



All India Federation of Tax Practitioners

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AIFTP TIMES

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

*Wish all members and readers
A Happy New Year*

FORTHCOMING PROGRAMMES	
Date & Month	Programme
8th & 9th January, 2011	Two Days National Tax Conference at Ahmedabad
8th January, 2011	National Executive Committee Meeting at Ahmedabad
15th January, 2011	Full Day Tax Conference at Jalgaon
15th January – 30th April	Workshop on MVAT and Service Tax at Mumbai

FOR QUERIES PLEASE CONTACT ANY OF THE FOLLOWING OFFICE BEARERS

Name	Tel. (O)	Fax	Mobile	E-mail
National President — M. L. Patodi, Adv.	0744-2361179	2363637	9829035256	patodiml@bsnl.in
Deputy President — S. K. Poddar, Adv.	0651-2202787	2309407	9431115265	sheojipoddar@rediffmail.com
Secretary General — J. K. Ranka, Adv.	0141-2379203	2379204	9829010593	ranka@datainfosys.net
Treasurer — Nikita R. Badheka, Adv.	022-22030011	22030012	9821037885	nikita.badheka@gmail.com

FEDERATION NEWS

J. K. Ranka, Secretary General

NORTHERN ZONE

**Brief Report of the foundation day celebration
on Saturday 13th November, 2010
organised at The Atrium (Claridges Hotel), Surajkund, Faridabad, Haryana,**

By Shri Sanjay Sharma, Jt. Secretary (NZ).

Inaugural Session

To celebrate the foundation day of the Federation, the North Zone organized a one day Residential Conference on GST, Service Tax and Direct Taxes Code. The venue chosen for the programme was new gracious Claridges Hotel "The Atrium", Surajkund, Haryana about 25 Km. from Delhi. Hon'ble Mr. Justice Tirath Singh Thakur, Judge Supreme Court of India was the Chief Guest for the inaugural session. Mr. Sanjay Sharma, Jt. Secretary (NZ) who was the moderator of the inaugural session welcomed all the dignitaries and delegates. Then, Hon'ble Mr. Justice Tirath Singh Thakur inaugurated the conference and set the events in motion by lighting the lamp of knowledge and Shri H.C. Bhatia, Vice President (NZ) chanted the bhakti shlokas. The welcome address was also given by Shri H.C. Bhatia, who is a mentor behind all the Tax Conferences of the Zone. Smt. Prem Lata Bansal, Chairperson (NZ) who besides being the first lady to be the chairperson of the NZ presented her inaugural address and outlined the theme of the Conference. Thereafter, Shri Bharatji Agrawal, Past President, the man with great vision under whose aegis this Federation gained new heights, delivered his address. Mr. M.L. Patodi, President AIFTP in his presidential address highlighted the role of AIFTP and enumerated its activities.

Then, the Chief Guest Hon'ble Mr. Justice T.S. Thakur, Judge, SC of India blessed the august gathering with his special address. Hon'ble Mr. Justice Thakur in his educative, motivating and inspirational address gave all the professionals valuable tips of advocacy. He also shared his nostalgic moments with the legendary Nani A. Palkiwala. He opined that both GST and DTC should open out a new approach to the Tax regime. Hon'ble Mr. Justice Thakur was then presented with a memorable memento of Lord Balaji as a token of love and affection to him, as he has always been a moral support to our Federation. The session concluded with an official vote of thanks by Mr. V.P. Gupta, Vice Chairman (NZ). This was followed by a high-tea break and was an opportunity for the conference delegates

to exchange pleasantries with each other. The presence of Shri S.K. Kaushik, Advocate and his 17 members-team from Haryana; Mr. Arvind Sharma, Mr. R.D. Kaushik, Mr. K.C. Kaushik, Advocates from Ghaziabad; Mr. B.S. Rawat, Advocate from Dehradun; Mr. Alok Jain and Mr. Sandeep Goyal, Advocates from Chandigarh; Mr. Sanjay Kumar and Mr. Piyush Aggarwal, Advocates from Allahabad and many more out-station delegates was a morale booster. The presence of remarkable number of delegates in the inaugural session was highly appreciated by Mr. J.K. Ranka, Secretary General AIFTP.

Ist Technical Session

The topic for the Ist Technical Session was proposed GST legislation and present Service Tax scenario. Mr. H.L. Madan, Vice Chairman (NZ) was the moderator of this session, who in his unique style, introduced & welcomed the Hon'ble speakers and gave the charge to the chairman of the session Shri P.S. Sarin, Advocate. To boost the morale of youngsters and to bring out the hidden talent in them a young CA Mohit Gupta was chosen to speak on the concepts of the proposed GST legislation. Mr. Mukesh Anand, Advocate and senior standing Counsel for customs, excise and service tax in Delhi High Court discussed the various aspects of service tax and in particular in relation to renting of immovable properties. The session was by this time thronged with above 200 delegates who were waiting to hear the stand of the finance ministry on GST implementation from the mouth of their representative, Mr. Gautam Bhattacharya, Jt. Secretary, Tax Research Unit, Govt. of India. Mr. Bhattacharya not only discussed the positive aspects of GST but also the potholes in its implementation. He categorically announced that it would be difficult for the finance ministry to bring this law in the year 2011. The Federation gave him written paper of suggestions prepared by Mr. Mukul Gupta, Advocate for the thoughtful consideration of the Finance Ministry. Thereafter, Mr. S. Ganesh, Sr. Advocate Delhi High Court presented his paper on the subject. He apprised the delegates with various recent case

laws and judgments on Service Tax. Summing up of the session was done by Shri P.S. Sarin, the Chairman, which was well received.

This was followed by a sumptuous lunch, as the menu had a variety of items to satisfy the varied tastes.

