



All India Federation of Tax Practitioners

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(For Members only)

# AIFTP TIMES

Volume 3 - No. 8

August, 2012

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
11-8-2012	National Executive Committee Meeting	Bhubaneswar
11 & 12-8-2012	National Tax Conference (EZ)	Bhubaneswar
5-10-2012	National Executive Committee Meeting	Bengaluru
6 & 7-10-2012	National Tax Conference (SZ)	Bengaluru
11, 12 & 13-10-2012	9th Nani Palkhivala Memorial National Tax Moot Court Competition	Mumbai
17, 18, 19 & 20-10-2012	AOTCA Seoul Meeting 2012	Korea

## FEDERATION NEWS

Narayan P. Jain, Secretary General

### TENTATIVE PROGRAMME FOR SEOUL AND SHANGHAI

(16th to 23rd October, 2012)

**AOTCA Conference at Seoul from 16th to 20th October, 2012**

**Conference at Shanghai and visit to Courts from 20th to 23rd October, 2012**

**Total cost from Mumbai is ₹ 1,95,000/-**

**Total cost from Delhi is ₹ 1,92,000/-**

Cost includes Delegate fees for Seoul Conference, Airfare, Taxes, Visa Cost for two countries, Overseas Insurance, Travelling at Seoul, 5 star stay at Seoul, 4 star stay at Shanghai, Lunches and Dinners at Indian Restaurant, Site Seeing, etc.

Note: Above cost on approx. basis converted @ ₹ 56/- per USD and are based on a minimum of 13 passengers. The actual cost will be divided among the delegates.

Those who desire to join the conference may send the cheque of ₹ 1,00,000/- in favour of "All India Federation of Tax Practitioners" payable at Mumbai on or before 15th August, 2012 alongwith the clear photocopies of first and last page of Passport.

For further details, members are requested to contact Mr. J. D. Nankani, Dy. President, AIFTP at jagdish@nankanis.com (Mob.) 9821034867

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
<b>National President</b> — S. K. Poddar, Adv.	0651-2202787	2309407	9431115265	sheojipoddar40@gmail.com
<b>Deputy President</b> — J.D. Nankani, Adv.	022-22841717	22831717	9821034867	jagdish@nankanis.com
<b>Secretary General</b> — Narayan P. Jain, Adv.	033-22821100	22820180	9830951252	npjain@vsnl.com
<b>Treasurer</b> — CA. Harish N. Motiwalla	022-22002103	22094331	9819422300	hnmotiwalla.ca@gmail.com

## NATIONAL TAX CONFERENCE at Bhubaneswar

### Two Days Seminar

Organized by

ALL INDIA FEDERATION OF TAX PRACTITIONERS (EASTERN ZONE)

Jointly with

BHUBANESWAR TAX BAR ASSOCIATION

(SUPPORTED BY ALL TAX BAR ASSOCIATIONS OF ODISHA)

on 11th & 12th August, 2012

AT: KIIT Campus, Patia, Bhubaneswar, Odisha.

### PROGRAMME

**SATURDAY, 11th August, 2012**

### Theme – New Challenges for Tax Professionals in Changing Scenario

- 9.00 am to 10.00 am : Registration & Breakfast
- 10.00 a.m : Inaugural Session
- Inauguration by : His Excellency, The Hon'ble Governor of Odisha.
- Presided over by : Shri S.K. Poddar, National President, AIFTP
- Chief Guest : Hon'ble Mr. Justice Anang Kumar Pattnaik,  
Judge, Supreme Court of India
- Guests of Honour : Hon'ble Mr. Justice Gopal Gouda,  
Chief Justice, Odisha High Court  
Hon'ble Mr Justice B.P. Das, Judge, Odisha High Court  
Shri.Prafulla Chandra Ghadai, Hon'ble Minister of  
Finance, Govt of Odisha.  
Dr. A. Samanta, Founder, KIIT University, Bhubaneswar  
Dr. Ashok Saraf, Sr. Advocate, Advocate General Arunachal  
Pradesh and Vice President AIFTP  
Shri N.P.Jain, Secretary General, AIFTP  
C.A Indu Chatrath, Chairman, AIFTP, E.Z.  
Mr. Manas Ranjan Mohapatra, Sr. Advocate  
Chairman, Reception Committee, NTC, 2012  
Shri N.D. Saha, Secretary, AIFTP, E.Z.  
Shri Rabindra Nath Pal, Advocate  
Secretary Reception Committee NTC – 2012  
NEC Member, AIFTP
- Vote of thanks : Shri Matadin Udayapurua, Advocate, Cuttack
- 1 pm to 2 pm : Lunch Break
- 2 pm to 4 pm : **1st Technical Session**
- Topic : (A) Solutions of problems relating to Computerization and e-TDS  
under the IT Act, & recent Amendment by Finance Act, 2012  
for curbing Tax Evasion.
- (B) Penalties under the Income Tax Act
- Chairman : Hon'ble Mr. Justice B.P.Das
- Co-Chairman : Hon'ble Mr. Justice Indrajit Mohanty
- Chief Speaker : Shri S.R Wadhwa, Advocate, New Delhi.
- Speakers : CA. A.K.Sabat, Bhubaneswar  
Shri N.P. Jain, Secretary General, AIFTP  
Shri K.K. Tripathy, Chief CIT, Odisha  
Shri Sanjay Kr. Acharya, Advocate, Odisha High Court,  
Cuttack

