

# AIFTP TIMES

Volume 5 - No. 5 | May 2014

## FORTHCOMING PROGRAMMES

Date & Month	Programme	Place
24-5-2014	One Day Tax Seminar (Northern Zone)	Agra
28-6-2014	National Executive Committee Meeting	Chennai
28, 29-6-2014	National Tax Conference (Southern Zone)	Chennai
22-8-2014	National Executive Committee Meeting	Nagpur
23, 24-8-2014	National Tax Conference (Western Zone)	Nagpur

## Suggestions for improving the administration of the Income Tax Appellate Tribunal

Dear Members,

The ITAT Bar Association's Co-ordination Committee (BACC) desires to forward a detailed representation to the incoming Government in July, 2014, with suggestions on better administration of the Income Tax Appellate Tribunal (the "Tribunal").

The BACC seeks the valuable suggestions of its Members on the following issues:

1. Any amendments desirable in the Income-tax Act for improving the functioning of the Tribunal;
2. Modification/amendments in the Income Tax Appellate Tribunal Rules or forms;
3. How to improve the quality of orders;
4. e-filing of appeals;
5. Functioning of e-court of the Tribunal;
6. Constitution of in-house committee to oversee administration;
7. Improving the official website of the Tribunal;
8. Checklists for filing appeals and representations before the Tribunal; and
9. Any other suggestions that the Members may consider appropriate for efficient management of the Tribunal.

Sd/-  
Convenors

Please send your suggestions on [itatbacc@gmail.com](mailto:itatbacc@gmail.com) / [aiftp@vsnl.com](mailto:aiftp@vsnl.com) latest by 30th June, 2014.

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

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## ONE DAY TAX SEMINAR

*Organised By*

**UTTAR PRADESH TAX ADVOCATES' WELFARE ASSOCIATION**

*Jointly with*

**ALL INDIA FEDERATION OF TAX PRACTITIONERS - NORTHERN ZONE**

**(AS KNOWLEDGE PARTNER)**

**ON SATURDAY, 24TH MAY, 2014**

**AT HOTEL ATITHI, TOURIST COMPLEX AREA, NEAR TAJ MAHAL, FATHEHABAD ROAD, AGRA**

**Theme: COMPLEXITIES IN THE SIMPLIFICATION OF TAX LAW**

### PROGRAMME

- 8.30 a.m. to 9.30 a.m. Registration & Breakfast
- 9.30 a.m. to 11.25 a.m. Inauguration:  
Guest of Honour: Shri O. P. Verma, HJS, Chairman, Commercial Tax Tribunal, Uttar Pradesh  
Guest of Honour: Shri Bharat Ji Agarwal, Senior Advocate, Allahabad
- 11.25 a.m. to 11.30 a.m. Re-arrangement of dais & short comfort break
- 11.30 a.m. to 2.00 p.m. **First Technical Session - VALUE ADDED TAX**  
**Builders as Works Contractor under U.P. VAT in the context of the recent Supreme Court's Judgments & Input Tax Credit/Reversal of ITC**
- 11.25 a.m. to 11.35 a.m. Startup and Formalities  
Chairman : Shri Bharat Ji Agrawal, Senior Advocate, Allahabad & Past National President, AIFTP
- 11.35 a.m. to 11.50 a.m. i) Introduction of Subject – Assessment of Builder as Works Contractor under U.P. VAT  
Speaker : Shri Ravi Prakash Agarwal, Advocate, Agra
- 11.50 a.m. to 12.30 p.m. ii) Intricate Issues arising out of recent Supreme Court Judgment in L&T Case  
Speaker : Shri Mukul Gupta, Advocate, Ghaziabad, Chairman, Central GST Committee & National Vice President-AIFTP
- 12.30 p.m. to 1.10 p.m. iii) Practical Aspects & Possible Solutions for assessment of Builder in the light of Supreme Court's Judgment.  
Speaker : Smt. Nikita Badheka, Mumbai, Past Chairperson, AIFTP (WZ)
- 1.10 p.m. to 1.40 p.m. iv) Input Tax Credit / Reversal of ITC under U.P. VAT with special emphasis as per Rule 30(2)  
Speaker : Shri Piyush Agrawal, Eminent Advocate, Allahabad
- 1.40 p.m. to 2.00 p.m. Brains' Trust Queries
- 2.00 p.m. to 2.45 p.m. Lunch Break
- 2.45 p.m. to 4.30 p.m. **Second Technical Session - INCOME TAX**  
**Concealment Penalty u/s. 271(1)(c) and Intricate issues of TDS under Income Tax**
- 2.45 p.m. to 2.55 p.m. Start-up and Formalities  
Chairman : Shri Arvind Shukla, Advocate, Varanasi and Chairman, AIFTP (NZ)
- 2.55 p.m. to 3.30 p.m. i) Concealment Penalty u/s. 271(1)(c)  
Speaker : Shri V. P. Gupta, Eminent Advocate, Delhi High Court & National Executive Committee Member, AIFTP
- 3.30 p.m. to 4.30 p.m. ii) Panel Discussion/Brains' Trust on Intricate Issues of TDS under Income Tax  
Moderator : CA. Naveen Garg, Ghaziabad along with Eminent panelists
- 4.30 p.m. to 4.45 p.m. Valedictory Session - Thanksgiving