2nd Technical Session

The topic for the 2nd Technical session was proposed DTC legislation. Mr. Rakesh Agrawal, Treasurer (NZ) was the moderator of this session, who after introducing and welcoming the Hon'ble speakers gave charge to Sh. S.R. Wadhwa, Advocate, the Chairman of the session. Likewise, in the 1st session a young CA Ms. Neha Bansal was chosen to initiate the discussion on the basic concepts of the proposed DTC legislation. Mr. Arvind Shukla, Advocate from Varanasi discussed the topic a income from employment and income from House Property under the proposed DTC legislation, CA A.K. Srivastava presented his paper on the topic of Capital gains and Income from residuary sources under the proposed DTC legislation, But the main fire brand speaker of the day was Dr. Rakesh Gupta, Advocate. He presented his paper on the topic of business income, GAAR, Relief from Double Taxation in a most impeccable manner and amused the audience with interesting exemplars. Thereafter, the concluding remarks were made by the chairman, Shri S.R. Wadhwa, which was highly informative.

Special Session - A Tribute to Shri Nani A. Palkhivala,

Since the foundation of our Federation was laid by the legendry Nani A. Palkhivala it was meticulously planned to have a special session - A Tribute to Shri Nani A. Palkhivala and the foundation day celebration function was the apt occasion. The Chief Guest of this session was Hon'ble Mr. Justice Dipak Mishra, Chief Justice, Delhi High Court. After the floral welcome of the guests, the moderator of this Sh. H.L. Madan, Vice Chairman (NZ) invited Shri H.C. Bhatia, Vice President (NZ) to present his welcome address. Then, Smt. Prem Lata Bansal, Chairperson (NZ) gave a sparkling address to the audience. Then Sh. N.M. Ranka, Sr. Advocate and Past President AIFTP informed how the doyens of the Professionals christened the Association in the presence of the distinguished Jurist Nani A. Palkhivala.

Hon'ble Mr. Justice Rajesh Bindal, Judge, P & H High Court, also graced the session. Thereafter, the Chief Guest, Hon'ble Mr. Justice Dipak Mishra, Chief Justice, Delhi High Court apprised the audience the nostalgic moments and different

facets of the life of Nani A. Palkhivala. Palkhivala's stimulating role in the Courts in the field of direct taxes and constitutional matters; the heights of his advocacy skills, etc. The session concluded with the presentation of mementoes to the distinguished Guests and with a delightful vote of thanks proposed by Mr. Sanjay Sharma, Jt. Secretary (NZ). The conclusion of this special session was followed by high Tea in the evening where the Chief Guest and delegates exchanged pleasantries the serious affairs of the day came to an end.

Amusing and Thrilling Evening

After a day long study and discussion, the delegates were provided amusement in the evening, which commenced with a 'Hasya Kavi Sammelan'. Renowned Kavi Mr. Deepak Gupta, stage co-ordinator and anchor with other known Kavis Mr. Mahender Sharma, Mr. Ved Prakash and a young bold Kavi, Mr. Charanjit Singh amused the delegates and guests, who kept rocking on their seats with laughter and clapping to their recitals. This was followed by a snack party and games of Tambola organised for the lady delegates and wives of the member delegates which enthralled the evening.

Night Accomodation at 'The Atrium' Hotel:

The foundation day celebrations did not end here, rather it started afresh. After a very eventful day and amusing evening thereafter, around 85 delegates stayed in the luxurious hotel, which was approximately 70% booked specially for us. The residential delegates enjoyed the lavish dinner with Ghazals at the restaurant of the hotel. This was followed by Antakshri, Jokes, Anecdotes, etc. by the residential delegates, who actively participated in these and made the evening 'Sone Pe Suhaga'.

Next Morning (Sunday) the delegates after stay at Hotel, again met in the star restaurant of the hotel and enjoyed an elaborate breakfast before parting and cherishing the enjoyable moments of this unique Residential conference celebrating the foundation day of the Federation. Senior members of the Federation namely Shri Bharatji Agrawal, Shri N.M. Ranka, Shri P.S. Sarin, Shri J.D. Nankani, Shri S.R. Wadhwa, Mr. Raj K. Batra to name a few, and all others who stayed in the hotel appreciated the arrangements and believed that such residential conferences from time to time would definitely develop brotherhood amongst members and be beneficial to update the knowledge on day to day amendment/changes taking place in Taxation Laws.



CENTRAL ZONE

Report of National Tax Conference 2010 at Indore

By Shri M.D. Sodani, Chairman, Conference Committee & Vice President, AIFTP

I am pleased to state that National Tax Conference 2010 was organised at Indore by AIFTP (CZ), TPA Indore and Indore Branch of CIRC of ICAI at ICAI Auditorium Scheme No.78 Part II, Near Prestige Public School, Indore on 11th & 12th December 2010. The Conference was inaugurated by the Hon'ble Justice Shri Syed Rafat Alam Saheb, Chief Justice of M.P. High Court. The Guest of Honour was Shri G. Ramaswamy, Vice President, Institute of Chartered Accountants of India. Formalities of Saraswati Vandana and lighting of Lamp was performed. The Chairman, Conference Committee and Vice President, Central Zone CA M.D. Sodani welcome the Hon'ble Chief Guest, Guest of Honour, National President, Imm. Past President, Secretary General, AIFTP and Chairman of Central Zone.

Addressing the gathering, the Chairman, Conference Committee informed the house that the total Registration is 525 and delegates have enrolled from all parts of the Country. He has also made a request to his Lordships Chief Justice to form a Tax Bench in Madhya Pradesh High Court for Taxation matters so that such matter, may be heard regularly, which in turn may reduce the pendency. He has also explained the purpose of the Theme of National Tax Conference (Vision 2020- Challenges for Tax Professionals) and insisted the Professional Brothers to be ready to face the challenges of the Tax Laws like Direct Tax Code -2010, G.S.T., IFRS etc.

The respected Chief Guest Hon'ble Justice Shri Syed Rafat Alam Saheb explained the strength of economy, past and future, role of legal profession in view of changes in the globalisation and insisted for continuous study and learning of Laws whatever it is. His Lordships also assured to have Tax Bench in the Hon'ble High Court of Madhya Pradesh for Tax matters which has been received by the audience as a welcome step.

