

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

Volume 13 – No. 7 • July 2022

FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
6th August, 2022	National Executive Committee Meeting	New Delhi
6th & 7th August, 2022	National Tax Conference (Northern Zone)	New Delhi
13th August, 2022	One Day Tax Conference (Eastern Zone)	Patna
28th August to 2nd September 2022	International Conference & Study Tour	Dubai & Abu Dhabi
1st October, 2022	National Executive Committee Meeting	Dwarka
1st & 2nd October, 2022	National Tax Conference (Western Zone)	Dwarka
16th to 18th December 2022	25th National Tax Convention 2022 (Central Zone)	Jaipur

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Journey of this Journal started with the idea conceptualized by Dr. Ashok Saraf the then President of AIFTP and immediately we started working on it and released the journal within a month of conceptualization. It has continued free of cost since then and now it has been felt that a nominal amount be fixed for the subscription of it. The Journal has been applauded by the Professionals and it has received wide acceptance and the Articles contained in the Journal are on the recent issues and controversies and amendments. The eminent Professionals had been contributing Articles in the Journal regularly and we are also covering RERA, FEMA and Companies Act apart from GST.

The payment can be made online and by scanning the QR Code. Kindly click the below link and get the details of the Journal and Form, which has to be filled and e-mailed to us on aiftpjournal@gmail.com :- <https://aiftp.in/journal>

Pankaj Ghiya

Chief Editor and Dy. President (2022)

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PATNA TAX CONFERENCE

Organised by

ALL INDIA FEDERATION OF TAX PRACTITIONERS(EZ)

Jointly with

BIHAR INCOME TAX BAR ASSOCIATION, PATNA

Sunday - 14th August'2022

Bihar Chamber of Commerce & Industries

Khemchandra Chaudhary Marg (North Gandhi Maidan), Patna-800001

Program Schedule

8 am – 9.15 am	REGISTRATION & BREAKFAST
9.15 – 11 am	INAUGURAL SESSION (MOC: Adv. Aakash Kumar & Adv. Naman Nayak)
11 am – 11.15 am	TEA BREAK
11.15 am – 01.30 pm	1st TECHNICAL SESSION: DIRECT TAX Search & Seizure: An Important Issues & Practical Aspects Guest Speaker: Advocate Paras Kochar, Kolkata Session Chairman: Senior Advocate Ajay Kumar Rastogi, Patna (MOC: CA Ashish Agarwal)
01.30 Pm – 02.15 pm	LUNCH
02.15 pm – 04.30 pm	2ND TECHNICAL SESSION: INDIRECT TAX Search & Seizure: An Important Issues & Practical Aspects Guest Speaker: National Deputy Preseident-AIFTP Adv. Pankaj Ghiya, Jaipur Session Chairman: D.B. Gupta, Patna (MOC: CA Rajesh Khetan & Adv. Manish Rastogi)
04.30 pm onwards	Hi - Tea Time

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Report of Eastern Zone from Sudhansu Sekhar Das, Conference Secretary

The one day Bhubaneswar Tax Conference organized by AIFTP EZ was held on Dt 15th April 2022 at Hotel Excellency, Bhubaneswar. CA S. C. Bhadra was Conference Chairman, Adv. Dillip K. Mohanty, Co-chairman, Adv. Sudhansu S. Das, Conference Secretary and Adv. Pradosh K. Pattnaik was the Convener.

The Conference inaugural function was presided over by Mr. S C Bhadra and the National President of AIFTP, Mr. D K Gandhi was the chief Guest on the occasion. Dy President of AIFTP Mr. Pankaj Ghiya, Secretary General CA Jamuna Shukla, National Vice president EZ Mr. Anand Pasari, National Joint Secretary Mr. Vivek Agarwal, EZ Chairman Mr. Sanjeev Anwar was on the Dais.

Vice chairman EZ, Secretary General EZ, Conference Secretary, Convener, National Treasurer, Joint Secretaries EZ, Zonal Treasurer, senior most member of AIFTP Sr. Advocate Mr. Bijoy Krushna Mohanti, Past President Sr. Adv. Premlata Bansal, Mr. Bimal Nandan Mohapatra, Mr. S N Sahu and immediate Past Chairman EZ Mr. Bibek Mohanti and herds of delegates from every corner of Odisha and from Various parts of the India were present off the Dais. Two technical sessions one on GST and another one on Income Tax were held on the occasion.

