receipt of Application.

- 1) We request you to come forward and contribute generously extending a helping hand to our fellow members, you may transfer your contributions directly to our HO Bank Account. The Bank Details are as under:

ALL INDIA FEDERATION OF TAX PRACTITIONERS**BANK NAME: ICICI BANK LTD****MUMBAI FORT BRANCH****ACCOUNT NO. : 623501161215****SAVING ACCOUNT****RTGS/NEFT CODE: ICIC0006235**

Please share the details of your contributions with Mr. Ravindra Patade, CEO, and AIFTP through Whatsapp on 9869722522 or through mail to aiftpho@gmail.com for our records.

- 2) We further request each and every member requiring any Financial assistance may please write to aiftpho@gmail.com or communicate with the Zone Chairman / Secretary/ National Vice President providing the details as required under the scheme which **has been published in this issue of AIFTP Times at page No. 2**. We assure you that keeping the name confidential we shall process the application within 48 hours.

Thanking you,

With regards,

Dr. Ashok Saraf,
Chairman of Committee

M. Srinivasa Rao
National President

S. S. Satyanarayana
Secretary General

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

Name	Mobile	Tel. (O)	E-mail
National President – Shri M. Srinivasa Rao, TP	9885796999	08812-238898	sai9malladi@yahoo.com
Deputy President – Shri D. K. Gandhi, Adv.	9810216801	0120-2718620	advocatedkgandhi@gmail.com
Secretary General – Shri S. S. Satyanarayana, TP	9989924646	040-40077737	sreepadass@gmail.com
Treasurer – CA. Vijay Narayan Kewalramani	9820073165	022-25372532	info@kewalramani.in

ALL INDIA FEDERATION OF TAX PRACTITIONERS FINANCIAL SUPPORT TO MEMBERS (COVID-19) SCHEME, 2021

In view of the current pandemic Covid-19, many of the members of the Federation have been hospitalized for treatment. Many of the Members have also lost their lives. Due to the present Covid-19 pandemic situation, such members and/or their families are facing financial exigencies. With a view to give financial support to such members and/or their families, the Federation has framed a scheme to provide financial support to the needy members and/or their families.

- 1) This scheme is called as AIFTP Financial Support to Members (COVID-19) Scheme, 2021.
- 2) The scheme has come into force with effect from 01-03-2021. The object of the scheme is to provide financial support to the members who are facing financial exigencies because of the hospitalization due to Covid-19 and to the family of the member who lost his/her life due to the Covid-19.
- 3) A Committee is constituted who will provide financial assistance to the needy members and their families. The composition of the Committee is as under-
 - i. Chairman: Dr. Ashok Saraf, Past President, Guwahati
 - ii. Member: Shri. Sanjay Kumar, Allahabad
 - iii. Member: Shri. S. Venkataramani, Bengaluru
 - iv. Member: Shri. Vivek Agarwal, Kolkata
 - v. Ex-Officio Member: Shri. M Srinivasa Rao, National President
 - vi. Ex-Officio Member: Shri. S. S. Satyanarayana, Secretary General
 - vii. Ex-Officio Member: Shri. Vijay Kewalramani, Treasurer
- 4) The decision of the Committee in providing financial support shall be final and shall not be questioned by anyone at any level.
- 5) The quantum of financial support shall be as under:-

Sl. No.		Amount
1.	Hospitalization of members upto 7 days due to Covid-19	₹ 20,000
2.	Hospitalization of the member due to Covid-19 for a period of more than 7 days	₹ 35,000
3.	Death of a member due to Covid-19	₹ 50,000
4.	That in cases of Home Quarantine & Treatment at Home if the member is having financial exigencies and there is recommendation of the Chairman or Secretary or the National Vice President of the respective Zone, in such cases the committee may sanction Financial support of amounts as it finds reasonable but which shall remain within the above limits.	

Note: That where the member is hospitalised and has a Medical Insurance Policy from an Insurance Company then the financial support shall be given of amounts as the committee finds reasonable.

- 6) The member or their family who needs financial support shall send such a request to the Committee duly recommended by the Chairman and/or Secretary in consultation with National Vice President of the Zone to which the member belongs.
- 7) The concerned member must be a member of the Federation as on 31.12.2020.
- 8) The member seeking financial support of the Scheme of 2021 shall not have an average Net Income above ₹ 7,50,000 during the years 2017-18, 2018-19 and 2019-20 from any of the sources.