Shri G.Ramaswamy Guest of Honour, Vice President ICAI also stated that Financial Reporting System is a crucial aspect now-a-days to compete with the Corporate World. He also requested

the Professionals to equip themselves with the current proposed changes in the Law so that they may compete with efficiency and can make progress.

Shri M.L.Patodi, President AIFTP also addressed the gathering and informed the delegates about the AIFTP and requested to join as a Member of AIFTP, those who are not at present the Members. He also advised that AIFTP is only the body which consist of Advocates, Tax Consultants and Chartered Accountants on all India basis and making representations to the Government on various issues like Budget, DTC, GST, etc.

Shri Bharatji Agrawal, Imm. Past President also welcomed the Chief Guest and advised the gathering to be a part of the AIFTP. He also insisted for continuity of One Day or Two Day National Tax Conference to interact on various subjects.

A biography of Shri N.M. Ranka, Past President titled "Law Profession : My Experiences and Expectations" was released by the Hon'ble Chief Guest. A Souvenir was also released by the Hon'ble Chief Guest which was presented by CA Govind Agrawal.

In the end Shri S.N. Goyal, President, TPA, Indore presented a vote of thanks.

On 11th December, 2010 there were five Technical Sessions namely Direct Tax Code Bill 2010 – Conceptual Issues by Shri Harish Motiwala, Limited Liability Partnership by Ritu G.P.Das, Taxability of Gift u/s 56(2)(vii) by Shri Pradeep K.Kapasi, Controversial Issues under Service Tax with reference to Builders and Developers by Shri Rajendra Kumar P., Incidence of Vat and Entry Tax on Builders and Developers and SEZ Units in M.P. by Shri P.D.Nagar. There was a Cultural Musical Evening which was memorable, evergreen old unforgettable Songs were sung by the renowned artist as well as members of the Federation.

On 12th December, 2010 there were four Technical Sessions i.e. Special Economic Zones-

Tax Aspects by Shri Dhinal Shah, Five Burning Issues under Capital Gain Tax by Shri Ashish Goyal, Certain Issues relating to T.D.S. by Shri Rajesh Doshi, G.S.T. Roadmap by Shri Mukul Gupta and Equipping Professionals for G.S.T. by Shri Sanjay Dhariwal.

Shri Surendra Mishra IRS, Chief Commissioner of Income Tax was the Chief Guest in the Validictory Session. Shri M.D.Sodani Chairman Conference Committee presented his report in respect of two days, activities and expressed his gratitude towards Chief Guest, Guest of Honour, Delegates, Friends associated with the Conference and Chairman of Branch for providing

Auditorium for the Conference. The Chief Guest, Shri Mishra addressed the house and advised to have more conferences on International Subjects and assure, the co-operation of Department. President Shri M.L. Patodi and Past President Shri N.M. Ranka expressed their thanks for organising such Conference and appreciated food, stay and other arrangements. They were also very happy with the hospitality extended to all the Delegates and Guests and the services of associated organisations and their members.

In the end the Conference concluded with National Anthem.



WESTERN ZONE

Report on Half day workshop on “Competition Commission – Advantage to Tax Practitioners”

By Shri H. N. Motiwalla, *Chairman (WZ)*

All India Federation of Tax Practitioners – Western Zone alongwith Bombay Chartered Accountants’ Society and The Chamber of Tax Consultants had arranged a half day workshop on “Competition Commission – Advantage to Tax Practitioners” on Friday, 3rd December, 2010 from 4.00 p.m. to 8.00 p.m. at Kasliwala Board Room, MICCA, Kalaghoda, Mumbai – 400 023.

Topics	Speakers
Competition Law – An Overview	Mr. R. Prasad, Member, Competition Commission of India.
Competition Law Provision & Advantages to the Tax Professionals	Mr. R. N. Sahai, Advisor (Eco.), Competition Commission of India.

Around 78 participants attended and appreciated the discussion.



SOUTHERN ZONE

The Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad has constituted an Advisory Committee in his Order issued in No. CS (1)/204/05 dated 12-10-2010 for the purpose of suggesting different types of services that can be provided to the dealers by the Department and also to give feedback to the Department on the effectiveness of such services provided. I am happy to inform that one of the six non-official members is the ‘representative from the All India Federation of Tax Practitioners, Southern Zone’. The Federation is thankful to the Commissioner.

P.V. Subba Rao,
Vice President, AIFTP



**Report of Two Days National Tax Conference
held at Bengaluru conducted on 13th & 14th November, 2010**

By Shri Sanjay Dhariwal, Vice Chairman (SZ)

The two days Conference jointly organized by All India Federation of Tax Practitioners (Southern Zone) and Karnataka State Chartered Accountants Association was held on 13th & 14th of November, 2010 at Nimhans Auditorium, Bengaluru. Justice Sri N. Venkatachala, Former Lokayukta of Karnataka & Former Supreme Court Judge, inaugurated the Conference.

Many issues pertaining to multiple aspects of Direct and Indirect taxes were meticulously deliberated, discussed and debated by the speakers as well as the audience.

Though the Conference witnessed a participation of only 135 delegates, it had delegates from Orissa, Kerala, West Bengal, Maharashtra, Rajasthan, Karnataka and Andhra Pradesh.

First day of the Conference

The first session was held by CA Amit Rathi on 'Wealth Management – Tips & Techniques' followed by a Coffee break. The next session was on K-VAT Audit by CA Venkataramani. Post Lunch was on Software Sector and Customs, Excise & Service Tax by CA K.S Ravi Shankar. The last session of the 1st day was on Tax & Accounting Conflicts & Transitional issues under IFRS by CA M.P Sarda.

