



All India Federation of Tax Practitioners

Price Rs. 5/-
(For Members only)

AIFTPtimes

Volume IV - No. 12 • December, 2009

*Editor-in-Chief, National President,
Members of the National Executive Committee and Journal Committee*

Wish all our members and readers

*Merry Christmas
and A Happy New Year*



Federation News

Mukul Gupta, Secretary General

FORTHCOMING PROGRAMMES

Dates & Months	Programmes
3rd to 5th December, 2009	6th Nani Palkhivala Memorial National Tax Moot Court Competition at Mumbai
18th December, 2009	Last National Executive Committee Meeting for the term 2008 & 2009 at Hotel Om Tower, M.I. Road, Jaipur from 2.30 p.m. to 4.00 p.m.
18th December, 2009	Extraordinary General Meeting at Hotel Om Tower, M.I. Road, Jaipur from 4.00 p.m. to 6.00 p.m.
18th December, 2009	First National Executive Committee Meeting for the term 2010 & 2011 at Hotel Om Tower, M.I. Road, Jaipur from 6.00 p.m. to 7.00 p.m.
19th & 20th December, 2009	15th National Convention at B. M. Birla Auditorium, Statue Circle, Jaipur

INTERNATIONAL STUDY TOUR TO USA

We are pleased to inform you that Federation is organising an International Study tour to USA during the month of May, 2010. Further details will be circulated in next issue of AIFTP Times. Interested participants are requested to contact office of the Federation.

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
National President — Bharatji Agrawal, Sr. Adv.	0532-2260576/77	2408389	9415235429	bharatjiagrawal@yahoo.co.in
Deputy President — M. L. Patodi, Adv.	0744-2361179	2363637	9829035256	patodi_jp1@sancharnet.in
Secretary General — Mukul Gupta, Adv.	0120-2820380	2821407	9811023739	mukuladv@hotmail.com
Treasurer — CA. Janak Vaghani	022-22821978	—	9324680306	janakvaghani2004@yahoo.com

REPORT ON TWO DAY NATIONAL TAX CONFERENCE AT BENGALURU

Karnataka State Chartered Accountants Association (KSCAA) jointly with All India Federation of Tax Practitioners (Southern Zone) (AIFTP) organized a two day National Tax Conference on the 7th and 8th November, 2009 at Hotel The Capitol, Bengaluru. The Conference was inaugurated by the Hon'ble Deputy Chairman of Rajya Sabha, Shri Rahaman Khan. In his inaugural address, he highlighted on the contribution of direct and indirect taxes in our country's GDP, role of tax practitioners in the development of the country and social responsibilities of the dealers and the importance of upcoming new tax regime (Goods and Service Tax). National President Shri Bharat Ji Agrawal, Shri Mukul Gupta, Secretary General, Shri P.V. Subba Rao, Chairman, SZ of AIFTP, Shri Siddaiah, President, KSCAA and Shri Prabhu, Vice President, KSCAA also addressed.

Primarily the technical sessions were divided into issues pertaining to Works Contract, taxes on subsequent Sales and Goods and Service Tax which were followed after the inaugural session.

The first technical session was addressed by K.K. Chythanya, Advocate on Karnataka Works Contracts issues, followed by a panel discussion on works contracts with panelists, P.C. Joshi Advocate, Venkataramani, FCA, Bharat Ji Agrawal Advocate and P.V. Subba Rao, Advocate. The Moderator Sanjay Dhariwal FCA has raised the issues which are commonly faced by the works contractor in compliance with the KVAT law to the panelist members and the session was very informative and interactive. Various views with supporting provisions and case law were discussed for the benefit of delegates.

In the post lunch session, learned speaker P.C. Joshi Advocate, has explained the issues pertaining to taxes on subsequent sales under the CST law with the supporting case laws. He has thrown the ideas for taxability on second sales and subsequent sales under the CST law.

The last session was addressed by learned speaker Venkataramani, FCA who made a presentation on "GST – A Road Map". In his address he sought the support and co-operation of the Industry for a smoother transition to GST and reiterated that GST will be beneficial to Trade and Industry. He also explained the models of the GST on which the Government is planning to introduce. He has given a comparison of existing laws with the forthcoming law with his expectations from the GST models.

The second day of the Conference has Technical Sessions for IFRS, Service tax issues for construction contracts and Direct Tax Code bills.

C.A. Mohan Das Pai, Director, Infosys Technologies Limited, Bengaluru led the first session, by introducing the concept of International Financial Reporting Standards (IFRS). K.S. Ravi Shankar, Advocate explained the most litigated issues relating to Service tax law like construction contract services, renting services and information and technology services. The last session was taken by Padamchand Khincha, FCA who enlightened the salient features of the Direct Tax Code and its comparison with the current Income Tax Law.

End of the day in commemoration of the two day memorable Conference, a Souvenir has been released comprising the useful articles on CST, GST, Service Tax, Income Tax, IFRS & Works Contracts.

Conference was systematically organized and all the sessions were commenced and concluded on time. About one hundred and eighty delegates participated. Conference was made very useful by way of interaction by the delegates. Delegates were present from different fields like industry, service, taxation etc., from other districts like, Tumkur, Gadag, Dharwad, Hubli etc., and also from other States. The paper presentation by the speakers was excellent.

The Valedictory Address was delivered by Sanjay Dhariwal, FCA, Marlula Siddaiah, FCA President – KSCAA and Allama Prabhu FCA Vice President – KSCAA. They summed up the proceedings and made concluding remarks. They thanked all the speakers for the excellent presentation and particularly expressed their gratitude to Shri Rahaman Khan, Hon'ble Deputy Chairman of Rajya Sabha for his exemplary views which have thrown more light on the Conference. They assured that in future also more such conferences will be organized.