- 4 pm to 6 pm : **2nd Technical Session**
- Subject : Service Tax in the Present Scenario with special Reference to Real Estate, and Works Contracts with penal Provisions And Matters relating to Central Excise & Customs.
- Chairman : Hon'ble Mr Justice L.K. Mohapatra, Judge Odisha High Court.
- Co-Chairman : Shri Bharat Ji Agrawal, Sr. Advocate Allahabad High Court & Past President, AIFTP
- Speakers : Shri Mukul Gupta, Advocate, Ghaziabad  
Chief Com. Central Excise & Customs and Service Tax, Odisha, Bhubaneswar  
Dr. D.N. Mishra, Judicial Member, CESTAT, Kolkata  
CA. Anjan Sirkar, Kolkata  
Shri D.N. Panda, Judicial Member, Service Tax Tribunal Mumbai
- Vote of thans : Shri Jagabandhu Sahoo, Advocate, Odisha High Court, Cuttack
- 6 pm to 8 pm : N.E.C Meeting at KIIT Banquet Hall, BBSR, Cultural Programme at KIIT Auditorium.
- 8 pm onwards : Dinner At - KIIT, Dining Hall.

**SUNDAY, 12th August, 2012**

- 8.30 am to 9.30 am : Breakfast.
- 9.30 am to 11.30 am : **3rd Technical Session**
- Subject : New Challenges for Professionals under recent trends within Fiscal Policy of India and Tracking of Black Money
- Chairman : Hon'ble Mr. Justice M.M. Das, Judge, Odisha High Court
- Co-Chairman : Shri P.S. Sarin, Advocate, New Delhi
- Speakers : Prof. Dr. Mukতিকanta Mishra, Chairman, Centurrian Group of Institutions, Bhubaneswar  
Dr. Kailash Chandra Mishra, Vice Chancellor, Sri Sri University, Bhubaneswar  
Shri M.L. Patodi, Advocate, Kota  
Immediate Past President, AIFTP  
Shri N.K. Chakraborty, Director, KITTs School of Law, Bhubaneswar  
Shri Ratan Samal, Advocate, Mumbai
- Vote of thanks : Shri R.K. Mishra, Vice-Chairman, E.Z
- 11.30 am to 1.30 pm. : **4th Technical Session**
- Subject : Ensuing GST regime and Challenges
- Chairman : Shri P.C. Ghadai, Hon'ble Minister of Finance, Govt. of Odisha
- Co-Chairman : Shri Sushil Kumar Modi, Hon'ble Deputy Chief-Minister And Finance Minister, Bihar.
- Speaker : Shri J.K. Mohapatra, IAS Principal Secretary, Finance Department Govt. of Odisha  
Shri P.C. Joshi. Advocate Mumbai & Past President, AIFTP.  
Shri A.K. Ganguli, Sr. Advocate, Supreme Court of India New Delhi  
Shri N.K. Arora, Advocate, Chairman, North Zone, AIFTP
- Vote of thanks : Shri Ramesh Chandra Das, Advocate, Bhubaneswar
- 1.30 pm to 2.30 pm : LUNCH

2.30 Pm To 4.30 pm

: **5th Technical Session**

- Subject : Problems of VAT Law, Penalties and Input Tax Credit Law related to Stock Transfer
- Chairman : Hon'ble Mr. Justice B.N. Mohapatra, Judge, Odisha High Court
- Speaker : Shri A. K. Ganguli, Sr. Advocate, Supreme Court of India, New Delhi.  
Shri B.K. Mohanti, Sr. Advocate, Former Advocate General of Odisha  
Shri Ratan Samal, Advocate, Mumbai  
Shri Manoj Ahuja, IAS, Commissioner of Commercial Taxes, Odisha, Cuttack.  
Shri S.C. Lal, Advocate, Odisha High Court.
- Vote of thanks : Shri Ramesh Chandra Samantaray, Advocate, BBSR

4.30 pm to 5.30 pm

: **Valedictory Session**

- Presided over by Shri S.K.Poddar, National President, AIFTP
- Chief Guest : Shri Naveen Pattnaik, Hon'ble Chief Minister of Odisha.  
Hon'ble Justice Dr. Arijit Pasayat, Former Judge, Supreme Court of India
- Guest of Honour : Shri Baijayant Panda, Hon'ble Member of Parliament  
Shri Pinaki Mishra, Sr. Advocate, Supreme Court of India, Hon'ble Member of Parliament  
Shri J.D. Nankani, Advocate, Mumbai & Dy. President AIFTP.  
Dr. Ashok Saraf, Sr. Advocate, Advocate General, Arunachal Pradesh and Vice President, AIFTP  
Shri Narayan Prasad Jain, Secretary General, AIFTP  
Shri Ashok Parija, Former Chairman, Bar Council of India  
CA Indu Chatrath, Chairman, AIFTP (E.Z.)  
Shri Ashok Kumar Mohanty, Advocate General, Odisha Cuttack.  
Shri Natabar Mohanty, Advocate, Bhubaneswar & Co-Chairman, Reception Committee NTC 2012.  
Felicitation of Members of the AIFTP in Odisha State.
- Vote of Thanks : Shri Ramesh Kumar Dhal, Advocate, Bhubaneswar and E.C. Member, AIFTP E.Z and Vice-Chairman Reception Committee.