Second day of the Conference

Day 2 began with a panel discussion on salient features of Direct Taxes Code, 2010. The panelists were CA S. Ramasubramanian, CA S. Krishnamurthy and CA K. R. Sekar, moderated by CA Padamchand Khincha. The second session was on the Issues & Recent Judgments in TDS on Resident Payments by CA D.R Venkatesh and on Non-Resident Payments by CA D.S Vivek; the next was a panel discussion on recent issues and judgments on Works Contract. The panelists were Shri P.C. Joshi, Advocate, Shri M.L, Patodi, Advocate, CA Rajesh Kumar T.R. and CA Naveen Rajpurohit, moderated by CA Sanjay Dhariwal. The last session of the two day conference was Brains Trust by Shri P.C Joshi, Advocate, CA Madhukar Hiregange, CA K. Gururaja Acharya, CA D. S. Vivek and Chaired by CA S. Krishna Swamy.

The Conference was a very useful and rewarding experience for all the participants. It has received overwhelming participation from all the delegates. It brought about substantial value addition to the participants. The Conference focused primarily on the critical issues and the challenges faced in the implementation of the provisions relating to the direct and indirect taxes, Wealth Management and IFRS. The learned speakers shared their knowledge and experience.



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/- |

J. K. RANKA
Secretary General

**Membership of AIFTP
as on 10-12-2010**

Life Members

	<i>Associate</i>	<i>Individual</i>	<i>Association</i>	<i>Corporate</i>	<i>Total</i>
Central	1	694	21	2	718
Eastern	—	882	33	0	915
Northern	—	810	17	0	827
Southern	—	737	13	3	753
Western	3	1542	32	14	1591
Total	4	4665	116	19	4804

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Organised

WORKSHOP ON MVAT & SERVICE TAX

Jointly with

BCAS, CTC & STPAM

Venue : STPAM Library-104, Vikrikar Bhavan, Mazgaon, Mumbai – 400 010

Time : 2.30 p.m. to 5.00 p.m.

We request all our members to take benefit of the Workshop organised by AIFTP (WZ) alongwith BCAS, CTC & STPAM on the subject of MVAT and Service Tax. The details are as under:

Sr. No.	DATE	DAY	SUBJECT	MONITOR & SPEAKER
1	15th January, 2011	3rd Saturday	Inauguration & Intricate Issues Under MVAT Act, 2002	CA C.B. Thakar
2	29th January, 2011	5th Saturday	Filing of Returns (including E-filing & payment of taxes, Assessment Procedures, Intererst, Penalties & Prosecutions.	Ashvin Acharya, Adv.
3	12th February, 2011	2nd Saturday	Practical Aspects under Business & Refund Audit	Deepak Bapat, Adv.
4	19th February, 2011	3rd Saturday	Intricate Issues under Input Tax Credit & Refunds (Set-off)	CA. Kiran Garkar
5	12th March, 2011	2nd Saturday	Intricate Issues Under Works Contracts/ Lease Tax & Provisions of Composition Schemes under MVAT Act.	CA. Mayur Parekh
Service Tax				
6	19th March 2011	3rd Saturday	Export & Import of Services, Valuation of Services Rules, 2006,	CA Manish Gadia
7	02nd April 2011	1st Saturday	Construction Services, Works Contract Services, Management, Maintenance & Repair Services, Renting of immovabale Property	CA Naresh Sheth
8	16th April 2011	3rd Saturday	Information Technology Services, Health Services, Commercial Coaching & Training, Supply of Tangible Goods Services	CA Ashit Shah
9	30th April 2011	5th Saturday	CENVAT Credit Rules, 2004	CA Rajiv Luthia

Fees : Rs. 1,750/- for Members & Rs. 2,500/- for Non-members.
Please enroll early as the limited seats are available.

For All India Federation of Tax Practitioners (Western Zone)

Harish N. Motiwalla
Chairman

Chirag S. Parekh & Avinash Lalwani
Jt. Secretaries

Note: Cheque/DD to be drawn in favour of "All India Federation of Tax Practitioners-Western Zone", payable at Mumbai.

TWO DAYS NATIONAL – CONFERENCE ON TAXATION

Organised by

**ALL INDIA FEDERATION OF TAX PRACTITIONERS
(WESTERN ZONE)**



&

ALL GUJARAT FEDERATION OF TAX CONSULTANTS

SOCIO ECONOMIC GROWTH, ETHICS AND TAXATION

In association with

**ITAT Bar Association, Ahmedabad
Income Tax Bar Association, Ahmedabad
Chartered Accountants Association, Ahmedabad
Ahmedabad Branch of WIRC of ICAI
Tax Advocates Association Gujarat, Ahmedabad
Gujarat Sales Tax Bar Association, Ahmedabad**

on Saturday, 8th January & Sunday, 9th January, 2011
at

J.B. Auditorium, Ahmedabad Management Association,
Vastrapur, Ahmedabad - 380 015.

PROGRAMME

SATURDAY, 8th January, 2011

- 8:00 am to 9:00 am : Registration
- 9:00 am to 10:30 am : Inauguration
Chief Guest : Hon'ble Mr. Justice Anil R. Dave, Judge, Supreme Court of India.
Guest of Honour : Hon'ble Mr. D. A. Mehta, Former Judge,
High Court of Gujarat
- 10:30 am to 11:00 am : Tea Break
- 11:00 am to 12:15 pm : **1st Technical Session: "Precedents, Judicial Discipline & Contempt"**
Chairman : Hon'ble Mr. D. A. Mehta, Former Judge,
High Court of Gujarat
Paper Writer : Shri K.H. Kaji, Advocate, Ahmedabad
- 12:15 pm to 1:30 pm : **2nd Technical Session: "Some Aspects of Depreciation"**
Chairman : Shri J. P. Shah, Advocate, Ahmedabad
Paper Writer : CA. H. Padamchand Khincha, Bengaluru.
- 1:30 pm to 2:30 pm : Lunch
- 2:30 pm to 3:45 pm : **3rd Technical Session: "TDS Provision under Section 195"**
Chairman : Shri Mukesh M. Patel, Advocate, Ahmedabad.
Paper Writer : C.A. Dhinal A. Shah, Ahmedabad
- 3:45 pm to 5:15 pm : **4th Technical Session: "Construction and Renting Services under Service Tax"**
Chairman : Shri Bharatji Agrawal, Sr. Advocate, Allahabad.
Paper Writer : Shri Naresh Thakkar, Advocate, Mumbai.