WORKSHOP ON MVAT ACT & ALLIED LAWS

All India Federation of Tax Practitioners (WZ) jointly with Bombay Chartered Accountants' Society, The Chamber of Tax Consultants & The Sales Tax Practitioners Association of Maharashtra proposed to be held in the month of November' 09, December'09 & January'10 is postponed to January' 2010 onwards. Future programmes will be intimated shortly on our website i.e. www.aiftponline.org.



NOTICE OF EXTRAORDINARY GENERAL MEETING
OF THE FEDERATION TO BE HELD ON 18-12-2009 AT JAIPUR

Date : 3-10-2009

Dear Members,

An Extraordinary General Meeting as provided in Rule 10 will be held on Friday, 18th December, 2009 at Hotel Om Tower, M. I. Road, Jaipur at 3.30 p.m. to transact the following agenda as prescribed in Rule 8.

AGENDA

1. To confirm the proceedings of the previous meetings held on 29th August, 2009 & 18th September, 2009.
2. To elect 40 members to the Executive Committee for the term 1-1-2010 to 31-12-2011.
3. To consider report of the Executive Committee for the period 1-1-2008 to 18-12-2009.
4. To consider suggestions from the members in respect of rendering better service to the members and for overall progress of the AIFTP.
5. To receive the report of the Chief Election Officer.
6. To transact any other business that may be raised with the permission of the chair.

For All India Federation of Tax Practitioners

Mukul Gupta
Secretary General

Notes:

1. Constitution, rules and regulations and specimen nomination form is printed in the May 2002 issue of the Journal and also available on website of AIFTP. Members are requested to read the same before filing the nomination.
2. Nominations are hereby invited for the membership of National Executive Committee from all eligible members in terms of Rules 10(1) and 14 subject to numerical limit as provided in Rule 7(3) for each Zone.
3. Nomination form duly proposed and seconded must reach the registered office of the Federation on or before 10th December, 2009 (Thursday) before 6.00 p.m. or may be personally tendered to Chief Election Officer Shri N. M. Ranka at Jaipur before 5.00 p.m. on 17th December, 2009.
4. Candidate may withdraw the nomination on or before 18th December, 2009 (Friday) before actual commencement of Election process.
5. As per clause 10(3) of the constitution of the Federation, the Chairman of the respective zone shall be ex-officio member of the Executive Committee hence Chairman elect is not required to file the nomination for the National Executive Committee. A special request is hereby made to all the zones to hold the election of respective zone on or before 30th November, 2009 and convey the result to head office through e-mail followed by dispatch through speed post.
6. As per the membership of respective zones as on 30th September, 2009 maximum number of candidates who can be elected as per rule 7(3) of the constitution are as under:-

Zones	Maximum to be elected	Members as on 30-9-2009
Western	14	1529
Eastern	07	771
Southern	06	664
Central	06	635
Northern	07	766
Total	40	4365

7. As per Rule 10, clause 6 of the constitution of the Federation, a member who is more than 5 years in practice and who has been a member of the Federation for at least two years can only file the nomination.
8. At the meeting held on 1-10-2005 at Mumbai it was decided unanimously that notice for Extraordinary General Meeting be published in the journal of the AIFTP or AIFTP Times as contemplated under rule 9 clause 3. Hence, no separate notice will be issued.
9. The National Executive Committee Meeting will be held once in three months at different places in the country, along with two days' Conference. The Executive Committee Members have to bear personally the expenses of travelling, stay and delegate fees of the Conference and also devote time for the welfare of the Federation. Persons of integrity and who can afford to spend time and money for the welfare of the profession are only requested to file the nomination.
10. The National Executive at its first meeting after election shall elect from amongst its members the following office bearers for two calendar years. (Rule 10 Clause 4 read with clause 6).
 1. One President
 2. One Deputy President
 3. Five Vice Presidents (one from each zone)
 4. One Secretary General
 5. One Hon. Treasurer and
 6. Five Hon. Joint Secretaries (one from each zone)
11. For further clarification the members may contact the Secretary General, Chairman of respective zone or Registered Office.
12. Nomination forms are also available in our website; i.e., www.aiftponline.org.
13. At the last National Executive Committee Meeting, Shri N. M. Ranka was appointed as the Chief Election Officer.
14. The Nomination Forms would be scrutinized by the aforesaid officer and conduct the election if warranted at Jaipur at the time of AGM

Note: All Zonal Chairmen are requested to hold the election of respective zones before 30th November, 2009.



15th NATIONAL TAX CONVENTION, 2009

DECEMBER 19–20, 2009

THEME : TAXATION POLICY – ECONOMIC DEVELOPMENT

VENUE

B.M. BIRLA AUDITORIUM, STATUE CIRCLE, C-SCHEME, JAIPUR-1

Organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS (CZ) • RAJASTHAN TAX CONSULTANTS ASSOCIATION
TAX CONSULTANTS ASSOCIATION, JAIPUR • JAIPUR BRANCH OF CIRC OF ICAI, JAIPUR
JAIPUR TAX BAR ASSOCIATION & TAX BAR ASSOCIATION, KOTA**

Jaipur, popularly known as 'Pink City', Utsav City, Heritage City & Chhota Kaashi, was founded in 1727 A.D. by Maharaja Sawai Jai Singhji and designed by architect Vidyadhar Bhattacharya. Jaipur, is famous throughout the world for its Palaces, Temples, Museums, Forts and is the Capital of the princely State of Rajasthan having the largest area in the country. Of late, Jaipur has become a hub for International Conferences, Seminars, Conventions etc. etc. Jaipur. It has rich heritage and culture and is famous being triangle to the foreign tourists namely; Delhi – Jaipur – Agra. Delhi and Agra are just at a distance of about 250 Kms. It is developing like a WORLD-CLASS CITY, with all the facilities and travel links.