Adv. Mr. Pankaj Ghiya, Dy. President of AIFTP was the Chairman for GST session and past President Sr. Adv. Premlata Bansal was the Chairman for IT technical sessions. The Key note Speakers were Adv. Vikram Chawla of Delhi and Adv. Anand Pandey of Varanasi for GST & IT respectively. The topic for GST session was "Draconian provision of attachment under GST & its remedies".

The Topic for IT Session was "Present Scenario u/s. 148 & 148A of Income Tax Act 1961 & its implication after recent High Court Judgments.

Report of Central Zone from Anil Mathur, Chairman

AIFTP-CZ in association with other local associations organized a one day conference “Tax Conclave - 2022” on Saturday, 21st May, 2022 at Hotel Ramada, Jaipur. The conference was inaugurated by Hon’ble Mr. Justice Ashok Gaur, Judge, Rajasthan High Court and national president Mr. D.K. Gandhi was the guest of honour. There were 5 technical sessions which were very ably dealt by eminent speakers and session chairmen from all over India. CA Prashanth G.S. from Bangaluru and CA Anchal Kapoor from Amritsar were the strength of this conference. Session on professional Liability while discharging duties was very much appreciated. Past president Mr. M.L. Patodi, National Dy. President Mr. Pankaj Ghiya and NVP-CZ Mr. V.K. Jolly also provided their gracious presence.

As record number of more than 400 delegates were registered for this conference. Brochure for NTC-2022 at Jaipur for 16-18th December, 2022 was also released. The CZ is grateful and appreciative to National President for his continued presence thought the conference.

AIFTP-CZ in association with Tax Bar Association, Kota organized a full day seminar on Income tax and GST on 25th June, 2022 at Kota. It was inaugurated by Hon’ble Mr. Shanti Dhariwal, Cabinet Minister-UDH, Govt. of Rajasthan. The seminar was attended by more than 150 delegates and had very lively and interactive technical sessions. Past president Mr. M. L. Patodi, National Dy. President Mr. Pankaj Ghiya, NVP-CZ Mr. V.K. Jolly & Secretary - CZ Mr. Sandeep Agarwal participated in this seminar. Senior members of profession were also felicitated for their contribution to the profession.

Report of Southern Zone from M. Amarendar, Chairman

South Zone conducted one day seminar at Hyderabad on gst and income tax in association with TTPA of Telangana and more more than 100 delegates participated and it was a successful program.

Respected Mrs. Nitu Prasad IAS Commissioner State tax was the chief guest addressed gathering and announced several modifications to OTS scheme on representation from SZ and TTPA.

70 GST questions are answered in the first session.

All the Speakers dealt with the subjects effectively and the response was overwhelming.

Seniors from the zone like ex chairmen Sri PV Subbarao and sir Nagendra Prasad and ex NP Dr. Murthy and Sri JV Rao, senior member, participated in the deliberations and advised the members accordingly.

Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of the Sales Tax Bar Association (Regd.), New Delhi for the year 2022-23

President : Sh. Sanjay Sharma
Vice President : Sh. Rohit Vaswani
Secretary : Sh. Suresh Agrawal
Jt. Secretary : Sh. Narendra Kr. Sharma

We wish them all the success

Direct Taxes

Ms. Neelam Jadhav, Advocate, KSA Legal Chambers

High Court:

1. S. 45 : Capital gains - Chargeable as (Jurisdiction to examine transaction) – AO’s jurisdiction to examine transaction, if the valuation officer determined Fair Market Value of property higher than disclosed by Co.

Assessee disclosed that during the AY 2018 – 19, sold a property, according to circle rate (stamp value rate) cost of property was Rs.390 crores. The Assessing Officer issued a notice stating that District Valuation Officer (DVO) determined fair market value of property at Rs.418 crores and asked it to explain as to why improvement cost in excess of what had been reported in valuation report of DVO should not be disallowed from cost of acquisition of property for calculation of capital gains under section 45. The Petitioner filed for seeking quashing of Show Cause Notices issued for.

The High Court observed that, it strange that though the property in question was mortgaged, yet the property in question was sold to a company in which the wife of the person in management of the Yes Bank was a Director. Further, the property in question was sold by the Petitioner below the circle rate (stamp value rate) contrary to Section 50C of the Act.