HIGH TEA

INDU CHATARTH  
CHAIRMAN, E.Z,  
ichatrath@yahoo.com  
NATABAR MOHANTY  
CO-CHAIRMAN NTC.2012  
natabarmohanty@rediffmail.com  
09437962328

N.D. SAHA  
SECRETARY,,E.Z  
ndsaha-51@hotmail.com

MANASRANJAN MOHAPATRA  
CHAIRMAN NTC-2012

R.K. DHAL,  
VICE CHAIRMAN NTC 2012  
rkdhaladvocate\_tax@yahoo.co.in

RABINDRA NATH PAL  
SECRETARY, NTC.2012,BBSR  
Mobile 09437448880 • speaktopalassociates@yahoo.com

**Delegate Fees** : ₹ 1,500 for members; ₹ 1,200/- for accompanying spouse  
₹ 2,500/- for Corporate Members; ₹ 1,000/- for Students

DD/Cheque at par may be drawn in favour of "**National Tax Conference 2012**"

**REPORT OF SEMINAR ON WHITE PAPER ON BLACK MONEY & CPC AT KOLKATA**

AIFTP (East Zone) organized a Seminar on White Paper on Black Money & Adjustment of unverified tax demand with refunds by Central Processing Centre at Indian Council for Cultural Relations, Kolkata on 14th July, 2012. Addressing the Seminar, Mr. Deepak Jain, Advocate highlighted the difficulties being caused to taxpayers due to adjustment of unverified demands against refunds by CPC, Bengaluru. This happened due to uploading of data by the field officers without proper verification of arrear demand. In many cases appeal effect and rectification petitions are also pending. AIFTP had taken up the matter with the Central Board of Direct Taxes and as a result a Circular No. 04/2012 has been issued on 20th June, 2012 asking the A.Os. to verify the demands and carry out rectifications even in cases where the time limit of 4 years stipulated in section 154(7) has expired. It is a welcome step and it is hoped that the Assessing Officers will take all necessary steps to mitigate the difficulties being faced by the taxpayers.

Analysing the White Paper on Black Money, Prof. Narayan Jain, Advocate and Secretary General of AIFTP referred to the report submitted by the Committee headed by the CBDT Chairman and highlighted that appropriate action is likely to be taken against entry operators and bills masters. He also said that the CBDT has expressed concern on multiple account opening by the same entity in a bank. The Government is likely to keep an eye in case multiple companies are registered at the same address. The Government has already implemented a number of recommendations in the Finance Act, 2012 and amendment of section 9, section 56(2), section 68 are the steps to prevent laundering of black money by various dubious means. Shri R.D. Kakra, Advocate felt that there is lack of political will in tackling black money.

Shri Indu Chatrath, Zone Chairman presided over the Seminar. Shri N.D. Saha, Zone Secretary thanked the speakers and all the participants for making the Seminar so success.

**REPORT ON "TAX CONFERENCE 2012" HELD ON 14-7-2012 AT RAIPUR (C.G.)**

The All India Federation of Tax Practitioners, Central Zone, had organized a one day "Tax Conference 2012" on 14-7-2012 at New Circuit House, Civil Lines, Raipur (C.G.) from 9.00 A.M. to 6 P.M.

The programme began with Saraswati Vandana. CA S.C. Maheshwari, Chairman AIFTP (CZ) highlighted the objects of the AIFTP and invited the new professionals to become its life members.

In the first session which lasted up to 1.30 PM. CA S.C. Maheshwari, chaired the session. The eminent faculties Shri V.S. Datey from Pune (M.S.) dealt on the subject "Service Tax Based on Concept of Negative List" and CA Gautam Nayak from Mumbai (M.S.) dealt on the subject "Recent Developments in TDS & TCS".

The second session began after delicious lunch at 2.30 PM which lasted up to 6.00 PM. Adv. P.M. Chora, Immdt. Past Chairman of Central Zone of AIFTP chaired the session. The eminent faculties Dr. S.L. Jain from Jaipur (Raj.) dealt on the subject "Search and Survey" and CA R.B. Doshi from Raipur (C.G.) dealt on the subject "Important issues in Exemption from capital gain".

All the faculties dealt with the subjects in depth and replied to the questions of the participant delegates extensively.

The conference was fully devoted to the above professional subjects on Income tax and Service tax and was attended by 250 delegates who were Chartered Accountants and Advocates mostly from Chhattisgarh and some were from Rajasthan and Madhya Pradesh.

The Raipur Branch of the Regional Council of the Institute of Chartered Accountants of India had announced to give credit of 6 CPE hours to the Chartered Accountant participants of this "Tax Conference 2012".

At the end vote of thanks was given by CA Paras Chhajed, Secretary AIFTP (CZ).