4.45 p.m. to 5.00 p.m. High Tea  
5.00 p.m. to 7.00 p.m. AIFTP-North Zone Managing Committee Meeting at the same venue in the Board Room

**Delegate Fees : Members or Non-Members – ₹ 750/-**

**OPTIONAL:** Taj Mahal Visit – early morning at 6.00 a.m. on 24th May 2014. The entry gate of Taj Mahal is less than 500 Mtrs. from Athithi Hotel. Entry Charges payable at actuals.

**For Stay arrangements at Agra,  
please contact and send Reservation Charges at least 5 days in advance**

CLARK HOTEL : Approx ₹ 5,500/- per day for twin bed room  
Tel.: 0562-2226121/27 • E-mail: resv@hotelclarks.in  
ATHITHI HOTEL : Approx ₹ 2,500/- per day for twin bed room  
Tel.: 0562-2330878/2330880 • E-mail: hotelathithi@hotmail.com

**For futher details, please contact:**

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## Two Day National Tax Conference at Chennai

Southern Zone of AIFTP has organised two-day National Tax Conference at Chennai on 28th & 29th June, 2014 at Hotel Park Sheraton (formerly Hotel Park Adyar) Mylapore, Chennai. In all probability hectic and concerted efforts are being employed to bring the Hon'ble Chief Justice of India to be the Chief Guest in the inaugural session commencing from 9.30 a.m. on 28-6-2014.

The conference would discuss and deliberate on important topics touching/covering direct and indirect taxation as also general law specifically with reference to the prosecutions under Income-tax Act for various deficiencies.

In the evening of 28th June, 2014 @ 5:00 p.m. there would be a National Executive Committee meeting at the venue followed by cultural programme.

Also arrangements are on to make all the outstation delegates to be comfortable in their stay during the two days by accommodating them in surrounding hotels suiting the respective pockets.

A detailed brochure with all details such as delegate fees, technical sessions, hotel accommodation etc., would be released shortly.

Outstation delegates may kindly make their travel arrangements accordingly.

Delegate Fees: Corporate: ₹ 3,000/-; Professionals: ₹. 2,500/-; Spouses: ₹ 1,500/-; Law Students: ₹ 1,000/-

**For further details, Please contact:**

**Dr. Anita Sumanth**  
Chairperson-SZ  
Mob: 09840320296

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## TWO DAY NATIONAL TAX CONFERENCE AT NAGPUR

ON 23RD AND 24TH AUGUST 2014

ORGANISED BY

ALL INDIA FEDERATION OF TAX PRACTITIONERS – WESTERN ZONE

JOINTLY WITH

THE SALES TAX PRACTITIONERS ASSOCIATION OF MAHARASHTRA, MUMBAI;

SALES TAX BAR ASSOCIATION, NAGPUR &

VIDHARBHA TAX PRACTITIONERS ASSOCIATION, NAGPUR

### Theme : Learn, Relax & Rejuvenate

All India Federation of Tax Practitioners (Western Zone) jointly with above organizations are pleased to announce Two Day National Tax Conference at Nagpur on 23rd and 24th August, 2014. The venue is "Suraburdi Meadows", which is a new and unique resort, spread over 35 acres, and is a lush green leisure destination with scenically located hillocks, winding roads and pristine lake water. This retreat destination having serene and tranquil atmosphere, is one of its kind in entire Central India. We strongly recommend all members not to miss this opportunity of learning with complete relaxation. In fact, we suggest all members to come with family one day in advance for total rejuvenation and have quality time with family (as no Idiot Box in rooms, so free from daily soaps)! We have negotiated attractive package for the delegates and their families.