SUNDAY, 9th January, 2011

- 9:00 am to 10:00 am : Breakfast

- 10:00 am to 11:15 am : **5th Technical Session: "Taxation of Real Estate – Some important aspects including project completion method, Section 50C, Development & Redevelopment and Section 80-IB"**
Chairman : Hon'ble Shri R. V. Easwar, President, ITAT
Paper Writer : Shri Saurabh N. Soparkar, Sr. Advocate, Ahmedabad
- 11:15 am to 12:30 pm : **6th Technical Session: "Computation of Income under Direct Tax Code Bill"**
Chairman : Shri N. M. Ranka, Sr. Advocate, Mumbai.
Paper Writer : CA. Dr. Girish Ahuja, Delhi.
- 12:30 pm to 1:30 pm : Lunch
- 1:30 pm to 2:45 pm : **7th Technical Session: "VAT – Controversial Issues in Input Tax Credit" "Intricate Issues of declarations under Central Sales Tax Act"**
Chairman : Shri P.C. Joshi, Advocate, Mumbai.
Paper Writer : Shri Nayan Sheth, Advocate, Mumbai.
Paper Writer : Smt. Nikita Badheka, Advocate, Mumbai.
- 2:45 pm to 4:00 pm : **8th Technical Session: "Controversies under Section 14A of I.T. Act"**
Chairman : CA. Kaushik D. Shah, Ahmedabad.
Paper Writer : Shri Keshav Bhujle, Advocate, Mumbai.
- 4:00 pm to 5:30 pm : **Valedictory Session:**
Chief Guest : Shri K. C. Patel, Advocate, Ahmedabad
Guest of Honour : Hon'ble Shri R. V. Easwar, President, ITAT
Hon'ble Shri D. S. Rastogi, CCIT-I, Gujarat*
Felicitations of Hon'ble Shri R. V. Easwar on his elevation as President, ITAT.

*Subject to confirmation

Delegate Fees:	Members	Non-Members	Spouse
	₹ 1,500/-	₹ 1,600/-	₹ 1,000/-

Cheque/DD should be in favour of "All India Federation of Tax Practitioners-Western Zone" or "All Gujarat Federation of Tax Consultants" payable at Ahmedabad.

For further details, Please Contact:

Convention Secretariat : Ashvin C. Shah

C/o. Chandulal M. Shah & Co., 601, Samruddhi, Opp. Sakar- III, PO: Navjeevan, Ahmedabad-14.
Phone: 079-27544430/27540612 Fax: 079-27541883 E-mail: cmshah@cmshah.com

SUBSCRIPTION RATES UP TO 31-3-2011

1.	Life Membership of the AIFTP				Rs. 2,500/-
	Additional subscription of AIFTP Journal (for 1 year)				Rs. 400/-
	Additional subscription of AIFTP Journal (for 3 years)				Rs. 1,000/-
2.	For Non-Members				
	Subscription of AIFTP Journal (for 1 year)				Rs. 600/-
	Subscription of AIFTP Journal (for 3 years)				Rs. 1,500/-
	Single copy of the AIFTP Journal				Rs. 50/-
3.	Corporate Membership				
	Nature of fees	Type I (5 Yrs.) Rs.	Type II (10 Yrs.) Rs.	Type III (15 Yrs.) Rs.	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

ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Organised by

FULL DAY SEMINAR ON MVAT & INCOME TAX

Jointly with

**JALGAON DIST. TAX PRACTITIONERS ASSOCIATION (JDTPA),
WIRC BRANCH OF JALGAON BRANCH ICAI AND
THE SALES TAX PRACTITIONERS' ASSOCIATION OF MAHARASHTRA (STPAM)**

on Saturday, 15th January, 2011 in Hotel Royal Palace, Jalgaon.

PROGRAMME

TIMINGS	SUBJECT	SPEAKER	CHAIRMAN
9.00 to 9.30	REGISTRATION & BREAKFAST		
9.30 to 10.00	INAUGURAL SESSION	<i>Chief Guest:</i> *Hon'ble Shri Eknathrao Khadse (Leader of Opposition, Maharashtra State) <i>Guest of Honour:</i> *Dr. Gurmukh Jagwani, (Ex MLC) Shri J.D. Nankani, Adv., Vice President, AIFTP (Zonal Vice President, AIFTP)	
10.00 to 12.00	TECHNICAL SESSION I Amendment in Form 704 & Issues under VAT Audit	CA Mayur Parekh IPP STPAM	Smt. Nikita Badheka, Adv., Treasurer, AIFTP
12.00 to 12.15	TEA BREAK		
12.15 to 01.45	TECHNICAL SESSION II Penalty Proceedings u/s 271(1)(C) of IT Act	Shri K. Gopal, Adv.	Eminent Faculty
01.45 to 02.45	LUNCH BREAK		
02.45 to 04.00	TECHNICAL SESSION III Issues in ITC (Set off), Refund and Business Audit	Shri Deepak Bapat, Adv., PP STPAM	Shri Vinayak Patkar, Adv., Vice Chairman AIFTP (WZ)
04.00 to 04.15	TEA BREAK		
04.15 to 05.30	TECHNICAL SESSION IV Brains' Trust	Smt. Nikita R. Badheka, Shri Vinayak Patkar Eminent Faculty	
05.30 to 06.00	VALEDICTORY SESSION	<i>Chief Guest:</i> Hon'ble Shri Gulabrao Deokar (Minister of State Agriculture, Employment, Transport)	

Delegates Fees: Tax Practitioners/Adv./CAs – Rs. 600/-; Students and Assistants – Rs. 400/- &
Nil for Members of JDTPA & ICAI, JALGAON

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Suresh U. Keswani
President JDTPA

Pankaj Dara
Chairman, Jalgaon Branch

Hemant Save
President, STPAM

For enrolment contact:

Suresh U. Keswani – 9823011600, Pankaj Dara – 9823354105, Magan N. Patil – 9823181798,
Anil Shah – 9422276902, Prashant Shinde – 9422223046, K.K. Badale – 9822250393

DIRECT TAXES

Ajay R. Singh, Paras Savla, Rahul Hakani & Renu Choudhari
Advocates

SUPREME COURT

1. S.115JAA – MAT credit to be set-off before computing advance-tax shortfall and liability for s. 234B/C interest

The scheme of s.115JA(1) and 115JAA shows that right to set-off the tax credit follows as a matter of course once the conditions of s.115JAA are fulfilled. The grant of credit is not dependent upon determination by the AO except that the ultimate amount of tax credit to be allowed depends upon the determination of total income for the first assessment year. Accordingly, the assessee is entitled to take into account the set off while estimating its liability to pay advance tax. If this interpretation is not given, there will be absurdity.