The High Court was of the opinion that the petition is bereft of any merit. Consequently, held that the Assessing Officer has the jurisdiction to examine in detail the transaction in question.

Avantha Realty Ltd. vs. ACIT, W.P. (C) 5100 of 2022 dt.28/03/2022 (Delhi)(HC)

TRIBUNAL:

2. S. 153A : Search and seizure - Client code modification done by group concerns were not found to be false and voluminous, client code modifications done was within permissible limit is allowable to the assessee.

The Assessee was a member of recognized stock exchanges and provided trading services in commodity markets through those exchanges. During search, evidence of client code modifications done by assessee and its sister concerns in their own account as well as in accounts of clients was found. The Assessing Officer was of view that shifting of client code was not due to genuine reasons but for providing accommodation entries to some persons in lieu of

consideration and accordingly he made addition. The CIT(A) has deleted the Addition made by the AO.

Tribunal observed that, the transactions on account of client code modifications done by group concerns were not found to be false or untrue and SEBI or stock exchange had not taken any action treating transactions to be non-genuine, further volume of client code modifications occurred were within permissible limit which allowed by SEBI. While deciding the issue the Tribunal held that, there is no perversity in the order of the CIT(A) deleting the addition as the transactions on account of CCM done by the group concerns are not found to be false or untrue.

Dy. CIT vs. Futurz Next Services Ltd. ITA No. 3556 /Delhi/ 2016 dt.04/01/2022 (Delhi)(Trib.)

3. S.253: Appellate Tribunal - Appeals - Name of assessee-company was struck down from ROC – Certificate of Incorporation not cancelled - Appeal before the Tribunal would be maintainable. (r.w.s. 68 and 226 of the Income-tax Act, 1961 & S.248, 250 of the Companies Act, 2013)

The Assessee company filed an appeal before Tribunal challenging order of CIT(A) which confirmed additions made by Assessing Officer under section 68. Before the Tribunal the Revenue argued that, the name of assessee-company was struck down from Registrar of Companies (ROC) under section 248 of CA Act, 2013 thus, appeal filed by assessee would become infructuous.

While deciding the appeal the Tribunal observed that, as per sub-section (6) of section 248 of Act, 2013 it is duty of Registrar to make provision for discharging liability of company before passing an order for struck off under sub-section (5) to section 248 and if there was any tax due from struck off company, revenue can invoke section 226(3) or 179 of Act, 1961 for satisfying such tax demands. Since in view of sub-sections (6) and (7) of section 248 and section 250 of Act 2013, when revenue had not forgone right to recover tax due on ground of company being struck off by ROC, right of assessee to determine tax liability in due process of law could not be denied by dismissing appeal pending before Tribunal. Therefore, Tribunal held that certificate of incorporation issued to Assessee Company could not be treated as cancelled and appeal filed by struck off assessee-company is maintainable.

Dwarka Portfolio (P.) Ltd. v. ACIT, ITA No.5338/ Delhi/ 2011, 2563/Delhi/ 2017 & 2868/ Delhi/ 2019 dtd.27/05/2022 (Delhi) (Trib.)



Indirect Taxes

Tanmay Mody, Advocate

1) GST – Transfer of unutilized ITC to another State

Whether unit having normal GST registration can utilise excess ITC by raising tax invoices on head office for providing support service?

Held: Company has been granted mining lease in State of Odisha though head office in Maharashtra participated in tender process. Unit in Odisha paid GST on royalty under reverse charge and had charged head office having ISD registration in another State for support services. Nature and aspect of support service provided is not clear. Unit in Odisha has used ISD registration in Mumbai as wrongful conduit and facilitated utilization of such ITC by other units. Petitioner's contention that tax is paid on behalf of ISD, is not supported by documentary evidence nor has statutory backing. No supply shown as made by unit in Odisha to office in Maharashtra. Transaction prima facie amounts to siphoning of tax amount warranting invocation of proceeding under Section 74.

(Source: Order in Writ Petition (Civil) No. 10052 of 2022 dated 17th May, 2022 by the H'ble Orissa High Court in JSW Steel Ltd. v. Union of India)

2) GST – Maintainability of Advance Ruling Application

After receipt of SCN to pay tax at 18%, petitioner approached Authority for Advance Ruling contending that rate of taxes applicable to sub-contractor should be 12 per cent in view of Notification No. 11/2017-(TR) as amended on 22-8-2017.