- 9) The member concerned and/or family member of the member shall provide necessary Bank details for the transfer of the financial support amount. The name of the member of the Federation and/or family to whom the financial support is given shall be confidential and shall not be disclosed to anyone under any circumstances.
- 10) A self declaration to that effect shall be given by the member or the family member of the said member to the aforesaid effect. After the Covid period is over, the member and/or the family member shall give necessary documentary proof in support of the aforesaid to the head Office of the Federation. If the declaration given by the member or the family member as the case may be, is found to be incorrect, the membership of the said member shall be terminated immediately and the said member and/or the family of the said member shall be liable to refund the amount of the financial support to the Federation forthwith.

GOOD NEWS FOR AIFTP

Dear Members,

We are pleased to inform you, that Hon'ble ITAT, Mumbai Bench has **allowed the appeal of the AIFTP** holding that the AIFTP is an Educational Institution. Hon'ble Bench has highlighted the Educational Activities of the AIFTP such as Moot Court, various Webinars, Publication, etc. **Dr. K. Shivaram, Sr. Advocate and Shri Shashi Bekal, Advocate** appeared on behalf of AIFTP. We are thankful to **CA. Harish Motiwalla**, who has represented before CIT(A).

Gist of Judgement is as under:-

S. 11 : Property held for charitable purposes – Assessee is engaged in educational activities to spread education in matters relating to tax laws, other laws and accountancy-Entitled to exemption – Order of CIT (A) denying the exemption was reversed. [S.2(15), 12A, 80G]

Facts:

The Assessee is a Charitable Organization which was established on November 1, 1976. The assessee is the Apex body of Tax Practitioners of India. The members of the Association include Advocates, Chartered Accountants and Tax Practitioners across the Country. The appellant organizes seminars, Lectures, publishes journals, AIFTP Times, publications etc. The appellant has conducted more than 100 webinars during the period of COVID-19, any tax practitioner or public at large are allowed to attend the meetings. All the meetings were without any charges. The said Trust is registered under Bombay Public Charitable Trust Act, 1950, Society Registration Act, 1860 also registered under section 12A of the Act on January 29, 1999 and having certificate of Exemption under section 80G of the Act.

The main object of the Assessee is “to spread education in matters relating to tax laws, other laws and accountancy.”

The Ld. AO vide order dated March 28, 2014 issued under section 143(3) of the Act, inter alia proceed to assess the income of the Assessee as a Mutual Concern rather than a Charitable Organization, thereby making an Addition of Rs. 8,46,038/- by denying the exemption under section 11 of the Income-tax Act, 1961.

Held:

Proviso to Section 2(15) of the Act i.e., any other activity or object of general public activity, will not apply to the assessee as the assessee is engaged in educational activity.

Further, assuming if the assessee is engaged in general public activity, if the Assessee while carrying out charitable objects earns some profit from any commercial activity to supplement, its main object, it cannot be said that the assessee has engaged itself in trade commerce and business so as to attract proviso to section 2(15) of the Act.

Further, the assessee has been granted exemption under section 11 of the Act since many years and the same has been accepted. Therefore, applying the rule of consistency the exemption has to be allowed.

Link for Full Judgement is as under:-

<https://itatonline.org/digest/wp-content/uploads/2021/06/AIFTP-Order.pdf>

Regards,

M. Srinivasa Rao
National President

AIFTP JOURNAL SUBSCRIPTION 2021-2022

Date: February 12, 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, 2021 to 31st March, 2022 falls due for payment on 1st April, 2021.

Life Member

Members are requested to remit the amount of ₹ 1,000/- for one year or ₹ 2,600/- for three years by NEFT/Cheque/Demand Draft at the earliest. You are also requested to fill in all the details in the Renewal Notice.

Non-Member

Non-members are requested to remit the amount of ₹ 1,400/- for one year or ₹ 3,750/- for three years by NEFT/Cheque/Demand Draft at the earliest. You are also requested to fill in all the details in the Renewal Notice.