**NEC AND NATIONAL TAX CONFERENCE  
at Bengaluru in October, 2012**

National Executive Committee meeting will be held in the evening of 5th October, 2012.

National Tax Conference at Bengaluru on 6th and 7th October, 2012. The efforts are being made to confirm the acceptance of the invitation to the Hon'ble Mr. Justice H.L. Dattu, Judge of the Supreme Court of India as Chief Guest and Hon'ble Chief Justice of Karnataka High Court as Guest of Honour. We accordingly request your goodselves to make note in your diary the above-mentioned dates for your stay at Bengaluru on those days. Further details would be supplied soon.

**Dr. M.V.K. Moorthy**  
Chairman, AIFTP (SZ)

## ANNOUNCEMENT – IBFD VACANCY

### Principal / Senior Research Associate Asia (Transfer Pricing and South Asian Countries)

IBFD is proposing to appoint The Principal / Senior Research Associate as a Transfer Pricing resource person and as a country specialist for a number of designated South Asian jurisdictions.

The position is based in Kuala Lumpur, Malaysia.

- He / She should have at least 5 years of professional experience with a tax / law / accounting firm, research institute or a governmental or international organization dealing with taxation in particular transfer pricing.
- Should have knowledge and experience with the tax system of one or more South Asian countries (preferably India); and
- Demonstrable ability in teaching and public speaking.

Skills required

- Fluent in English (written and oral);
- Experience in public speaking;
- Experience in editing and drafting in the English language;
- Excellent editorial and writing skills; and
- Computer literacy

The proposed Salary and fringe benefits are as under:-

- A competitive salary, depending on relevant work experience, background and education.
- Comprehensive package of (flexible) fringe benefits which includes amongst others comprehensive medical coverage.
- Attractive training and development opportunities.

#### **For more information, please contact:**

Ms. Sarima Shafie Telephone: +603-2287 0709 Email: [ibfdasia@ibfd.org](mailto:ibfdasia@ibfd.org)

Send your application, together with your current and expected remuneration, before 20th August, 2012 to:  
Email: [recruitment@ibfd.org](mailto:recruitment@ibfd.org)

## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of the Jaipur Tax Bar Association, Jaipur for the year 2012-13.

President	:	Shri Ram Babu Vijay
General Secretary	:	Shri Vikram Kumar Gogra
Vice President	:	Shri Pradeep Sharma
Hon. Jt. Secretary	:	Shri Mukesh Bhardwaj
Hon. Treasurer	:	Shri Vikas Sharma

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of the Commercial Taxes Bar Association, Jamshedpur for the year 2012-13.

Chairman	:	Shri B.L.A. Agarwal
President	:	Shri R. N. Gupta
Vice Presidents	:	Shri K. Tripathy, Shri B. Chatterjee and Shri Umesh Prasad
General Secretary	:	Shri K.L. Mittal
Hon. Jt. Secretaries	:	Shri K. Shivram Sharma, Shri Jagjit Singh and Shri Heman Sahu
Hon. Treasurer	:	Shri R.S. Mitra

We wish them all the success.

Hearty Congratulations to the newly elected office bearers of the Income Tax & Sales Tax Bar Association, Chandigarh for the year 2012-13.

President	:	Shri Jasjit Singh Dhindsa
Sr. Vice President	:	Shri Rajinder Malhotra
Vice Presidents	:	Shri Suresh Kumar Bhuria & Shri Sanjeev Khurana
General Secretary	:	Shri Ajay Gupta
Secretary	:	Shri Shaman Jain
Joint Secretary	:	Shri Vipin Sharma
Treasurer	:	Shri Abhay Sharma

We wish them all the success.

**ADMINISTRATION OF JUSTICE – INCOME TAX APPELLATE TRIBUNAL**

By  
**N. M. Ranka, Senior Advocate, Jaipur**

Our Constitution has built up a judiciary to keep a watch, vigil and see that the freedom enshrined in the Constitution reach to every citizen and is not jeopardized or tinkered with or obstructed by the executive or any person in authority or otherwise. It is the bounden duty of the judiciary to administer or deliver justice to all citizens without any discrimination or delay. The third organ has been created in order to secure justice and in order to reach every citizen the freedom, the peace, the prosperity-spiritual and economic, so as to achieve the objectives contained in the preamble of the Constitution. Judiciary occupies an important place in the Constitutional set up. It is the bounden duty of the judiciary to see that the other two wings do not transgress their boundaries. The standard and quality of a democracy practised in a country is judged and measured by the independent and impartial judiciary and efficient legal system.

We have created Supreme Court, State High Courts, Tax, Central Excise, Military and other Tribunals and the subordinate judiciary for quick and efficient dispensation of justice. The Hon'ble Justices, Members of the Tribunal, District Judges and other judicial officers are elevated, selected, nominated and promoted primarily from the law profession with sound commonsense and dignified demeanour. Strict norms have been laid down for selection, promotion, elevation from amongst men well versed in the knowledge and practice of law. He must be a man of high integrity, honesty and required to have a moral vigour, ethical firmness and impervious to corrupt or venial influences. He should be competent enough to keep most exacting standards of propriety in judicial conduct. Well defined strict procedure has been evolved so that right persons, at right time, in right manner enter the judicial system of our country. In 'Shukraneetisar' the great jurist Shukra says "The judges appointed by the king should be well-versed in procedure, be wise, of good character and temperament, soft in words, impartial to friend or foe, truthful, learned in law, active (not lazy), free from anger, greed or desire (for personal gain)". Function of a judicial authority is a divine function. The greatest strength of the judiciary is the faith and trust of the citizens in it. It should not be shaken and one should not be under a cloud.