Conference details are:

- Days & Dates : Saturday, 23rd August, 2014 (Full Day)  
Sunday, 24th August, 2014 (Half Day)  
AIFTP - NEC Members - NEC Meeting on Friday 22nd Aug., 2014 - EVENING
- Venue : SURABURDI MEADOWS, Nagpur-Amravati Road, Near Suraburdi Lake,  
Waddhamna, Nagpur - 440023 Maharashtra  
Approx. 20 kms. from Nagpur Airport and also from Nagpur Railway Station  
(Nagpur is well connected with major cities by Air / Rail / Road. Details will be mailed to the requesting delegates)
- Delegate Fees : For Non-Residential Delegate - ₹ 3,000/- per person  
For Residential Delegate - ₹ 4,500/- per person  
For Accompanying Spouse / Family Member - ₹ 3,500/- per person.  
(Package deal inclusive of one night stay at the resort on twin sharing basis.)

[The above rates are inclusive of two breakfast (23rd & 24th), two lunch (23rd & 24th) and gala dinner on 23rd night, along with Entertainment Evening. It also includes (for delegates) course material, tea & coffee during the conference and delegate kit. For the spouses / family members, it includes sightseeing]

Delegates wishing to stay extra will get the same accommodation @ ₹ 1500/- per person on twin sharing, excluding food charges

The tentative schedule of the conference is as under:-

#### DAY 1 – SATURDAY, 23RD AUGUST, 2014

- 9.30 a.m. to 10.00 a.m. – Registration & Fellowship
- 10.00 a.m. to 10.45 a.m. – Inaugural Session
- 10.45 a.m. to 12.00 noon – **1st Technical Session**
- |              |  |
|--------------|--|
| Topic        | – Service Tax Issues in Reverse Charge Mechanism & issues of CENVAT Credit under Service Tax |
| Paper Writer | – Mr. Jitendra Motwani, Advocate, Mumbai   |
| Chairman     | – Shri Bharat Ji Agrawal, Sr. Advocate, Allahabad  |
- 12.00 noon to 1.30 p.m.– **2nd Technical Session**
- |              |  |
|--------------|--|
| Topic        | – Update on liability of Developers & Works Contractor |
| Paper Writer | – Shri Nitin S. Shah, Advocate, Pune                   |
| Chairman     | – Shri Vinayak Patkar, Advocate, Mumbai                |

- 1.30 p.m. to 2.30 p.m. - Lunch Break  
 2.30 p.m. to 3.45 p.m. - **3rd Technical Session**  
 Topic - Issues of Inter State Sales *vis-à-vis* Branch Transfer & practical difficulties & solutions  
 Paper Writer - Shri H. C. Bhatia, Advocate, New Delhi  
 Chairman - Shri Vikram Nankani, Advocate, Mumbai  
 3.45 p.m. to 4.00 p.m. - Tea Break  
 4.00 p.m. to 5.15 p.m. - **4th Technical Session**  
 Topic - Capital Gain *vis-à-vis* transactions in immovable property  
 Paper Writer - CA. (Dr.) Girish Ahuja, New Delhi  
 Chairman - Shri N. M. Ranka, Sr. Advocate, Jaipur

**ENTERTAINMENT PROGRAMME**

- 7.00 p.m. to 7.30 p.m. - Fellowship  
 7.30 p.m. to 8.30 p.m. - Musical Programme  
 8.30 p.m. onwards - Gala Dinner