Thanking you,

Yours sincerely,

For **ALL INDIA FEDERATION OF TAX PRACTITIONERS**

Sd/-

Vijay N. Kewalramani
Treasurer

Sd/-

Mitesh Kotecha
Chairman, Journal Committee

Note :

1. **You can make online payment through our website i.e., www.aiftponline.org**
2. Alternatively payment can be made by NEFT/Account Payee Cheque/Demand Draft in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
3. **Members doing NEFT are requested to intimate AIFTP Office through email i.e. aiftpho@gmail.com along with proof of payment.**
4. OUTSTATION MEMBERS are requested to send payments only by either At Par Cheque or Demand Draft payable at Mumbai drawn in favour of "ALL INDIA FEDERATION OF TAX PRACTITIONERS".
5. An early payment of the subscription would be highly appreciated.
6. **Members who require the AIFTP Journal to be couriered separately at their communication address, should add ₹ 300/- per year as courier charges.**
7. Please send the perforated portion furnished below duly filled in all respects along with the payment.
8. Please write your name on the reverse of Cheque/D.D.

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:-

Name : All India Federation of Tax Practitioners (No short form is allowed)
Bank Name : ICICI Bank Ltd.,
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

Direct Taxes

Ms. Neelam Jadhav, Advocate, KSA Legal Chambers

High Court

1. Sale of Jaggery is not an 'Agricultural Activity', Income Tax Exemption denied.

The assessee, an agriculturalist engaged in the activity of conversion of the sugarcane crops harvested by him into jaggery. While filing income tax return for the relevant year, he disclosed his income from the sale of jaggery as agricultural income and claimed for exemption. The department rejected the claim stating that the said activity cannot be treated as agricultural activity for allowing exemption. The Tribunal also confirms the view of the department.

The Honorable High Court while considering the appeal observed that the conversion of sugarcane into jaggery is also not an essential process to make sugarcane marketable. The assessee did not state the circumstance under which the assessee converted the sugarcane into jaggery, further observed that the assessee has incurred an expenditure for manufacturing of jaggery while the incurred expenditure towards cultivating sugarcane. "Moreover, it is also seen that though manufacturing of jaggery can be done by a small scale by a group of farmers by extracting juice from fresh sugarcane which is filtered and boiled in wide yellow shallow iron pans with continuous stirring and also adding soda or other similar chemicals to get the jaggery, it is evident that the process of converting sugarcane into jaggery is not an essential one to make sugarcane marketable and there is more profit in making it as jaggery and selling. If the exemption of agricultural income is extended to the sale of jaggery, it would only facilitate many agriculturists to claim this exemption and carrying revenue loss to the exchequer,". The High Court held that the exemption for agricultural income under the Income Tax Act, 1961 does not include the income from the sale of jaggery.

E. Palaniappan vs. ITO, Tax Case Appeal Nos.1467 & 1468 of 2008 dated 22/06/2021 (Mad)(HC) source : www.hcmadras.tn.nic.in

2. Depreciation allowable as Application of Income on Charitable Objects

The assessee, is a Charitable Trust registered u/s. 12A of the Income Tax Act. The assessee filed its return of income for the AY 2009-2010. The AO concluded Assessment u/s.143(3), and while concluding the assessment, the Assessing Officer inter alia held that the depreciation claimed by the assessee would not be allowable as a deduction in the computation of the funds available for application by the assessee on the premise that the entire cost of the assets were allowed as an application of the funds in the year when the same were purchased. The AO held that the provisions of s. 11 is distinct from that of s. 14 and that the deductions and the allowances that are provided in chapter V cannot be applied in determining the income for the purpose of s.11 of the Act. Aggrieved over the order of the AO, the assessee filed an appeal before the CIT (A). The CIT (A) allowed the appeal. Before Tribunal Revenue filed an appeal, which confirmed the order of the CIT (Appeals) and dismissed the appeal.

The Honorable court, held that depreciation claim of the assessee would not result in double deduction, though the entire cost of the depreciable assets has already been allowed as application of income towards object of the trust. The Court ruled that the depreciation is allowable as application of income on charitable objects.

CIT vs. M/s. Ramananda Adigalar Foundation Kumaraguru College of Tech Campus, Chinnavedampatti, T.C.A.No.188 of 2014 dated 21/06/2021(Mad)(HC) source : www.hcmadras.tn.nic.in



Join Telegram Group of AIFTP

Dear Members

We have created a Telegram group "AIFTP EDUCATION GROUP", so that all members of the Federation can discuss Education related matters under one roof.