Peace and Justice are the essence and necessity of every ideal society. It is the duty of each member of the legal fraternity either judges,

judicial authority or Advocate to safeguard law, assist justice and help prevail peace in the society, even at the cost of whatever the interest may be. The nobility of Indian Judiciary calls for settling the disputes and avoiding furtherance of these disputes by every possible means. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judiciary at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty.

The Hon'ble Judges of the Supreme Court and High Courts are elevated from amongst the practicing lawyers and promoted from the higher judiciary. It is for the High Court collegium to screen, select and nominate. Recommended person is thoroughly investigated by the State and Union Law and Home Ministry, the Hon'ble Supreme Court's collegium, the Prime Minister's Office and on unanimous approval, warrant is issued by his Excellency the President of India. Oath is administered to the constitutional functionary. Secrecy is maintained and thorough investigations about integrity and character are made in extenso. Best amongst the persons are elevated. Similarly for Members of Income Tax Appellate Tribunal and other Tribunals, qualifications are stated in the statute and persons found fit to exercise the powers and discharge the functions conferred by the Act are selected by the Committee headed by a Senior Judge of the Supreme Court, nominee of the Chief Justice of India. On having assumed the judicial office, the judge is judge for 24 hours. Justice P.B. Gajendragadkar said "Judges ordinarily must observe certain rules of decorum in their social behaviour and a little isolation and aloofness are the price which one has to pay for being a judge, because a judge can never know which case will come before him and who may be concerned in it. No hard and fast rule can be laid down in this matter, but some discretion must be exercised".

On the recommendation of Franks Committee on Administrative Tribunals and Enquiries, the Income Tax Appellate Tribunal was set up on 25th January, 1941 as an Independent quasi-judicial body to hear Second Appeals under the Income-tax and Wealth Tax Acts. The Tribunal was constituted with three Benches with its headquarter at Bombay now Mumbai. With the increase in litigation and in accordance with the motto 'Sulabh Nyay – Satvar Nyay' Benches increased to 36 in 1973-74, to 53

in 1977 and present strength is of 63 Benches at 27 stations. Presently members as 80 against the strength of 126. Criteria for its working is '(i) Cheapness; (ii) Accessibility; (iii) Freedom from technicalities; (iv) Expedition; and (v) An expert knowledge of the subject.' Its function has been applauded by the Supreme Court and those who matter. Smt. Indira Gandhi, iron lady and most powerful Prime Minister in 1981 stated : "The Income Tax Appellate Tribunal with its branches spread all over the country has an important role. It has to preserve the interests of revenues to the State, to prevent harassment to the tax-payers and to render better service and quicker justice to the citizen and the State alike". Illustrious former Prime Minister, Shri Rajiv Gandhi appreciated on 4-3-1985 "Over the years, tax laws have grown in complexity and with it has grown the need for fair and dispassionate interpretation of the laws. The Income Tax Appellate Tribunal has made a useful contribution in this field." Hon'ble Mr. Justice Y. V. Chandrachud, Former Chief Justice of India on July 15, 1981 observed - "The Income Tax Appellate Tribunal is a model administrative Tribunal whose illustrious example and commendable performance may well be emulated by similar other tribunals in different disciplines. There is uniform praise of the manner in which the Tribunal functions and I suppose it is one of the few quasi-legal institutions which is not plagued by the problem of arrears". In my view it is not only model Tribunal but rather 'Mother Tribunal'.

Initially there was only one post of the President but with expansion and for better administration of justice, the Central Government was empowered to appoint the Senior Vice President and the Vice President. Section 252(3) of the Income-tax Act, 1961 mandates the Central Government to appoint a Senior Vice President or one of the Vice Presidents of the Appellate Tribunal to be the President thereof. Similarly, powers have been conferred to appoint one or more Members of the Appellate Tribunal to be the Vice President and to appoint one of the Vice Presidents of the Appellate Tribunal to be the Senior Vice President. The President has been empowered to delegate the powers and functions of the President to the Senior Vice President or Vice President, as the case may be. The President continues to be the head of the institution and entire administration vests in him. It is the bounden duty of the President to see that the Members discharge the functions efficiently and expeditiously.

Till 90's promotion from Vice President / Senior Vice President to the august office of the 'President' was automatic and with expedition. Usually a Member functions for more than 12

- 15 years before promotion as a President. Some of the Presidents have been elevated as Hon'ble Judges like Justice Ranganathan, Justice T. D. Sugla, latest being Hon'ble Mr. Justice R.V. Easwar. However, it has been noticed that former President, Shri Vimal Gandhi retired on 3-6-2010. Till date the Senior Vice President is acting as an officiating President. It is for the first time that for more than 25 months Senior Vice President has been functioning as officiating President. Similarly, the vacant post of Senior Vice President and Vice President have not yet been filled up in spite of representations by the Bar and all concerned. Superannuation is known and it is desirable that the process for elevation or filling up the vacancy commences sufficiently in advance so that by the time the post is vacant successor fills up the vacancy. Such expeditious action would not only put strength in the new incumbent but would be in the interest of efficient administration of justice. Needless to mention that many bold decisions and administrative measures can be taken up by the head of any institution only when such head is elevated with speed.