**DAY 2 – SUNDAY, 24TH AUGUST, 2014**

- 10.00 a.m. to 11.15 a.m.- **5th Technical Session**  
 Topic - Deemed Income under sections 56(2), 68 & 69 of Income Tax Act, 1961  
 Paper Writer - CA. Pradip Kapasi, Mumbai  
 Chairman - CA. Jaydeep Shah, Nagpur, Past President, ICAI.  
 11.15 a.m. to 1.00 p.m. - Brains' Trust Session  
 Trustees - Shri S. K. Poddar, Advocate, Ranchi (Income Tax)  
 - CA. Ashok Chandak, Nagpur, Past President, ICAI (Service Tax)  
 - Shri Mukul Gupta, Advocate, Ghaziabad (Service Tax)  
 - Shri P. C. Joshi, Advocate, Mumbai (Sales Tax/VAT/CST)  
 - Smt. Nikita R. Badheka, Advocate, Mumbai (Sales Tax/VAT/CST)

**The above Programme is subject to change**

**For further information, please contact the below Office Bearers:**

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8. Sachin Gandhi, Vice President, STPAM (Mob.) 09821482020
9. Shashank Dhond, Hon. Secretary, STPAM (Mob.) 09821094250

**RENEWAL SUBSCRIPTION TO AIFTP JOURNAL**

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal on 3rd March, 2014. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai as early as possible.

Members can also download the subscription Form from our website; i.e., [www.aiftponline.org](http://www.aiftponline.org) and send us the subscription.

Thanking you,

**For All India Federation of Tax Practitioners**

**JANAK VAGHANI**  
Treasurer

## DIRECT TAXES

Ajay R. Singh, Rahul Hakani, Rahul Sarada and Ms. Neelam Jadhav  
Advocates, KSA Legal Chambers

### HIGH COURTS

**1. S.234E: High Court issues notice on challenge to notices for levy of fee for failure to file TDS statement – Recovery of fee is subject to outcome of Petition**

S. 234E of the IT Act, 1961 inserted by the Finance Act, 2012 provides for levy of a fee of ₹ 200/- for each day's delay in filing the statement of Tax Deducted at Source (TDS) or Tax Collected at Source (TCS). A Writ Petition to challenge the validity of s. 234E has been filed in the Jodhpur Bench of the Rajasthan High Court. *Vide* an order dated 15-4-2014 the High Court has directed that notice should be issued to the CBDT and the UOI as to why the Petition should not be accepted. It has also been held that in the meanwhile, if any recovery is made from the Petitioner that shall be subject to the final decision of the Writ Petition.

*Om Prakash Dhoot v. UOI (Rajasthan High Court)*  
(Source: [www.itaonline.org](http://www.itaonline.org))

**2. S.80-IB(10): If developer does not (without just cause) develop to full extent of FSI, a part of the sale proceeds has to be treated as being for sale of FSI and denied s. 80-IB(10) deduction**

For any commercial activity of construction, be it residential or commercial complex maximum utilisation of FSI is of great importance to the developer. Ordinarily, therefore, it would be imprudent for a developer to underutilise available FSI. Sale price of constructed properties is decided on the built up area. It can thus be seen that given the rate of constructed area remaining same, non-utilisation of available FSI would reduce the profit margin of the developer. When a developer therefore utilises only say 25% of FSI and sells the unit leaving 75% FSI still available for construction, he obviously works out the sale price bearing in mind this special feature. Thus, therefore, when a developer constructs residential unit occupying a fourth or half of usable FSI and sells it, his profits from the activity of development and construction of residential units and from sale of unused FSI are distinct and separate and rightly segregated by the AO. *CIT vs. Moon Star Developers (Gujarat High Court)*  
(Source: [www.itaonline.org](http://www.itaonline.org))

**3. S.80IA(9): The effect of s. 80-IA(9) is that s. 80-IA deduction has to be reduced for s. 80HHC deduction in all cases and not only when the combined deduction exceeds the profits**