We, on behalf of the All India Federation of Tax Practitioners and the other Organizing Associations cordially invite you to participate in the National Tax Convention, 2009 on 19th - 20th December, 2009 at Jaipur. We welcome you from the core of our heart to this Great City which is renowned for warm hospitality. We expect professional colleagues from throughout the country to attend in large numbers. Please convey to all interested professionals about this Convention. We will be discussing proposed "LAW REFORMS by DIRECT TAXES CODE", "GST" in addition to the other normal subjects of practical importance on Direct as well as Indirect Taxes. Dignitaries from the field of law and accountancy would address the congregation and it would be an opportunity to have an in-depth study of the subjects, to inculcate brotherhood and relax.

Thanking you,

(Bharat Ji Agrawal – 09415235429)
National President – AIFTP

(M.D. Sodani – 09425093888)
Chairman (CZ) – AIFTP

(M.L. Patodi – 9829035256)
Conference Chairman

PROGRAMME

SATURDAY, 19TH DECEMBER, 2009

Registration & Breakfast	: 08.30 a.m. to 09.30 a.m.
Inaugural Session	: 9.45 a.m. to 11.45 a.m.
Chief Guest	: Hon'ble Mr. Justice Dalveer Bhandari, Judge, Supreme Court of India
Guest of Honour	: Hon'ble Mr. Justice G.S. Singhvi, Judge, Supreme Court of India
	: *Hon'ble Shri Ashok Gehlot, Chief Minister of Rajasthan
	: Hon'ble Mr. Justice Jagdish Bhalla, Chief Justice of Rajasthan High Court
	: Shri H.M. Bangur, President, Cement Manufacturers' Association
	: Shri Bharat Ji Agrawal, Senior Advocate, National President, AIFTP, Allahabad
	: Release of publication "Entertainment Industry"
Tea Break	: 11.45 a.m. to 12.00 noon

FIRST TECHNICAL SESSION – 12.00 NOON to 01.45 P.M.

Chairman	: Hon'ble Shri S.S.N. Moorthy, Chairman, Central Board of Direct Taxes
Subject	: Implications of Direct Taxes Code
Guest of Honour	: Shri M.K. Singhi, Executive Director, Shree Cement Ltd.
Speakers	: Shri Nishith Desai, Advocate, Founder International Law Firm, Nishith Desai Associates, Mumbai, Shri Ganesh, Sr. Advocate, New Delhi
Group Leader	: Shri P. M. Chopra President, Rajasthan Tax Consultants Association
Co-ordinator	: Shri Sudhir Bhansali, Secretary, Rajasthan Tax Consultants Association
Lunch	: 01.45 p.m. to 2.30 p.m.

SECOND TECHNICAL SESSION – 02.30 P.M. to 04.00 P.M.

Chairman	: Hon'ble Mr. Justice Rajesh Bindal, Judge, Punjab & Haryana High Court
Guest of Honour	: Shri R.M. Gupta, Sr. Executive President, Grasim Industries Ltd.
Subject	: Computation of Sources of Income under the Direct Taxes Code
Speakers	: Shri H. Padamchand Khincha, FCA, Bangalore Shri Naryan Jain, Advocate, Vice Chairman, AIFTP (EZ) Kolkata
Expert Comments	: Dr. K. Shivaram, Advocate, Past President, AIFTP, Mumbai
Group Leader	: Shri Dinesh Gupta, President, Jaipur Tax Bar Association
Co-ordinator	: Shri Rambaba Vijay, Secretary, Jaipur Tax Bar Association.
Tea Break	: 04.00 p.m. to 04.15 p.m.



THIRD TECHNICAL SESSION – 04.15 P.M. to 06.15 P.M.

- Chairman : Hon'ble Judge, Rajasthan High Court
 Guest of Honour : Shri A.K. Saraogi, President & C.E.O. J.K. Cement Ltd.
 Subject : **Subsequent Sale under CST & Recent Controversial Issues with Special Reference to Works Contract**
 Speaker : Smt. Nikita Badheka, Advocate & Notary, Chairperson, AIFTP (WZ), Mumbai
 Subject : **Road Map – GST**
 Speaker : Shri R. Sekar, IRS, Commissioner of Customs, Pune
 Expert Comments : Shri V. Ramachandran, Sr. Advocate, Past President, AIFTP, Chennai
 Group Leader : Shri Milind Vijayvargiya, President, Tax Bar Association, Kota
 Co-ordinator : Shri M.D. Soni, Secretary, Tax Bar Association, Kota

CULTURAL PROGRAMME – 7.00 p.m. to 9.00 p.m.
DINNER – 8.30 p.m. to 10.00 p.m.

SUNDAY, 20TH DECEMBER, 2009

- Breakfast : 08.30 A.M. to 09.30 A.M.

FOURTH TECHNICAL SESSION – 09.30 A.M. to 11.15 A.M.

- Chief Guest : Smt. Vinita Singhania, MD, JK Lakshmi Cement Ltd.
 Subject : **Implications of Input Tax Credit under VAT**
 Speaker : Eminent Faculty
 Subject : **Present & Proposed Provisions of Penalty on Concealment**
 Speaker : Smt. Ritu G.P. Das, FCA, Kota
 Subject : **Tax Management through Hindu Undivided Family**
 Speaker : Smt. Surbhi Ranka, CA, Jaipur
 Expert Comments : Smt. Prem Lata Bansal, Advocate, Delhi
 Tea Break : 11.15 a.m. to 11.30 a.m.