Similar scenario is noticed in respect of elevation as Hon'ble Judges of the High Courts. A fairly large vacancy exists. The sanctioned strength of Hon'ble Judges at the Supreme Court, High Courts, the Tribunals and subordinate judiciary is inadequate, causing inordinate delay in disposal and unrest in the people. It is highly desirable that the executive takes expeditious steps for timely elevation and promotion, rather it should be automatic, primarily based on seniority. On doing so much of the criticism can be avoided.

As a matter of fact Bar is the mother of Bench. The popular version about the relationship of the Bar and the Bench is regarded as both are the 'wheels of the chariot of justice'. Unless both function in harmony, the cause of justice cannot be advanced. I have always viewed that Justice Delivery System is a joint effort, an effort in which both the Bar and the Bench must act in concert with one another. It should be our constant endeavour to see that our relationship is strengthened day in and day out.

Time has come when we have to bring back those old glories by strengthening the coordination and harmonization between the stakeholders of the Justice Delivery System of our country with the help of harnessing our extraordinary ability by adopting and practicing in day-to-day life the attributes possessed in our legal heritage. Filling up of the existing vacancies and elevation or promotion with expedition is an urgent necessity. All who matter need be awakened in national interest.



**DIRECT TAXES**

**Ajay R. Singh, Paras S. Savla, Rahul Hakani, & Renu Choudhuri**  
Advocates, KSA Legal

**HIGH COURTS**

**1. S. 147: Reassessment – Reopening on the basis of material already available in assessment proceedings – Held that no reassessment in the absence of “fresh tangible material” is invalid**

In the instant case, the assessee had made a claim for 30% *ad hoc* expenditure, but withdrew the same when he was asked by the AO to substantiate the same. Subsequently, the AO issued the notice u/s 148 of the Act on the ground that the claim for expenses (which was withdrawn) had to be assessed as “unexplained expenditure” u/s 69. It was held by the Hon’ble Bombay High Court that the reopening on the basis that the said *ad hoc* expenditure was based on the same material. There was no fresh tangible material before the AO to reach a reasonable belief that the income liable to tax has escaped assessment. It is a settled position of law that review under the garb of reassessment is not permissible.

*CIT v. Amitabh Bachchan (High Court) (Bombay)(www.itatonline.org)*

**2. S. 154: Rectification of mistake – Enhancement by ITO – Disallowance of PF/ESIC – Debatable issue**

The assessee filed ROI on 30-12-1999. On 28-3-2002 the AO passed an order u/s 143(3) disallowing an amount of Rs. 14,68,884 being the payment made towards PF/ESIC u/s 43B. The disallowance was confirmed on appeal *vide* order dated 23-9-2008 of the ITAT. Meanwhile on 5-7-2004 the AO passed an order u/s 154 enhancing the disallowance in respect of the aforesaid payment from ₹ 14,68,664 to ₹ 29,64,750/-. On appeal the ITAT deleted the enhancement of the disallowance on the ground that the issue sought to be rectified is not a mistake apparent from record as there could be two possible views on the same and held that on merits the deduction was allowable. On further appeal the High Court following the decision of Apex court in Alom Extrusions Ltd. (2009) 319 ITR 306, it was held that the employers contribution made to any PF/ ESIC before the due date or even after due date of payment under respective Act would be allowable as a deduction with retrospective effect from 1-4-1998 even though the amendment was made by the Finance Act, 2003. The court observed that the courts do not make law but only declares the law as it exists. Therefore order of rectification was correctly set-aside by ITAT.

*CIT v. Fouress Engineering (India) Ltd. (ITA No. 481 of 2011 dated 11-6-2012)(High Court)(Bombay)*

**3. S.271(1)(c): Penalty – Furnishing of inaccurate particulars – No penalty if wrong claim caused by “bona fide mistake”**

In the instant case, the claim made by assessee was regarding depreciation in respect of properties that

were assessed under the head “house property” and (ii) claim of deduction in respect of provision for income-tax. It was held that the claim was a “human *bona fide* clerical mistake” as the assessee was a firm not having expert chartered accountants on its payroll. It was held that as regards depreciation, the property was let out for the first time in the latter part of the AY. As such, the benefit of inadvertence or mechanical or repetitive claim being made can be given to the assessee. As regards the provision for taxation, the assessee made a claim for deduction of the provision for the first time in the year under appeal. There was no history of furnishing such accurate particulars by the assessee for the previous years. Accordingly, s. 271(1)(c) penalty is not leviable.