Sub-section (9) of s. 80IA is aimed at restricting the successive claims of deduction of the same profit or gain under different provisions contained in sub-chapter C of Chapter VI of the Act. This provision, therefore, necessarily impacts other deduction provisions including s. 80HHC of the Act. Nothing contained in s. 80HHC suggests that the deduction provided therein was immune from any outside influence or that the provision was impregnable by any other statute or enactment. Accepting any such theory would lead to incongruous results. Even the assessee concedes that sub-section (9) of s. 80IA would operate as to limiting the combined deductions to a maximum of the profits and gains from an eligible business of the undertaking or enterprise. If s. 80HHC contained a protective shell making it immune from any outside influence, even this effect of sub-section (9) of s. 80IA could not be applied. This would completely render the provisions of sub-section (9) of s. 80IA redundant and meaningless. *CIT v. M/s. Atul Intermediates (Gujarat High Court)*  
(Source: [www.itaonline.org](http://www.itaonline.org))

### TRIBUNALS

**4. Ss.54E, 54EA & 54EB: The term "month" in ss. 54E, 54EA, 54EB & 54EC does not mean "30 days" but the "calendar month". So, the expression "within a month" means "before the end of the calendar month"**

Sections 54E, 54EA & 54EB require the investment to be made "within a period of six months after the date of such transfer". The subtle question is that whether the word "month" refers in this section a period of 30 days or it refers to the month only. The term 'month' is not defined in the I.T. Act. Therefore its meaning has to be understood as per the General Clauses Act, 1897 which defines the word "month" to mean a month reckoned according to the British calendar. In *Munnalal Shri Kishan Mainpuri 167 ITR 415 (All)* it was held in the context of limitation u/s 256(2) that the word 'month' refers to a period of 30 days and, therefore, the reference to "six months" in s. 256(2) is to "six calendar months" and not "180 days". On some occasions, the Legislature had not used the term "Month" but has used the number of days to prescribe a specific period. For example, the First Proviso to s.254(2A) provides that the Tribunal may pass an order granting stay but for a period not exceeding 180 days. This is an important distinction made in the statute while subscribing the limitation/period. This distinction thus resolves the present controversy by itself.

*Alkaben B. Patel v. ITO (ITAT, Ahmedabad) (Special Bench)* (Source: [www.itaonline.org](http://www.itaonline.org).)



**5. S.250(4) r.w. Rule 46A: Additional evidence: Reconciliation filed of parties account – Assessing Officer making the addition of total amount and not the differences – CIT(A) ought to have admitted the ledger account produced by the assessee in appellate proceeding in interest of justice, more so when document produced goes to the root of matter**

The additions were made by the A.O. for non-reconciliation of the accounts. The reconciliation was filed before the A.O. but he failed to take note of the same. He further contended that even the Id. CIT(A) wrongly rejected the reconciliation filed by the assessee holding that the same was the computer generated documents and were not duly signed by the concerned parties. The CIT(A) while rejecting the said copies of the ledger account failed to take note of the separate confirmations filed by the assessee. The further contention of the learned A.R. has been that even the AO instead of making the addition of the difference of the amount, which according to him was not reconciled, has made the addition of the entire outstanding amount. The undisputed fact is that the disputed additions have been made in the case of the assessee due to difference of the reconciliation statements. The stand of the assessee is that the statements were reconciled not only before the AO but also before the CIT(A). But CIT(A) has failed to look into the documents filed before him.

The Hon'ble Tribunal held that the straightaway rejecting of the ledger accounts by the lower authority was not justified. If the learned CIT(A) had any doubt about the authenticity of the documents in question he could have verified the same from the concerned parties. Even otherwise, while refusing to take into consideration the relevant documents which were very much necessary for the just decision of the case, learned CIT(A) failed to exercise his appellate jurisdiction u/s. 250 of the Act. The duty was also cast upon the learned CIT(A) to admit and consider the evidence produced before him by the assessee. The powers conferred on the First Appellate Authority under sub-section (4) of section 250 of the Act, being a quasi-judicial power, it is incumbent on him to exercise the same, if the facts and circumstances justify. Even otherwise under rule 46A(4) of the IT Rules, the CIT(A) has been given power to call for production of any document or the examination of any witnesses to enable him to dispose of the appeal. There is no doubt about the legal position that if any document furnished by the assessee before the Commissioner (Appeals) is in the nature of clinching evidence which goes to the root of the case then in the interest of justice such types of evidence should not be rejected.

The Hon'ble ITAT held in the interest of justice, the matter remanded back to the AO to verify the ledger account statements, confirmations, etc.