FIFTH TECHNICAL SESSION – 11.30 A.M. to 01.15 P.M.

- Chairman : Shri Uttam Prakash Agarwal, President, Institute of Chartered Accountants of India
 Guest of Honour : *Shri Anil Kapoor, MD Chambal Fertilisers and Chemicals Ltd., New Delhi
 Subject : **Controversial Issues under the Central Excise Act**
 Speaker : Shri V. Lakshmi Kumaran, Advocate, New Delhi
 Subject : **Income from Undisclosed & Other Sources Under Income Tax**
 Speaker : Shri Sunil Talati, FCA, Past President, ICAI, Ahmedabad
 Expert Comments : Shri M.D. Sodani, Chartered Accountant, Chairman, AIFTP (CZ), Ujjain
 Group Leader : Shri R. P. Vijay, Chairman, Jaipur Branch of ICAI of CIRC
 Co-ordinator : Shri Sharad Kabra, Secretary, Jaipur Branch of ICAI of CIRC
LUNCH : 01.15 p.m. to 02.00 p.m

BRAINS' TRUST SESSION – 02.00 P.M. to 4.00 P.M.

- Chairman : Shri N.M. Ranka, Senior Advocate, Jaipur
 Other Brain Trustees : Shri S.R. Wadhwa, Advocate, Former Chairman, ITSC & V.P. AIFTP, Delhi
 : Shri S.K. Poddar, Advocate, Vice President, AIFTP, Ranchi
 : Shri P.S. Sarin, Advocate, Delhi
 : Shri H.C. Bhatia, Advocate, Chairman, AIFTP (NZ), Delhi
 : Shri K.L. Goyal, Advocate, Vice Chairman, AIFTP (NZ) Chandigarh
 : Shri Mukul Gupta, Advocate, Secretary General, AIFTP, Ghaziabad
 : Shri Pankaj Ghiya, Advocate, Jaipur
 Group Leader : Shri Ashok Tambi, President, Tax Consultants Association
 Co-ordinator : Shri Lalit Chandgothia, Secretary, Tax Consultants Association

VALEDICTORY SESSION – 4.00 P.M. to 5.30 P.M.

- Chief Guest : Hon'ble Mr. Justice Dr. A.R. Laxmanan
 Former Judge Supreme Court of India & Former Chairman, Law Commission of India
 Guests of Honour : *Hon'ble Shri Shanti Dhariwal, State Home, Law & Justice Minister, Govt. of Rajasthan
 : *Shri Gulab Kothari, Chairman & M.D., Rajasthan Patrika Ltd.

* Consent Awaited

Delegates Fees : Members : Rs. 1,500/-; Non-Members : Rs. 2,000/-; Accompanying Spouse : Rs. 1,000/-

For more details please contact:

Shri M. L. PATODI, Dy. President, AIFTP & Conference Chairman,
 278, Shopping Centre, Kota • (M) 9829035256 • patodi_jp1@sancharnet.com
Shri P. M. CHOPRA, President, RTCA, Jodhpur • (M) 9413523820 • chopraassoc@gmail.com
Shri J. K. RANKA, Vice President AIFTP & ConOti, M.I. Road, Jaipur – 302 001 (Rajasthan)

E-mail ID: nationaltaxconvention2009@gmail.com • ranka@datainfosys.net

2. Outstation members are requested to send DD payable at Jaipur only.
3. Separate cheques/DD may be sent as advance towards Hotel Booking.

DIRECT TAXES

AJAY R. SINGH, PARAS S. SAVLA, RAHUL K. HAKANI & RANGESH BANKA
Advocates, KSA Legal

HIGH COURT

1. Appeal – High Court – S. 260A, Limitation Act – Ss. 5 & 29

High court has no power to condone the delay in filing the appeal under s. 260A beyond the prescribed period.

ACIT vs. S. Shubhash Traders (2009) 226 CTR 372 (MP)

2. Bad debt – Deductible – Ss. 14A, 36(1)(vii), 80HHC

Under section 80HHC and section 14A, the expenditure incurred from the export income could not be held to be for earning income which did not form part of the total income, which concept was dealt with under section 10 of the Act. Section 80HHC deals with deduction of the element of profit from export from taxable income. Therefore, the claim of bad debt could not be disallowed.

CIT vs. Kings Exports (2009) 318 ITR 100 (P&H).

3. Business Expenditure – Sales Promotion Expenditure – Allowable – S. 37 (1)

Assessee company instead of distributing free samples of liquor, used to reimburse the payment made by defence establishments to CSD stores for purchase of liquor and is not against public policy nor prohibited by Law or in the nature of bribe, expenditure being for sales was deductible as business expenditure.

Brihan Maharashtra Sugar Syndicate Ltd. vs. DCIT (2009) 226 CTR (Bom) 160.

4. Charitable Trust – Registration under section 12A – Ss. 2(15), 12A & 12AA

Imparting education with the primary purpose of earning profits cannot be said to be a charitable activity for the purpose of Registration under S.12AA.

CIT vs. National Institute of Aeronautical Engineering Educational Society (2009) 226 CTR (Uttarakhand) 582.

5. Income – Mutuality – interest income not exempted – S. 4

Investment of surplus funds by the assessee club with member banks and institutions not with a definite idea of using the same in any specific projects for the further development of the infrastructural facilities of the club did not satisfy the concept of mutuality and therefore benefit of exemption cannot be extended to the interest income.

Madras Gymkhana Club vs. DCIT (2009) 226 CTR (Mad) 176.

TRIBUNAL

6. Bad debt – Business loss – Ss. 28, 36(1)(vii), 37

Amount paid by the assessee under performance guarantee bond is allowable as business loss/expenditure. Mere fact that the assessee has claimed the amount written off in the course of business as bad debt does not preclude him from claiming the same as business loss/expenditure.