Members are requested to join that group using the following invite link

<https://t.me/joinchat/UI0MqgRtKslMyh8M>

Kindly note those who do not have Telegram app installed will need to install that to be able to join the group.

Also follow the Twitter handle @aiftpindia and join the Facebook Account of AIFTPHO

Regards,

Team AIFTP

Indirect Taxes

Tanmay Mody, GST Practitioner

1) GST – Constitutional validity of Place of Supply for Intermediaries

Challenge to Constitutional validity of 13(8)(b) and section 8(2) of the IGST Act, 2017 to the extent that it seeks to levy GST on services provided to, used and consumed by recipients located outside India and treating the same as intra-state supply leviable to GST. Petitioner case that the service rendered by the petitioner is an export of service to foreign customer located outside India, however, 'intermediary' defined under section 2(13) of the IGST Act has been placed under section 13(8)(b) of the IGST Act by virtue of which the place of supply of the service is the location of the supplier i.e. in India, making the supply is deemed to be an intra-state supply liable to GST.

Held: Per Justice Ujjal Bhuyan: The Constitution has only empowered Parliament to frame law for levy and collection of GST in the course of inter-state trade or commerce, besides laying down principles for determining place of supply and when such supply of goods or services or both takes place in the course of inter-state trade or commerce. Thus, the Constitution does not empower imposition of tax on export of services out of the territory of India by treating the same as a local supply. In the present case, it is certainly a supply of service from India to outside India by an intermediary. Petitioner fulfils the requirement of an intermediary as defined in section 2(13) of the IGST Act. Further, all the conditions stipulated in sub-section (6) of section 2 for a supply of service to be construed as export of service are complied with. The overseas foreign customer of the petitioner falls within the definition of 'recipient of supply' in terms of section 2(93) of the CGST Act read with section 2(14) of the IGST Act. Therefore, it is an 'export of service' as defined under section 2(6) of the IGST Act read with section 13(2) thereof. It would also be an export of service in terms of the expression 'export' as is understood in ordinary common parlance. Section 13(8)(b) of the IGST Act read with section 8(2) of the IGST Act has created a fiction deeming export of service by an intermediary to be a local supply i.e., an inter-state supply. It is apparent that section 9 of the CGST Act cannot be invoked to levy tax on cross-border transactions i.e., export of services. Likewise, from the scheme of the IGST Act it is evident that the same provides for levy of IGST on inter-state supplies. Import

and export of services have been treated as inter-state supplies in terms of section 7(1) and section 7(5) of the IGST Act. On the other hand, sub-section (2) of section 8 of the IGST Act provides that where location of the supplier and place of supply of service is in the same state or union territory, the said supply shall be treated as intra-state supply. However, by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India. This runs contrary to the scheme of the CGST Act as well as the IGST Act besides being beyond the charging sections of both the Acts. Section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 is ultra vires the IGST Act besides being unconstitutional.

Per Justice Abhay Ahuja: Once the Parliament has in its wisdom stipulated the place of supply in case of Intermediary Services be the location of the supplier of service, no fault can be found with the provision by artificially attempting to link it with another provision to demonstrate constitutional or legislative infraction. To say that by virtue of Section 13(8)(b) read with Section 8(2) of the IGST Act, Parliament has sought to impose tax on export of services out of the territory of India by treating the same as local supply in violation of Articles 246A and 269 is completely fallacious and untenable and the argument deserves to be rejected. When there is a specific provision defining Intermediary as contained in section 2(13) of the IGST Act and Intermediary Services are specifically dealt with in section 13(8)(b), the question of application of a general provision would not arise, particularly when the constitutionality of both the above provisions has been upheld. Neither Section 13(8)(b) nor Section 8(2) of the IGST Act are unconstitutional or ultra vires the IGST Act - Section 13(8)(b) is also not ultra vires Section 9 of the CGST Act, 2017. Section 13(8)(b) as well as Section 8(2) of the IGST Act are constitutionally valid and operative for all purposes.

On account of the split decision, the case has been placed before the Chief Justice for further action.

(Source: Separate orders in Writ Petition No. 2031 of 2018 by the Bombay High Court in the case of Mr. Dharmendra M. Jani vs. Union of India & Ors.)