*CIT v. Societex (High Court)(Delhi) (www.itatonline.org)*

**TRIBUNALS**

**4. S. 9: Income deemed to accrue or arise in India – Income earned in respect of Project Management Contract – Nature of service being mixture of managing, technical and consultancy services, assessee squarely fell within purview of ‘fees for technical services’ – Income liable to be computed only under section 44D**

The assessee is an engineering company incorporated in and tax resident of Japan. It was engaged in executing certain Project Management Contracts (PMC) with Indian companies. In respect of the said revenue assessee followed taxation on net basis. The actual execution of the contract was carried out in India by local contractors who were appointed by Indian entities. It was also apparent that assessee’s services were in nature of managing or supervising construction, erection of units and not directly entering into this activity. Thus, it was held that the nature of assessee’s activity was a mixture of managing, technical and consultancy services and therefore, amount received by assessee squarely fell within purview of ‘fees for technical services’ as Explanation 2 to section 9(1)(vii) and thus, income liable to be computed only under section 44D. (AY 1999-2000)

*Dy. DIT (IT) v. Toyo Engineering Corpn. (2012) 136 ITD 268 (Mum) (Trib)*

**5. S. 12A: Charitable /Religious Trust – Significant or material change in object clause of MOA by voluntary act of the assessee – Changes to be vetted by revenue authorities before granting the benefit u/ss. 11 and 13 of the Act**

The assessee is a society registered under section 12A of the Act whose main object is to promote the game of cricket. There was a significant or material change in the object clause of MOA of the assessee’s society made by the assessee voluntarily. It was held that in case of such significant change in the object clause, the revenue authorities have a right to examine the question as to whether these changes in the memorandum, rules

and regulations are in consonance with the provisions of the Act so as to enable assessee to avail benefit as charitable institution u/ss. 11, 12 and 13.

*Board of Control Cricket in India v. ITO (2012) 136 ITD 301 (Mum.) (Trib.)*

**6. S. 32: Business expenditure – Depreciation - Non-compete rights – Held to be an “intangible asset” eligible for depreciation**

The non-compete right is an “intangible asset as, it is the right of absence of competition or it is an asset which is capable of being transferred as in the facts of the instant case the same was transferred by the assessee at the time of amalgamation and the expenditure resulted in the acquisition of an unrivaled and non-competed business territory for 10 years which brought advantages in the capital field. Though in *Srivatsan Surveyors 125 TTJ 286 (Chennai)*, it was held that a restrictive covenant is a “right in persona” and not a “right in rem”, a contrary view was taken in *ITO vs. Mediacorp Technologies India Ltd. 30 SOT 506 (Chennai)*. When two views are possible, the view favourable to the assessee should be followed held in *CIT vs. Vegetable Products Ltd. 88 ITR 192 (SC)*.

*ACIT v. G.E. Plastics (ITAT) (Ahmedabad) (www. itatonline.org)*

**7. 132: Search action – Addition made by AO merely on the basis of section 132(4) statement – Failing to consider evidence on record AO hauled up for repeatedly disregarding ITAT’s directions & directed to pay costs**

Search action was carried on at the premises of the assessee. During the course of search action assessee statement was recorded u/s. 132(4). Statement of the assessee was retracted / modified on before the DDI (Inv), i.e. within reasonable time. Even after repeated request to supply the copies of the statement recorded no copy is furnished to the assessee. The addition was

made merely on the basis of the statement recorded u/s 132(4). The Tribunal in the first round remanded the matter back to the file of AO to make a fresh assessment on the basis of the evidence found in the search and not only on the basis of the retracted/ modified statement. However, the AO again made addition on the basis of statement, without considering the evidence on record. In second round of appeal the ITAT again remanded the matter to the file of AO and same action was committed by the AO. On third round of appeal the ITAT held that where after time and again remanding the matter to AO, the AO repeated the same conclusion drawn in the earlier orders and not considering the evidence on record, it was held that AO failed in following the principles of natural justice. The Hon’ble Tribunal remanded the matter again to the AO to complete the assessment only on the basis of incriminating material, if any, and not only on the basis of the s. 132(4) statement. The AO was directed to pay cost as also it was held that if the AO repeats the same order without examining the material on record, the order will be quashed without any further consideration.

*Sushila Suresh Malge v. ACIT (ITAT) (Mumbai) (www. itatonline.org )*

**8. S. 139(4): Filing of Return of Income – Belated Return – Exemption cannot be denied in case of purchase of new flat within the date of filing of belated return**

It was held that where the assessee filed a return which was well within the time limit of Section 139(4) of the Act and made investment in the purchase of new flat within the due date of filing of such belated return u/s 139(4) then the exemption u/s 54 cannot be denied.

*Mrs. Vijayalakshmi Adimoolam v. ITO (ITAT) (Mumbai) (ITA No. 6424/M/2010, AY 2007-08 dated 11-7-2012)*



## Hearty Congratulations

Hearty Congratulations to the newly elected office bearers of The Chamber of Tax Consultants for the year 2012-13.

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We wish them all the success.

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We wish them all the success.

**INDIRECT TAXES**

**Nikita R. Badheka**  
Advocate & Notary

**9.1 Sale – local sale or exports – Symbolic delivery of goods**

Moulds were manufactured by a dealer for the purpose of manufacturing a product which was exported to the foreign buyer and which was claimed as an export sale. The Karnataka High Court held insofar as manufacture of mould is concerned, for which the dealer had received payment in advance called as "tool development charges", amounts to an intra-State sale as the moulds were never actually exported, but remained with the dealer and such transaction definitely attracts levy of tax within the scope of section 4 of the Karnataka VAT Act.