Anang Tradevest Pvt. Ltd. vs. ITO, ITAT 'A' Bench, Mumbai. ITA No. 10/Mum./2008.

7. Business expenditure – Year in deductible – S. 37 (1)

Since the assessee has completed more than 95 per cent of project and offered income therefrom on year-to-year basis, expenses incurred on home for aged and on club house were allowable as business expenditures.

Asstt. CIT vs. Sheth Developers (P) Ltd. (2009) 33 SOT 277 (Mum).

8. Capital Gains – Indexation – Indexed cost of gifted assets has to be determined with reference to previous owner

The assessee transferred a capital asset which was received by her by way of gift on 1-2-2003. The previous owner had acquired the capital asset on 29-1-1993. In computing capital gains, the assessee claimed that the indexed cost of acquisition had to be worked out by taking the date of acquisition by the previous owner. The AO rejected the claim though the CIT(A) accepted it. On appeal by the Revenue, the issue was referred to the Special Bench. Held by the Special Bench:

(i) Explanation (iii) to s. 48 defines the term “indexed cost of acquisition” to mean the amount which bears to the cost of acquisition the same proportion as the Cost Inflation Index **for the first year in which the asset was held by the assessee ...**” A literal reading of the provision suggests that one has to go by the year in which the asset was held by the assessee. However, this would be inconsistent with the scheme of the Act as reflected in the definition of “short-term capital asset” in Expl. 1(b) to s. 2 (42A) which provides that **the period for which the asset was held by the previous owner also has to be taken into account. It is not logical that the cost of acquisition and the period of holding is determined with reference to the previous owner**

and the indexation factor is determined with reference to the date of acquisition by the assessee. Such an interpretation will lead to absurdity and unjust results and defeat the purpose of the concept of 'indexed cost of acquisition'. In accordance with the principles of purposive interpretation of statutes, Expl. (iii) to s. 48 has to be read to mean that **the indexed cost of acquisition has to be computed by taking into account the period for which the asset was held by the previous owner.**

DCIT vs. Manjula J. Shah, ITA No. 7315/Mum/2007 – Source: itatonline.org

9. Capital gains – Retirement of partner – S. 45(4).

Section 45(4), has no application in the case of retirement of one partner. Capital gain is not chargeable to tax on the facts of the case also for the reason that the transfer of property to the retiring partner was necessitated on account of family arrangement to avoid a possible dispute.

Asstt. CIT vs. Goyal Dresses (2009) 30 DTR (Chennai) (Trib) 75.

10. Charitable purpose – Ss. 11, 13

No distinction is made between charitable and religious purposes in section 11(i)(a), and therefore, a trust which is partly religious and charitable is entitled to exemption under s. 11(1) (a), even otherwise, maintenance, of mosque and church is to be treated as charitable purpose and not purely religious purpose and therefore, exemption under section 11(1)(a) could not be denied to the assessee trusts which exist for various charitable purposes besides maintenance of chapels and mosques, on the ground they are partly charitable and partly religious trusts, once no case is made out for application of provisions of section 13.

The Society of Presentation Sisters vs. ITO (2009) 30 DTR (Coch.) (TM) (Trib)1.

11. Deductions – Housing project – Built up area – S. 80-IB

Definition of "built-up area" in clause (a) of section 80-IB (14) introduced by Finance Act, 2004, has only prospective effect from 1-4-2005, therefore prior to 1-4-2005 balcony would not form part of built up area, irrespective of area of such balcony.

Asstt. CIT vs. Sheth Developers (P) Ltd. (2009) 33 SOT 277 (Mum).

12. Export – Deduction – S. 80HHC deduction is allowable for s. 115JB even if there are no normal profits despite Ajanta Pharma

The assessee's income was computed u/s 115JB as it had no income under the normal provisions of the Act. The assessee claimed that despite the absence of normal

profits, it was eligible for deduction u/s 80HHC in computing the book profits under Expl. (iv) of s. 115JB in accordance with the judgment of the Special Bench in *Syncome Formulations 106 ITD 193 (Mum) (SB)* and that the judgment of the Bombay High Court in *Ajanta Pharma 223 CTR 441 (Bom)* (*which held that Syncome Formulations was overruled*) was not applicable. Held upholding the assessee's plea:

In **Syncome Formulations**, the Special Bench had to consider two questions i.e. (a) method of computation of deduction u/s 80HHC and (b) percentage of deduction allowable in each year. As regards the percentage of deduction, the Special Bench held that the assessee would be entitled to 100% deduction. This view was overruled by the High Court in **Ajanta Pharma** where it was held that in view of s. 80HHC(1B), deduction was only allowable as per the limits set out therein. **However, the first issue as to the method of deduction u/s 80HHC was not before the High Court.** As per Sun Engineering 198 ITR 297, the observations of a Court have to be read in context. **Consequently, the judgment of the Special Bench on this aspect still held good and the assessee was entitled to deduction u/s. 80HHC even though there were no normal profits.**

DCIT vs. M/s. Glenmark Laboratories Ltd. ITA No. 4155/Mum/2007 – Source : itatonline.org

13. Interest – MAT – S. 115JA 234B & 234C

The Tribunal had to consider whether an assessee liable to pay Minimum Alternate Tax u/s 115JA was also liable to pay interest u/ss. 234B & 234C for short fall in payment of advance tax. The Judicial Member followed the judgment of the Bombay High Court in **Snowcem India Ltd.** 313 ITR 170 and held that interest u/ss. 234B and 234C could not be levied when book profits was computed u/s 115JA. The Accountant Member dissented and followed the earlier judgment of the Special Bench in **Ashima Syntex Ltd.** 117 ITD 1 where a contrary view was taken. The Third Member had to consider whether the judgment of a non-jurisdictional High Court would prevail over that of the Special Bench of the Tribunal. Held by the Third Member:

- (i) The view that the High Court is above the Tribunal in the judicial hierarchy and that the judgment of a non-jurisdictional High Court would prevail over that of the Special Bench is subject to two exceptions. The first exception is where there is only one judgment of a High Court on the issue and no contrary view has been expressed by any other High Court. But **when there are several decisions of non-jurisdictional High Courts expressing contrary views, the Tribunal is free to choose that view which appeals to it and in certain circumstances the view which is favourable to the taxpayer may be adopted;**

- (ii) The second exception is where the judgment of the non-jurisdictional High Court, though the only judgment on the point, is 'per incuriam' i.e. is rendered without having been informed about certain statutory provisions or binding precedents that are directly relevant. **A 'per incuriam' judgment need not be given effect to by a lower court;**
- (iii) In Snowcem India Ltd, the Bombay High Court decided in favour of the assessee following the precedents rendered in the context of s. 115J. **However, its attention was not drawn to sub-sec. (4) of 115JA which, according to the department, makes all the difference between s.**

115J and s. 115JA. Accordingly, the judgment cannot be relied upon by the assessee as being entirely in its favour on all the aspects of section 115JA and therefore it cannot be said that it should be followed in preference to the order of the Special Bench in **Ashima Syntex;**

- (iv) **Consequently, the judgment of the Special Bench had to be followed and it had to be held that the assessee was liable to pay interest u/ss. 234B & 234C even when income was computed u/s 115JA.**

M/s. Kanel Oil & Exports vs. JCIT ITA No. 2667/Ahd/2007 – Source : itatonline.org



INTERNATIONAL TAXATION

CA. DHANESH BAFNA, CA. MADHAV KHANDELWAL, SUJEETH KARKAL, Advocate

ADVANCE RULING

1. Royalty – Section 9(1)(vi) of IT Act & Article 12 of India USA – DTAA

The authorities in this case has held as follows:

- a. Payment received by the applicant for grant of non-exclusive, irrevocable and perpetual right to use know how pertaining to the manufacture and marketing of radial tyres is liable to be taxed as Royalty under sec. 9(1)(vi) of the Income-tax Act. The power of taxation in this regard cannot be denied to the Indian Government from the stand point of territorial nexus. Also, the theory of "off-shore supply of technical documentation" sought to be developed has no factual foundation. And the transaction is also covered in the definition of 'royalties' in para 3(a) of article 12 of DTAA between India and USA.
- b. Payment received for transfer of ownership of tread and side wall design/patterns (TSD), designed by the transferor and approved by the transferee cannot be viewed to be merely incidental to the conferment of right to use the know-how granted. Therefore, not liable to be taxed as royalty under the provision of the treaty provisions.
- c. Consultancy and assistance services are no doubt the services allied or consequential to the alleged sale but they cannot be characterized as 'inextricable' or 'inseparable' from sale. The consideration received for consultancy, assistance and training is therefore liable to be taxed as fee for included services under the treaty as Fees for Technical Services under the IT Act, 1961.

International Tire Engineering Resources LLC, In Re [30 DTR 161 (AAR)]

HIGH COURT

2. Even drawings, designs etc., constitutes plant

The High Court in this case held that:

- i. Drawings, designs, processing data, etc. constitute plant within the meaning of the Income- tax Act. Clause 10(a) of the agreement show that the title in the documents stood transferred to the Indian assessee and it became the owner and could use the same for any purpose albeit after a period of five years. Therefore, the learned Tribunal was right in holding that the Indian assessee had purchased Plant Know How at Singapore and the amount being paid was on account of purchase of the plant and not as royalty.
- ii. The foreign company had no business in India. It had no plant in India. The transaction took place in Singapore. The agreement was entered into between the parties at Singapore and the documents were handed over to the representative of the Indian company at Singapore. This was a case of outright purchase of plant know how and not a case of transfer of interest.

CIT vs. M/s. Maggronic Devices Pvt. Ltd. [2009-TIOL-568-HC-HP-IT]

3. Grossing up – Section 195A

The High Court held that under section 195A of the Income-tax Act, grossing up could be done by the AO if the tax chargeable on any income was borne by the employer. It is clear from the assessment order that tax amount was paid by the employer and specifically, addition to this effect was made by the assessing officer.

While grossing up tax liability under section 195A, the AO did not furnish any reason. He has not even stated as to what is other amount of tax paid by the employer on the basis of which grossing up was done under the said provision. Since the finding of fact is arrived that the advance tax was in fact paid by the employee and not by the employer the basis for this grossing up by the AO was clearly unsustainable.

CIT vs. Tadashi Murakami [2009-TIOL-596-HC-Del-I]

TRIBUNAL

4. India-Singapore DTAA – Article 12 – Technical Services

It was notice by the Tribunal that the Euro Singapore, incorporated in Singapore, for some of the key multinational clients of the Euro Group had set up a centralized group of persons which acted principally as a communication channel between any local Euro entity and the client. The AO was of the view that the assessee company was using plan secret formula or process and therefore, these services were in the nature of technical services and accordingly, the same falls under Article 12 of the Indo-Singapore DTAA and accordingly he assessed such royalty receipts as income of the assessee. Further, the Assessing Officer was satisfied that the assessee was not having any PE in India. Moreover, revenue has not produced any evidence which can prove that assessee was having any PE in India. The ground raised by the revenue shows that they challenged only the issue regarding deletion or addition on the basis that the

assessee was not having any PE in India. When this fact stand accepted by the Assessing Officer (indirectly) and revenue has no proof that the assessee is having any PE in India, the CIT(A) has correctly adjudicated the issue.