CIT vs. Tulsyan NEC, Source : www.itatonline.org

“substantial part” does not connote an idea of being the “major part” or the part that constitutes majority of the whole. Any business which the company does not regard as small, trivial, or inconsequential as compared to the whole of the business is substantial business.

CIT vs. Parle Plastics Ltd. (2010) 236 CTR 382 (Bom)

4. S.4. Income – Capital receipt – Affirmative Voting Rights [S 2 (14)]

Amount received by assessee for affirmative voting on a resolution was not a business receipt, but received as bounty or windfall for voting affirmatively and supporting a resolution and was a capital receipt. Amount received by Assessee as casual receipt in the nature of windfall and not repetitive in character would not amount to income and therefore not liable to tax.

CIT vs. David Lopes Menezes(2010) 195 Taxman 131(Bom)

HIGH COURT

2. S.2(14) – Agricultural Land – Capital gains – No Agricultural income.

Land which was shown as agricultural land in the revenue records and never sought to be used for non-agricultural purposes by the assessee till it was sold has to be treated as agricultural land, even though no agricultural income was shown by the assessee from this land, and therefore, no capital gain was taxable on the sale of the said land.

CIT vs. Debbile Alemao (Smt.) (2010) 46 DTR 341 (Bom).

3. S.2(22)(e) – Deemed Dividend – applicable only to loans given in the year. S. 2(22)(e) not applicable if lending is not “trivial” part of business.

S. 2(22)(e) covers only the amount received during the previous year by way of loans/ advances and not amounts received in an earlier year. The second condition, the expression

5. S.12AA – Charitable purpose – University – artificial juristic person. (S 2 (15), 2(31)).

University, incorporated under Haryana private Universities Act, 2006, is an artificial juristic person within the meaning of term “person” under section 2(31)(vii), hence it is entitled to make an application for registration under section 12AA. The objects of the university were granting fellowship, freeship, scholarship etc. to students belonging to weaker sections of society , it could be concluded that assessee was a charitable institution.

O.P. Jindal Global University vs. CIT (2010) 127 ITD 164 (Delhi).

6. S.37 (1) – Business expenditure – Lease rental for dozers

As long as an expenditure is incurred bona fide in pursuit of business and not by way of diversions of funds, it has to be allowed as a deduction. Entire lease rent paid by the assessee

for hiring the dozers for using them in its business was allowable as a business expenditure even though assessee did not actually use 3 out of the hired dozers.

CIT vs. Salitho Ores Ltd. (2010) 236 CTR 53/46 DTR 377 (Bom).

7. S. 40(a) (ia) - Business Expenditure - Payment to goods - Freight charges - (S. 194 C.).

Where the Tribunal has recorded a categorical finding fact that there was no material on record to prove any written or oral agreement between the assessee and recipients of goods for transportation and that such payment of freight had not been shown to have been made in pursuance to a contract of transportation of goods for a specific period, quality or price and further, none of the individual payment exceeded Rs. 20000, there was no liability to deduct tax under section 194C and disallowance under section 40(a) (ia) was rightly deleted.

CIT vs. Bhagwati Steels (2010) 47 DTR 75 (P&H).

TRIBUNALS

8. S.37 (1) - Capital or Revenue expenditure - Termination of agreement

Assessee entered into an agreement for purchase of property for infrastructural facilities for business, assessee terminated the agreement and paid compensation, payment to be treated as capital in nature and not allowable as revenue expenditure.

Sap Labs India Pvt Ltd. vs. Asst. CIT (2010) 6 ITR (Trib) 81 (Bang).

9. S.41 (1) - Remission or cession of trading liability - Loan waived - [S 28 (iv)].

Where capital assets are acquired by obtaining a loan and subsequently, loan amount is waived by other party, principal amount of loan waived by other party cannot be brought

to tax under section 28(iv) or under section 41(1).

Dy CIT vs. Logitronics (P) Ltd. (2010) 127 ITD 16 (Delhi).

10. S.48 - Capital gains - Computation - fair market value - Full value of consideration - (S 45, 50C, 55A).

Under section 45 the full value of consideration is to be adopted for computing the capital gains. Under section 50C, fair market value estimated by the registering authority is deemed to be full value of consideration, however there is no provision in the Act under which the fair value market value assessed by the DVO is to be taken as full value of consideration, hence the AO was not justified in adopting the fair value determined by the DVO as the full value of consideration for computing the income from capital gains.

ITO vs. Mohinder Nath Sehgal & Sons (2010) 46 DTR 238 (Trib) (Chd).

11. S.48 - Capital gains - Chargeability - Transfer of right to acquire property - Nil cost of acquisition (S.45).

Transfer of right to acquire property .ie. for giving up right to claim specific performance did not attract capital gains as no cost of acquisition was determinable.

B. Ramakrishnaiah vs. ITO (2010) 46 DTR 406 (Trib) (Hyd).

12. S.74 - Capital gains - Capital loss - Carried forward and set off - Non resident.

Claim of carry forward of capital loss brought from earlier years by the assessee, a company, tax resident of Mauritius, could not be rejected by the AO while making assessment of subsequent year on the ground that since the assessee company was not liable to tax on the capital gains under Art 13 of DTAA between India and Mauritius, such capital loss was also exempt.

Flagship Indian Investment Co. (Mauritius) Ltd. vs. Asst DIT (2010) 133 TTJ 792 (Mumbai).