*M/s. BSN Medical P. Ltd. v. DCIT 3(1), Mumbai, ITA No. 8830/M/2011 A.Y. 2006-07, Bench "B" Date of order 28-3-2014.*

**6. S. 14A r.w. Rule 8D: During the year no investment made, no exempt income earned and no expenditure incurred in relation to making any investment – Assessing Officer to record his dissatisfaction with reasons why Rule 8D to be applied**

The sole ground raised in the appeal is with regard to the confirmation of disallowance of ₹ 29,84,949/- u/s. 14A of the Income-tax Act. The AO during the assessment proceedings observed that the assessee-company had made investments of ₹ 19.43 crores for earning exempt income. He therefore made a disallowance u/s. 14A of the Income-tax Act, 1961 read with Rule 8D which was worked out at ₹ 29,84,949/-. In appeal before the CIT(A), the learned AR of the assessee submitted that the assessee had not incurred any expenditure for making investments to earn the dividend income and further that the AO had not given any finding for rejecting the assessee's claim that no disallowance was required u/s.14A. The learned CIT(A) confirmed the disallowance made by the AO.

Before the Hon'ble Tribunal the assessee has submitted that neither any exempt income nor any expenditure had been incurred for earning of the exempt income. The assessee had his own sufficient funds for making the investments. He has further contended that the investments were incidental to the business of the assessee.

The Hon'ble ITAT relying on the decision of the '*Godrej & Boyce Manufacturing Co. Ltd.*' 328 ITR 81 and observed that Rule 8D r.w.s. 14A(2) is not arbitrary or unreasonable but can be applied only if the assessee's method is not satisfactory. It has been further held that Rule 8D is not retrospective and applies from A.Y. 2008-09. And further observed that u/s. 14A of the IT Act, resort can be made to Rule 8D of the IT Rules for determining the amount of expenditure in relation to exempt income, if, the AO is not satisfied with the correctness of the claim made by the assessee in respect of such expenditure.

In the present case the AO without recording any dissatisfaction with regard to the claim of the assessee that no expenditure was incurred by the assessee for earning the exempt income, straightaway applied Rule 8D against the mandate of the provisions of s. 14A of the Act.

The Hon'ble ITAT viewing all facts and circumstances of the case, restored this issue back to the AO with a direction that the AO will examine the contentions of the assessee made in this regard.

*M/s. JIK Industries Ltd. v. Dy. CIT, I.T.A. No.7088/Mum/2011 A.Y. 2008-09; dated 9-4-2014 Bench "J".*



**Subscription Rates w.e.f. 1-4-2014**

1. Life Membership of the AIFTP				₹ 2,500/-
Subscription of AIFTP Journal (for 1 year)				₹ 800/-
Subscription of AIFTP Journal (for 3 years)				₹ 2,100/-
2. For Non-Members				
Subscription of AIFTP Journal (for 1 year)				₹ 1,000/-
Subscription of AIFTP Journal (for 3 years)				₹ 3,000/-
Single copy of the AIFTP Journal				₹ 80/-
3. Corporate Membership				
Nature of fees	Type I (5 Yrs.)	Type II (10 Yrs.)	Type III (15 Yrs.)	Type IV (20 Yrs.)
	₹	₹	₹	₹
Admission	500/-	500/-	500/-	500/-
Subscription	5,000/-	7,500/-	11,500/-	15,000/-
Total	5,500/-	8,000/-	12,000/-	15,500/-

*Note: Members may download the membership form from the website of AIFTP., i.e., www.aiftponline.org*

**Advertisement Tariff  
for AIFTP Journal  
(W.e.f. 15th July, 2013)**

Particulars	Per Insertion
1. Quarter page	₹ 1,500/-
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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 28-4-2014  
Life Members**

	Associate	Individual	Association	Corporate	Total
Central	0	792	23	3	818
Eastern	3	1149	35	3	1190
Northern	0	945	17	0	962
Southern	1	889	13	6	909
Western	4	1700	33	16	1753
<b>Total</b>	<b>8</b>	<b>5475</b>	<b>121</b>	<b>28</b>	<b>5632</b>

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

**Associate Editors of AIFTP Times : Mr. Kishor Vanjara & Mr. Deepak R. Shah**

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