DIT vs. M/s. Euro RSCG (S) Pte. Ltd. [2009 – TIOL-708-ITAT Mumbai]

5. Non-discrimination clause – Applicability of tax rate – Indo – Mauritius DTAA – Article 24

That the assessee had claimed that it should be taxed at the rate of 40% The Assessing Officer was of the view that in view of the Ruling of Authority for advance rulings in AAR No. 362 of 1997 in the case of Societies Generate wherein it was held that a non-domestic company has to pay taxes at the given rate in the Finance Act Accordingly, he applied the tax rate of 55%. It was held by the Tribunal that in view of the Explanation 1 to section 90 Vide Finance Act, 2001 with retrospective effect from which provides that the charge of higher rate of tax in case of non-resident companies shall not be regarded as less favourable, the application of 55% rate by the AO is valid. Also, the expenditure incurred is to be allowed subject to limitation of the Taxation laws of the contracting states but no such restriction is incorporated in the DTAA with Mauritius and, therefore, restriction provided u/s. 37(2) of the Act cannot be enforced. In the circumstances, the order of the learned CIT(A) was upheld.

Joint CIT vs. State Bank of Mauritius Ltd. [2009 – TIOL-712 – ITAT – Mum]



LIST OF WINNER, RUNNER OF RANKA BEST TAX SEMINAR AWARD

Year	Winner	Runner
2008 & 2009	Ranka Best Zone Chairman Award Shri H.C. Bhatia, Advocate, Chairman, Northern Zone	(i) Mrs. Nikita R. Badheka, Advocate, Chairperson, Western Zone and (ii) Shri R.D. Sharma, Advocate Chairman, Eastern Zone
2008	(Two Days Seminar) AIFTP Southern Zone at Hyderabad	
	(One Day Seminar) Tax Practitioners Association, Ujjain	AIFTP, Eastern Zone
2009	(Two Days Seminar) Tax Bar Association, Varanasi	(i) Marattha Chamber of Commerce at Pune and (ii) Jamshedpur Tax Bar Association at Jamshedpur
	(One Day Seminar) Chandigarh Judicial Academy, Chandigarh	Taxation Bar Association, Vijayawada

Homage to our revered Shri Anil Kumar Singh, Member, National Executive Committee who has left for his heavenly abode



Shri Anil Kumar Singh, Advocate and Vice Chairman of Northern Zone for state of U.P. has left for his heavenly abode on 19-11-2009. He was the President of Income Tax Bar Association, Varanasi and a gem of the Federation.

Shri Anil Kumar Singh has put his heart and soul in the unforgettable, grand and most successful National Tax Conference at Varanasi in March, 2009.

AIFTP (Northern Zone) and I personally, in particular and legal fraternity and AIFTP in general, has become quite poor on his untimely, sad and sudden demise leaving behind him, his widow, a daughter and a son Puneet, a member of AIFTP.

God may give his family, friends and associates sufficient strength to bear this irreparable loss.

Shri Bharat Ji Agrawal, Sr. Advocate, National President

○□○

We have untimely, unfortunately lost for ever a simple, sweet, sincere, humane, hospitable, courteous, devoted, dedicated determined imparelled soldier of the Federation.

Shri N. M. Ranka, Sr. Advocate, Past President

○□○

Shri Anil Kumar Singh, an active member of our Association has left for heavenly abode on 19th November, 2009.

I pay my respectful homage to him.

The Conference organized at Varanasi under his able leadership will be remembered forever.

He was an able Lawyer having indepth knowledge on the subject of Taxation and contributed number of articles of professional interest and was a speaker at various seminars and conferences. Above all a noble human being. He has immensely contributed for the development of the profession and the Federation. In his passing away, our Association has lost guiding spirit.

We shall always cherish his sweet memories.

I pray, the Almighty grant eternal peace to the departed soul and strength and courage to his family to bear this great loss.

Dr. K. Shivaram, Advocate, Past President & Editor-in-Chief

○□○

New star in the sky over river Ganges

While we were busy in organising the International Tax Conference during 19th to 21st November 2009, we learnt about the sad demise of my good friend, Shri Anil Kumar Singh. He was a great asset to the Federation since last couple of years. In fact I saw in him a future leader. His ability of organising a big event like National Tax Conference at Varanasi was at full blossom in March 2009, when about 1,100 delegates from all over the nation and the State participated. The religious ceremony on the bank of river Ganges arranged by him was also a memorable one, especially when the same was participated by Supreme Court judges and other legal luminaries from the country.

He showed complete dedication, devotion with determination while enrolling new life members for the Federation in a very short period. I had the pleasure of recognising his efforts in the executive committee meeting.

I can well realise the shock to his family members. However, we have no say against the wishes of God Almighty. Possibly He needed Anil Kumarji for a better purpose than over here. Thus, a bright star have taken its place in the sky always watching the progress made by the Federation.

The untimely departure of Shri Anil Kumar Singh from us have left behind a virtual void in the State of U. P. as well as North Zone of the Federation, that will be difficult to be filled up. We, however, have greater responsibility to ensure the fulfilment of the dream carried by him for the activities undertaken by this Federation.

I pray God Almighty to give eternal peace to the departed soul and enough strength to his family members to withstand the unbearable loss.

Shri P. C. Joshi, Advocate, Past President

○□○

Late Shri Anil Kumar Singh, Advocate was a true professional.

Shri M. L. Patodi, Advocate, Dy. President

○○○

Untimely demise irreparable loss to AIFTP & Professional Fraternity at large.