High Court further held that the Delivery can be actual or symbolic and the delivery in the instant case is definitely symbolic as once the goods have become the property of the foreign buyer and the assessee has not only held on behalf of foreign buyer but also has acted on the instructions of the buyer by using the goods to further manufacture other goods for the use and benefit of the foreign buyer.

*IBEX Engineering Pvt Ltd. vs. State of Karnataka (2012 NTN (Vol. 49)-10) (Kar.)*

**9.2 Sale**

The expired medicines were returned by retainer to distributor who in turn return the same to manufacturing company. The company claimed exemption from sales tax for value of goods recalled and returned other expiry of shelf life. Such medicines use thereafter destroyed. The loss is borne by manufacturer. The distributors are issued credit note by manufacturers who in turn would issue credit note to retailers.

The Kerala High Court on facts held that this is not a case of fruited or unfruited sale. The claim of manufacturer was not allowable. However the High Court observed this is a genuine problem faced by the medicine distributors in the State which probably the State has to address. The Petitioner/manufacturer is free to take up the matter with the Government for providing sufficient safeguard under the VAT scheme.

*(Glaxo SmithKline Pharma Ltd. vs. State of Kerala (2012 NTN vol49-121)*

**10. Sale price – Res Judicata**

The issue before the WBTT was whether in case of sale of Motor Vehicle, the Post Sale Expenses like Road Tax, Insurance Premium Charges and Registration Cost are includible in Sale Price. The WBTT held them not to be included in the sale price within the meaning of Section 2(31) of the West Bengal Sales Tax Act, 1994.

As regards res judicata the WBTT held Res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar

courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct.

*(Frostees Exports (India) Pvt Ltd. vs. DCCT, Corporate Division, Kolkata and Others 2012 NTN (Vol. 49)-124)*

**11.1 Seizure**

Seizure of Polyester Texturized Yarn (PTY) was made on the ground that the Transit Form it has been mentioned as TEA – It was presumed that Yarn would be unloaded in the State of U.P. and Tea will be loaded for transporting it to Delhi. The U P Tribunal held except in Column 17, TEA has been mentioned in place of Textile Yarn due to mistake of the person who made the Transit Form. Possibilities, however may be strong, cannot take the place of evidence goods cannot be seized on the presumption that it will unloaded on way. The Appeal was allowed and the goods were directed to be released without deposit of security with the direction that in the Transit Form actual name of goods be mentioned.

*HRO – 55E/4167 vs. Commissioner, Commercial Tax, U.P. (2012 NTN (Vol. 48) Tribunal-158)*

**11.2 Check post**

Allegation was for attempt to evade tax wherein goods were allegedly transported against same Bill No which was used earlier. The tribunal held the onus in on department to prove the sale under the earlier bill

Merely because the department has alleged that the same bill had been used earlier also would not be enough to infer evasion of tax. It has to be established by the department that sale against the earlier bill also took place and the goods were transported. Case remanded to verify as to whether sale took place against the earlier bill or not.

*M/s. Patiala Pipes Pvt. Ltd. vs. State of Punjab Appeal No. 51 of 2012 (Order passed on 17-5-2012)*

**12. Review application**

The review application was entertained on grounds of the impugned orders passed by the tribunal suffering from patent errors of facts and law. The appellant in his appeal had contended that the Assistant Excise and Taxation Officer who detained the goods and imposed penalty was not authorised at that particular point of time to do so. The basic issue raised was of jurisdiction critical for decision of the case. The Tribunal has just mentioned in its order under review that the officers were rightly empowered by the State legislature, but when they were empowered has not been stipulated which is important consideration for determination of issue. Therefore, review is admitted.

*M/s. Rallis India Ltd. vs. State of Haryana STR No. 74 of 2007-08 (Hn.Tbnl.) Order passed on 28-5-2012*

**BOOK REVIEW**

AIFTP TIMES  
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The 21st Edition of "How to Handle Income tax Problems?" authored by Advocate Shri Narayan Jain and C.A. Dilip Loyalka has been released recently by M/s. Book Corporation. It is in two volumes, containing 89 chapters, covering more than 3000 questions and answers of day to day importance faced by the tax payers. The answer are well supported by authoritative pronouncements of the Apex Court, High Courts and Tribunals.

The added advantage of the book is that it covers tax rates for all persons. It also covers TDS rates alongwith DTAA rates for dividend, interest royalty and fees for technical services. The book also contains important CBDT circulars, notification, press release and instructions.

The authors have also incorporated the amendments made by the Finance Act, 2012 to provide readers its analysis in simple language.

The book is very useful for the those who have to deal with complex subject of Income tax, particularly to Advocates, Chartered Accountants, Tax Practitioners and Tax Administrators.

The two volumes of this book is available for moderate price of ₹ 2,495/-

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215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020. • Tel.: 22006342  
Telefax: 22006343 • E-mail: aiftp@vsnl.com • Website: www.aiftponline.org