INTERNATIONAL TAXATION

CA. Dhanesh Bafna, CA. Madhav Khandelwal & Sujeeth Karkal, Advocate

TRIBUNAL**1. Stay directly to Tribunal maintainable – Rule 35A of Appellate Tribunal Rules, 1953 – Section 144C of Income-tax Act, 1961**

The assessee filed an application in the Tribunal seeking stay on recovery of demand raised pursuant to the order of the Dispute Resolution Panel ('DRP') on a transfer pricing adjustment without approaching the lower authorities for stay. The Tribunal while granting conditional stay held that it is not mandatory on the part of the assessee to move application before the Revenue Authorities for granting of stay of outstanding demand. Accordingly, there is no merit in the argument of the department that the stay application should be rejected outright since the assessee has not moved any petition before the Revenue Authorities seeking stay of the demand. Seeking stay before the lower authorities is directory and not mandatory.

DHL Express vs. ACIT (ITAT Mumbai) (Source: itatonline.org)

2. Arm's length price – Advertising agent – Sections 92C, 92C(2), 92CA(3), 143(2) – Income-tax Act, 1961

The assessee was engaged in undertaking advertising services for its customers/associate enterprises in the capacity of an agent. The tribunal, relying on Transfer Pricing Guidelines, held that a mark-up is to be applied to the cost incurred by the assessee company in performing its agency function and not to the cost of rendering advertising space on behalf of its associate enterprises. The method adopted by the assessee while submitting transfer pricing study based on net revenue had been accepted by the department in earlier years and, therefore, there was no reason to depart from that stand.

DCIT vs. M/s Cheil Communications India Pvt. Ltd. (2010-TII-60-ITAT-DEL-TP)

3. Credit for State Taxes in addition to Federal Taxes – Sections 40(a)(ii), 90 & 91 – Income-tax Act, 1961

The Tribunal held that the argument that ss. 90 & 91 are confined to USA Federal taxes and not to USA State taxes and that therefore the bar in s. 40(a)(ii) does not apply to USA State taxes is not acceptable because any payment of income-tax is an application of income. Further, the scheme of ss. 90 & 91 does not discriminate between Federal taxes and State taxes and though the India-USA DTAA confines the credit only to Federal taxes, the assessee will be entitled to relief u/s 91 in respect of both taxes as that will be more beneficial to the assessee vis-à-vis tax credit under DTAA. Consequently, the bar against deduction in s. 40(a)(ii) will apply to USA State taxes as well, though the assessee will be entitled to credit in respect of USA State taxes.

DCIT vs. Tata Sons Ltd. (ITAT Mumbai) (Source: itatonline.org)

4. DRP directions – Section 144C – Income-tax Act, 1961

The assessee filed an appeal before the Tribunal against the assessment order passed pursuant to DRP direction, which was given without considering assessee's submission. The Tribunal while upholding the assessee's contention and remanding the matter back to the files of DRP held that s. 144C empowers the DRP to issue directions for the guidance of the AO to enable him to complete the assessment. However, as against the provisions of s.144C, the DRP has passed a very laconic order. Though voluminous submissions were made before the DRP against the draft assessment order, it brushed aside everything without even a whisper of the assessee's objections and submissions. The directions of the DRP are too laconic to be left uncommented. The directions given by the DRP almost tantamounts to supervising the AO's draft order and in that sense it can be equated that appellate jurisdiction being exercised.

GAP International Sourcing India Pvt. Ltd. vs. DCIT (Source: itatonline.org)



INDIRECT TAXES **Sales Tax Decisions**

P. C. JOSHI, Advocate

Discount

The Karnataka High Court after considering the provision of Section 2(36) as well as section 30 read with Rule 3(2)(c) and section 31, held that the discount granted through credit notes issued subsequent to the issuance of the tax invoices, were not eligible for deduction from the sale price.

M/s. T. V. Sundaram Iyengar & Sons Ltd., vs. The State of Karnataka 2010-11 (15) KCTJ Pg.25

Dealer

The Kerala High Court upheld the constitutional validity of the amendment to the definition of the term 'dealer'. By such an amendment, a bank or a financial institution, effecting sale of pledged gold and other valuable ornaments, was treated on par with the normal dealer. Such a transaction was also held to be that of a sale of goods liable to be taxed under entry 54 of list II of the Seventh Schedule of the Constitution.

State Bank of Travancore vs. Commercial Tax Officer & Ors. (2010) 18 KTR 476 (Ker).

Doctrine of "Audi Alterrum Partem"

The Supreme Court disapproved the Judgment of the Rajasthan High Court disposing off the matter before it by a cryptic order not supported by any reason. The apex court observed that the principle of "Audi Alterrum Partem" was the basic principle of natural justice and the requirements of the reason is bare necessity for any order to be valid.

Asst. Commissioner, Commercial Tax Dept., vs. Shukla & Brothers (2010) 18 KTR 495 (SC).

Estimation & Penalty

The Gujarat Value Added Tax Tribunal followed the Judgment of the Gujarat High Court in the case of *Batliboi and Co., Ltd vs. Sales Tax Officer (119 STC 583)* and held that when the authorities on a visit to place of business, found a difference in stock as well as certain slips that could not be explained satisfactorily by the assessee, he was, not only liable to penalty as provided in the Act but also estimation of turnover on the basis of rough slips and unexplained stock difference. The quantum of the penalty however was reduced from 115% to 50% of the tax involved.

M/s. Sanjay Traders vs. The State of Gujarat November, 2010 Sales Tax Journal Pg.706.

Entries in Schedule

1) Antiseptic Cream

The Allahabad High Court while disposing of several cases regarding the classification of Antiseptic Cream and Navratan Oil, held that both the items in question were neither cosmetics nor Ayurvedic medicines. The court applied the common parlance test and held that the two criteria relevant for a product to be considered as medicaments, were satisfied without any contrary evidence by the department. The Court therefore held that the items in question were taxable at the lower rate of tax.