Shri S. K. Poddar, Advocate, Vice President, AIFTP (EZ)

○○○

Anil Kumar Singh passed away on 19th November, 2009. A very dynamic, knowledgeable and wise tax advocate, he was the Vice-Chairman (Northern Zone) from Uttar Pradesh, AIFTP.

He organized an excellent National Tax Conference of AIFTP at Varanasi and enrolled the largest number of additional members for the Federation.

His passing away has left a void that will be difficult to fill for a long time in the history of the Federation.

Shri S. R. Wadhwa, Advocate, Vice President, AIFTP (NZ)

○○○

Shri Anil Kumar Singh within a short span of time made a mark in Federation and made friends throughout the length & breadth of our country. It would be difficult to find such a fine gentleman in years to come.

Shri J. K. Ranka, Advocate, Vice President, AIFTP(CZ)

○○○

We, at AIFTP (NZ), are deeply grieved at the sad and untimely demise of Mr. Anil Kumar Singh. We, in our lifetime, cannot forget the memorable & historic National Tax Conference held at Varanasi under his dynamic leadership. We shall always cherish his memory for his organizing capacity, hospitality & qualities of leadership. He was always calm and serene. He was instrument in enrolling the maximum number of life-members for the Northern Zone. In him, we have lost a Chairman and the National President in the making. His loss to his family, AIFTP & the society can never be filled.

Shri H. C. Bhatia, Advocate, Chairman, Northern Zone

○○○

Shri Anil Kumar Singh has recently come up as dynamic leader in the Northern Zone. His contribution to the activities of AIFTP was enormous. On his untimely demise at the prime of his professional career, we have lost a true friend, a genuine and hard working leader, a dynamic and expert advocate. The void which is left on his sudden demise is difficult to fill in. We pray almighty to bestow eternal peace to the departed soul and we pray the God to give to his near and dear one enough strength and courage to bear this untimely loss.

Mrs. Nikita R. Badheka, Chairperson, AIFTP (WZ)

○○○

In the history of Federation, the name of Shri A.K. Singh will be remembered forever, for he is the only person, who got enrolled hundreds of professionals as members. The most successful National Tax conference is to his credit at Varanasi organised in March, 2009. When about 40 of us arrived at Varanasi Railway Station to attend the Conference, Shri Singh personally came and saw that all the 40 persons are accommodated in different vehicles to different destinations. In the National Tax conference held on 7-11-2009 in Bangalore, I remembered the most successful Conference at Varanasi, and informed the audience that the number of delegates attended exceeded 1100 with about dozen Judges as Guests of Honour.

A great loss.

May his soul rest in peace.

May God give all strength to the bereaved family members.

Shri P. V. Subba Rao, Chairman, AIFTP (SZ)

○○○

**APPEAL TO MEMBERS**

Dear Members,

The journal has become monthly from January, 2002. We desire that the journal should become self-sufficient. Hence, we request you to send us advertisements for the journal. The rates of advertisement are as under:

- | | |
|--|-------------|
| 1. Quarter Page | Rs. 600/- |
| 2. Ordinary Half Page | Rs. 1,000/- |
| 3. Ordinary Full Page | Rs. 2,000/- |
| 4. Second and Third Cover Page | Rs. 2,500/- |
| 5. Fourth Cover Page –
Three fourth page (in four colour) | Rs. 3,500/- |

MUKUL GUPTA
Secretary General

**Membership of AIFTP
as on 10-11-2009****Life Members**

	Associate	Individual	Association	Corporate	Total
Central	—	614	20	1	635
Eastern	—	743	33	0	776
Northern	—	752	17	0	769
Southern	—	656	13	2	671
Western	03	1485	31	10	1529
Total	03	4250	114	13	4380

List of Publications

Sr. No.	Name of Publication	Edition	Rates	
			Members	Non-Members
1.	HUF-152 Frequently Asked Questions And Answers	Aug., 2009	130.00	150.00
2.	A Handbook on FEMA – Taxation – Frequently Asked Questions	Mar., 2009	240.00	300.00
Western Zone				
3.	Co-operative Housing Society	Oct., 2006	160.00	180.00
4.	Tax Professionals' Manual	Dec., 2005	280.00	315.00

Notes:

- The above publications are available for sale; those who desire to buy may contact the office of the Federation.
- Outstation members are requested to add Rs. 40/- per publication as courier charges, **except for A Handbook on FEMA – Taxation – Frequently Asked Questions & Tax Professionals Manual**, where as Courier charges is Rs. 50/- per copy.
- Please draw separate Cheque/Draft in favour of "All India Federation of Tax Practitioners" payable at Mumbai for publications at **Sr. Nos. 1 & 2** and separate Cheque/Draft in favour of "All India Federation of Tax Practitioners (Western Zone)" payable at Mumbai for publications at **Sr. Nos. 3 & 4**.

Non-receipt of the Times must be notified within one month from the date of publication, which is 2nd of every month.

Members of Editorial Team of AIFTP Times : Mr. Kishor Vanjara & Mr. Deepak R. Shah

Printed & Published by Mitesh Kotecha on behalf of All India Federation of Tax Practitioners (name of owner) and printed at Finesse Graphics & Prints Pvt. Ltd., 309, Parvati Industrial Premises, Sun Mill Compound, Lower Parel, Mumbai 400 013, Tel.: 24961605/85 • Fax: 24962297 (name of printing press) and published at 215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020, Tel.: 22006342 • Fax: 22006343 (place of publication) • Editor : Dr. K. Shivaram

To

**Posted at Mumbai Patrika Channel Sorting
Office – Mumbai 400 001.**

Date of Posting : 1st & 2nd December, 2009

If undelivered, please return to :



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