



All India Federation of Tax Practitioners

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(For Members only)

AIFTP TIMES

Volume 2 - No. 6 • June, 2011

FORTHCOMING PROGRAMMES	
Date & Month	Programme
17th June, 2011	National Executive Committee Meeting at Mumbai
17th & 18th June, 2011	Two Day Tax Conference at Mumbai on Indirect Taxes
25th June, 2011	Annual General Meeting of AIFTP (EZ) at Kolkata
25th June, 2011	Half Day Seminar on Search & Survey under the IT Act at Kolkata
28th June, 2011	Annual General Meeting of AIFTP (WZ) at Mumbai
19th & 20th August, 2011	Two Day Workshop on Drafting of Agreements, Deeds and Documents at Mumbai
11th November, 2011	Celebration of Foundation Day at Delhi
12th & 13th November, 2011	Two Day National Tax Conference at Delhi
16th to 19th November, 2011	AOTCA International Tax Conference at Bali, Indonesia.
9th December, 2011	National Executive Committee Meeting at Ranchi
10th & 11th December, 2011	Two Day National Tax Convention at Ranchi

FEDERATION NEWS

J. K. Ranka, Secretary General

INTERNATIONAL TAX CONFERENCE

"Golden Tax Summit is organizing International Tax Conference in Shanghai China on 25-26th August, 2011. China is a beautiful place if you are interested please convey so that you may participate and visit different places in China.

AOTCA Conference is going to take place in Bali (Indonesia) between 16-19th November 2011 – please join. We may plan to have 7 days trip to Malaysia – Bangkok / Srilanka either before AOTCA Conference or after Conference – if you are interested please let us know so that a Tour can be planned at a reasonable package. Please contact for the above your Zonal Chairman / National Vice President/National Joint Secretary /Secretary General at the earliest."

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
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ALL INDIA FEDERATION OF TAX PRACTITIONERS (WZ)

Organised

TWO DAY

**WORKSHOP ON DRAFTING OF AGREEMENTS, DEEDS AND DOCUMENTS
(including Taxation of Real Estate Transaction)**

Jointly with

**THE CHAMBER OF TAX CONSULTANTS AND
BOMBAY CHARTERED ACCOUNTANTS' SOCIETY**

With the Indian economy integrating itself in the Global economies, it has become imperative to be more cautious and careful while entering into agreements at various levels and thus it is of prime importance to understand the do's and dont's and the precautions to be taken care while drafting of such documents.

With a view to help the members, All India Federation of Tax Practitioners (WZ) along with The Chamber of Tax Consultants and Bombay Chartered Accountants' Society has arranged a two day Workshop on Drafting of Agreements, Deeds and Documents on **Friday and Saturday, 19th and 20th August, 2011 from 9.00 a.m. to 5.00 p.m. at Terrace Hall, West End Hotel, New Marine Lines, Mumbai – 400 020.**

Topics	Speakers
DAY 1 (19-8-2011)	
Conveyancing – An Overview	Shri Pravin Veera <i>Advocate & Solicitor</i>
Important Provisions of Bombay Stamp Act, Indian Stamp Act and Registration Act	Shri Pradip Kapadia <i>Advocate & Solicitor</i>
Taxation of Real Estate Transactions	Shri Vipul Joshi, <i>Advocate</i>
Drafting of Agreements for Development and Sale of Immovable Properties (including M.O.U.)	Shri J. S. Solomon <i>Advocate & Solicitor</i>
Drafting of Deed of Partition and Deed of Family Arrangement	Smt. Parimal Y. Golwala <i>Advocate & Solicitor</i>
Drafting of Wills	Ms. Shilpa Thakar, <i>Advocate</i>
DAY 2 (20-8-2011)	
Redevelopments of Properties of Co-operative Housing Societies	Shri Parimal Shroff* <i>Advocate & Solicitor</i>
Drafting of documents relating to Transfer of Flats and Premises in a Co-operative Society	Shri Ankoosh Mehta <i>Advocate & Solicitor</i>
Drafting of Agreements under Maharashtra Ownership Flats Act and Maharashtra Apartment Ownership Act	Shri Mahesh Shah <i>Advocate & Solicitor</i>
Drafting of Agreement for Leave and Licence, Lease Deed, Business Conducting Agreement	Shri Bankim Desai <i>Advocate & Solicitor</i>
Limited Liability Partnership Act and Drafting of documents relating to Limited Liability Partnership	Shri Vijay Kewalramani <i>Chartered Accountant</i>

* Confirmation awaited

Delegates fee (including Tea, Coffee, Lunch & Material)

₹ 2,100/- for Members, ₹ 2,500/- for Others

Note: Cheque/DD to be drawn in favour of "All India Federation of Tax Practitioners–Western Zone", payable at Mumbai. Outstation members are requested to make payment by DD only.

Members are requested to take advantage of this unique opportunity and enroll early to avoid disappointment.

Members wishing to enroll can contact the following:

Federation's Office : 022 2200 6342 / 022 2200 6343



All India Federation of Tax Practitioners (WZ)

Jointly with

The Sales Tax Practitioners Association of Maharashtra



TWO DAY TAX CONFERENCE

17th & 18th June, 2011

at Navinbhai Thakkar Auditorium, Shradhdhanand Road, Vile Parle (E), Mumbai

Theme: Role of Professionals in Changing Times

All India Federation of Tax Practitioners (Western Zone) along with The Sales Tax Practitioners Association of Maharashtra cordially invite you to participate in the Tax Conference for exclusive & exhaustive study of recent development & amendments on Indirect Taxes on 17th & 18th June, 2011 (Friday & Saturday) at Mumbai.