M/s. Himani Limited vs. The Commissioner of Commercial Taxes, U.P. Lucknow & Ors. 2010 NTN (Vol.44)-209.

2) Medical Equipments

The Joint Commissioner of Commercial Taxes, Gujarat while deciding the application under section 80 of the Gujarat VAT Act, held that Flower Position Bed (Manual) and Labour Table Pono which were used only in the hospital, for appropriate comfort and convenience of patients who were required to be kept in a specific position during their stay in the hospital, were not furniture but medical equipments under entry 28A (2) of Schedule II

Applicant M/s. Babulal Kalidas Panchal – Umargaon Source November 2010 Sales Tax Journal Pg.695

3) Nylon Body Sponge

The Kerala High Court held that knitted nylon fibre in bunch form used as a scrubber while taking bath was not covered by entry 113 relating to plastic under the Kerala General Sales Tax Act 1963 but by the residuary one.

Amway India Enterprises vs. State of Kerala (2010) 18 KTR 517 (Ker)

4) Papad & Kachori

The Allahabad High Court applied the decision of the Supreme Court in the case of *Shivshakti Gold Finger vs. Asst. Commissioner, Commercial Taxes (1996) 9 SCC 514* and held that Papad & Kachori made out of Makai, were exempt under notification dated 10th April, 2000 issued under the provisions of U.P. Trade Tax Act.

Kela My Food Products vs. Commissioner Commercial Tax 2010 NTN (Vol.44) – 246

5) PXI Controllers Signal Converters, etc.

The Supreme Courts while interpreting chapter 84 & 90 under the Customs Act, 1962 held that programmable process controllers though separate

from sensors was an individual component contribute to a clearly defined function and therefore where rightly classified under the chapter heading 9032.89.10 The Apex court also held that chapter 84 dealt with machines performing a specific function other than data processing.

Commissioner of Customs, Bangalore vs. N. I. Systems (India) Pvt Ltd (2011) 1 STD Pg.63

Form C Second Counterfoil

The Gujarat Value Added Tax Tribunal after considering the case law in detail with the relevant provisions of the Central Sales Tax Act, held that the three parts of the C Form were under the heading (1) Counterfoil (to be kept by the issuing dealer) (2) duplicate (to be kept by the selling dealer for his record) and (3) Original (to be submitted to the assessing authority by the seller). In the case before the Tribunal the assessee had handed over the original portion of the 'C Forms' to his Practitioner who thereafter intimated about its submission before the officer. Before the assessment could be completed, the Practitioner expired and the officer denied the submission of the forms on record. He also insisted for the original forms. The assessee however produced the duplicate portion of the original C Forms that were submitted earlier, but the same were not accepted and the tax was levied at a high rate. Before the Tribunal, the assessee pointed out that rule 4 (2) of the CST Rules nowhere mentioned about the production of original copy and all the three parts of the C Form formed part of the original Form. Considering the peculiar facts of the case, the Tribunal directed the levy of concessional rate of tax on the basis of duplicate part of the original C Form.

M/s. Arbuda Industries vs. The State of Gujarat. November, 2010 of Sales Tax Journal Pg.714.

Limitation

The Bombay High Court after considering the provisions of section 33 (4A) of the Bombay Sales Tax Act 1959, held that the first proviso thereunder was not restricted and applicable only to the cases where the dealers had filed their returns within due date. The submission of the State in that regard was that the proviso in question was appended to sub-section (4A) and therefore the said proviso should be restricted only to those cases which were covered by sub section (4A). The High Court in that connection held that while interpreting any provision of the Act, the entire section and the scheme therein were required to be considered and the fact about the placement by itself cannot determine the scope of the statutory provision.

The Commissioner of Sales Tax, Maharashtra State, Mumbai. vs. M/s Lucas India Services Ltd & Ors. Sales Tax Reference No.19 of 2003 decided on 12th August, 2010.

Input Tax Credit

The West Bengal Taxation Tribunal upheld the legality of the provisions of ITC restricting it only to dealers registered under the Act. In other word the input tax credit during the unregistered period was held to be not available.

(Smt.Sunita Lakhotia vs. S.T.O. Coochbehar Charge & Ors (2010) 56 S.T.A. Pg.234).

Incentives on expansion

The larger Bench of Allahabad High Court held that a unit enjoying the benefits under notification 640 dated 21st February, 1997 was entitled to have exemption on expansion on the quantity of manufactured goods in excess of the quantity of base production plus stock of the previous year relating to base production. According to the Court, the base production included the quantity of the stock transfer/consignment transactions. The larger Bench overruled the earlier decisions of the Division Bench in the case of Ambika Steel Pvt. Ltd., as well as that of M/s. IFFCO Limited.

M/s. Hindustan Lever Limited vs. State of U.P. and Ors. 2010 NTN (Vol.44) - 223.

Revised Return

Section 35 (4) of Karnataka Value Added Tax Act 2003 provided for a period of six months for submission of a revised return. In the case before the Karnataka High Court, the assessee had submitted revised returns beyond the period of six months. The authority did not accept the same and reassessment order was passed. While the appeal against such an order was pending the assessee approached the High Court against such an action of non acceptance of the revised return simply because the same was filed after the lapse of six months. The Karnataka High Court held that the provisions in question were not mandatory but directory. The High Court therefore quashed the reassessment order and directed the authorities to consider the revised return and pass fresh order. The assessee undertook to withdraw the appeal that was pending before the Appellate Authority.

M/s. Federal Mogul Goetze (I) Ltd vs. The A.C.C.T. & Ors. 2010-11 (15) KCTJ Pg.15.

Works Contracts

The Kerala High Court held that the Tax payable on the deemed sale of declare goods used in works contract was always subject to the restrictions provided in Section 15 of the Central Sales Tax Act 1956. The Court therefore read down the provision of 6 (1) (f) so as to make the same applicable to be taxed @ 4% in case of declare goods and not 12.5% as was done by the authorities.

Jose K.M. vs. Asst. Commissioner (Assmt.) (2010) 18 KTR 524 (Ker).



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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