2) GST – Value of Supply for Betting transactions

Whether the petitioners are liable to pay GST on the commission part or on the total amount collected in the totalizator?

Held: Making the entire bet amount that is received by the totalizator liable for payment of GST would take away the principle that a tax can be only on the basis of consideration. The consideration that the petitioners receive is by way of commission as totalizator. This can be nothing different from that of a stock broker or a travel agent, both of whom are liable to pay GST only on the commission income earned and not on all the monies that pass through them. Rule 31A(3) insofar as it declares that the value of actionable claim in the form of chance to win in a horse race of a race club to be 100% of the face value of the bet is beyond the scope of the CGST Act. Article 246A which introduced Goods

and Services Act, the definitions and other provisions of the Act do not bring in the activity of the petitioners under the ambit of the Act. Rule 31A(3) travels beyond what is conferred upon the Rule making authority under Section 9 which is the charging section, by way of an amendment to the Rule. The totalizator is brought under a taxable event without it being so defined under the Act nor power being conferred in terms of the charging section which renders the Rule being made beyond the provisions of the Act. Rule 31A(3) which does not conform to the provisions of the Act is held to be ultra vires the enabling Act. The petitioners are liable for payment of GST on the commission that they receive for the service that they render through the totalizator and not on the total amount collected in the totalizator.

(Source: Order in Writ Petition No. 11168/2018 c/w 11167/2018 by the Karnataka High Court in the case of M/s. Bangalore Turf Club Ltd vs. The State of Karnataka)



Announcement

All India Federation of Tax Practitioners (Western Zone) is pleased to announce its 3rd Online Webinar for the year 2021 covering the following topic:

Topic : Taxation of Distribution of Assets on Retirement or Dissolution of partnership or otherwise

Day & Date : Sunday, 11th July 2021

Time : 10.30 AM To 12.30 PM

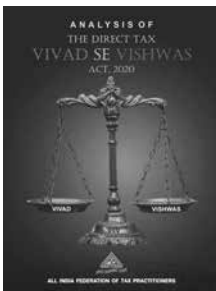
Speaker : CA Jagdish Punjabi

Link to Webinar: Will be shared shortly.

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Chairman
AIFTP (WZ)

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Vice Chairman
AIFTP (WZ)

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Direct Tax



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Sr. No.	Name of Publication	Edition	Rate (₹)		
			Members	Non-Members	Courier Charges per copy
1.	Reassessment – Law, Procedure & Practice (Practical Guide)	Dec., 2020	Free	Available on website	100.00
2.	151 Landmark Judgments of the Honourable Supreme Court	Oct., 2020	Available on website	Available on website	–
3.	Vivad Se Vishwas Act, 2020	May, 2020	295.00*	590.00*	–
4.	GAAR General Anti-Avoidance Rules	Dec., 2019	640.00	720.00	100.00
5.	311 – Frequently Asked Questions on Survey – Direct Taxes	Dec., 2018	600.00	675.00	100.00

Notes: 1. The above publications are available for sale; those who desire to buy may contact the office of the Federation.
2. Local/Outstation members not collecting from office are requested to add courier charges, as mentioned above.
3. Please draw Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai.
* Including GST

Advertisement Tariff for AIFTP Journal

Particulars	Per Insertion
1. Quarter page	₹ 1,500/-
2. Ordinary half page	₹ 2,500/-
3. Ordinary full page	₹ 5,000/-
4. Third cover page	₹ 7,500/-
5. Fourth cover page	₹ 10,000/-

There shall be Discounts on bulk advertisements.

Membership of AIFTP as on 29th June, 2021 Life Members

Zone Name	Associate	Individual	Association	Corporate	Total
Central	0	1178	25	0	1203
Eastern	6	1901	37	0	1944
Northern	0	1429	20	2	1451
Southern	1	1688	23	5	1717
Western	5	2726	38	6	2775
Total	12	8922	143	13	9090

DISCLAIMER

The opinions and views expressed in this Times are those of the contributors. The Federation does not necessarily concur with the opinions/views expressed in this journal.

Non-receipt of the Times must be notified within one month from the date of publication, which is 4th of every month.

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Associate Editor of AIFTP Times : CA. Janak K. Vaghani

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