Held: Advance ruling is a decision provided by the Authority or Appellate Authority to the applicant on matters or on questions in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. It means any person can obtain ruling from the Authority or Appellate Authority in advance either during or proposed to be undertaken any supply of goods or services. The very purpose of taking advance ruling in advance is to avoid any controversy or conflict with the authorities in payment of GST/SGST in particular categories at the time of rendering service or sale of goods. Application is liable to be filed under section 97 for obtaining the advance ruling in advance, not during the pendency of any issue before the authority. The Petitioner

approached the Authority for obtaining the advance ruling only after a search was conducted in which the evasion of SGST was found which has resulted in issuing a show-cause notice. Authorities have rightly declined to grant advance ruling to the petitioner as the petitioner did not approach in advance before the Authority for obtaining the ruling.

(Source: Order in Writ Petition No. 8363 of 2022 dated 14th June, 2022 by the H'ble High Court of Madhya Pradesh in Saisanket Enterprise v. Authority for Advance Ruling & Commissioner of Commercial Tax, Madhya Pradesh)

3) GST – Compulsory 1/3rd deduction towards land value

Whether the paragraph in Notification No. 11/2017-Central Tax (Rate) providing for 1/3rd deduction with respect to land or undivided share of land in cases of construction contracts involving element of land is ultra-vires the provisions of CGST Act / Gujarat GST Act and / or violative of Article 14 of the Constitution of India?

Held: Legislative intent is to impose tax on construction activity undertaken by a supplier at the behest of or pursuant to contract with recipient. No intention to impose tax on supply of land in any form and it is for the reason that it is provided in the Schedule III to CGST Act. Paragraph 2 of Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 is ultra-vires the provisions as well as the scheme of the GST Acts. Where a detailed statutory mechanism for determination of value is available, then deeming fiction cannot be justified on the basis that it is meant to curb avoidance of tax when such fiction is leading to arbitrary consequences. Application of such mandatory uniform rate of deduction is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. Deduction was contemplated in 14th GST Council Meeting where ascertaining land value in flats is difficult. Mandatory deduction will be available only at the option of a taxable person in cases where the actual value of land or undivided share of land is not ascertainable. Department directed to refund excess amount of tax collected along with interest.

(Source: Order in Special Civil Application Nos. 1350, 6840 of 2021 & 5052 of 2022 dated 6th May, 2022 by the H'ble High Court of Gujarat in Munjaal Manishbhai Bhatt v. Union of India)



ANNOUNCEMENT

Dear Members,

We are pleased to inform you that the AIFTP has published a Book titled “**Handbook on Taxation of Partnership Firms & Limited Liability Partnerships: Frequently Asked Questions**” in association with the Taxmann.

The publication was released by Mr. S. P. Singh Baghel, Hon'ble Minister of State in the Ministry of Law and Justice, and Justice Rajesh Bindal, Hon'ble Chief Justice of Allahabad High Court on December 25, 2021 at the 24th National Convention of AIFTP at Lucknow.

The price of the publication is ₹ 945/-. AIFTP Members can avail the book at ₹ 725/- (Including Courier charges).

For further information please contact

Mr. Ravindra Patade, Chief Executive Officer | T. No.: 022-49706343 | Email: aiftpho@gmail.com



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Date: February 22, 2022

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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, 2022 to 31st March, 2023 falls due for payment on 1st April, 2022.

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Yours sincerely,

For **ALL INDIA FEDERATION OF TAX PRACTITIONERS**

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2.	Reassessment Law, Procedure & Practice (Practical Guide)	Dec., 2020	Free	Available on website	100.00
3.	151 Landmark Judgment of the Honorable Supreme Court	Oct., 2020	Available on website	Available on website	–
4.	GAAR General Anti-Avoidance Rules	Dec., 2019	640.00	720.00	100.00

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Central	0	1405	25	0	1430
Eastern	6	2021	37	0	2064
Northern	0	1608	21	1	1630
Southern	1	2170	23	2	2196
Western	5	2894	38	3	2940
Total	12	10098	144	6	10260

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