Object of the conference is to exhaustively discuss the recent trends in Indirect Taxes, i.e. covering Important Aspects of MVAT, Service Tax & Constitution Amendment Bill on GST. For those who are specialising in either VAT or Service Tax only, it is an opportunity to update not on the subject normally practice by them. With the GST round the corner, this is a need for the hour.

The paper writers from all over India including Maharashtra would do their best to provide food for thought and probable solutions to the participants. Though this unique conference is designed to discuss threadbare the important aspect of recent trends, the paper writers would also deliberate on the basic aspects of the subject in their paper. The paper book is designed to remain as a permanent reference book in the library of participants.

Kindly go through the detailed programme and submit your cheques or DDs to office of the Federation or STPAM well in advance so that you don't miss the bus.

Friday, 17th June, 2011

Timing	Subjects	Speakers	Chairmen
8.30 am – 9.30 am	Registration & Breakfast		
9.30 am – 10.30 am	Inauguration	Hon'ble Director General of Service Tax / Chief Commissioner of Service Tax, Mumbai*	
10.30 am – 11.45 am	Important Aspects of VAT & Service Tax on Real Estate	CA Sunil Gabhawalla, Mumbai	Shri P. C. Joshi, Adv., Mumbai
11.45 am – 1.00 pm	Important Practical and Procedural Aspect of Service Tax	CA Pranav Mehta, Mumbai	Shri S. S. Gupta, Adv., Mumbai
1.00 pm – 2.00 pm	Lunch Break		
2.00 pm – 3.10 pm	Constitution Amendment Bill for GST & Update on GST	Shri Mukul Gupta, Adv., Ghaziabad	Shri R. V. Desai, Sr. Advocate, Mumbai
3.10 pm – 3.30 pm	Tea Break		
3.30 pm – 4.45 pm	Recent Issues of Service Tax Valuation Rules – including Hoteliers & Restaurants	CA Rajkamal R. Shah, Mumbai	CA A. R. Krishnan, Mumbai
4.45 pm – 5.45 pm	Amendment to existing Services, including Legal Consultancy Services & Amended Recovery & Penal Provisions	Shri Shailesh Sheth, Advocate Mumbai	Dr. Ashok Saraf, Sr. Advocate Guwahati

Saturday, 18th June, 2011

Timing	Subjects	Speakers	Chairmen
8.30 am – 9.30 am	Breakfast		
9.30 am – 10.45 am	Issues on Recent Amendment to MVAT Act & Rules	CA Kiran Garkar, Mumbai	Shri P. V. Surte, Adv., Mumbai
10.45 am – 11.00 am	Tea Break		
11.00 am – 12.15 pm	Interstate Works Contract and Branch Transfer Issues	Shri Vinayak Patkar, Adv., Mumbai	Shri P. S. Sarin, Adv., Delhi
12.15 pm – 1.30 pm	Important Aspect – Business Audit & Refund Audit – MVAT	Shri Deepak Bapat, Adv., Mumbai	Shri C. B. Thakar, Adv., Mumbai
1.30 pm – 2.30 pm	Lunch Break		

2.30 pm – 3.40 pm	Issues of CENVAT Credit – Recent Amendments	CA Rajiv Luthia, Mumbai	Shri Vikram Nankani, Adv., Mumbai
3.40 pm – 4.00 pm	Tea Break		
4.00 pm – 5.00 pm	Controversies in Point of Taxation Rules	CA Sagar Shah, Pune	Shri V. Sridharan, Adv., Mumbai
5.00 pm – 6.00 pm	Brains' Trust Session : Trustees Shri P. C. Joshi, Adv., Mumbai Mrs. Nikita R. Badheka, Adv., Mumbai Shri Vikram Nankani, Adv., Mumbai Shri V. Sridharan, Adv., Mumbai		Shri M. L. Patodi, Adv., Kota

*Confirmation Awaited

Delegates Fees: Members – ₹ 2,000/- Non-Members – ₹ 2,500/- | Accompanying Spouse – ₹ 1,000/-
(including course material, breakfast and lunch on both days)

Cheque/DD to be drawn in favour of “All India Federation of Tax Practitioners – Western Zone” or “The Sales Tax Practitioners Association of Maharashtra”, payable at Mumbai. Outstation members are requested to make the payment by DD only.

Note: Enrolment forms are available at:

- Federation's Office : 215, Rewa Chambers, 31, New Marine Lines, Mumbai – 400 020. • Tel. 022-2200 6342/43
- The STPAM's Library : 104, Vikrikar Bhavan, Mazgaon, Mumbai-400 010 • Tel. 022-2377 6395/6991 7320/6991 7321
- Sales Tax Tribunal Bar Association, Mumbai : 713, Vikrikar Bhavan, Mazgaon, Mumbai-400 010 • Tel. 022-2375 3365
- Downloadable forms available at www.aiftponline.org/www.stpam.org

For further details, please contact:-

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 Mr. Hardik P. Marfatia, Hon. Treasurer, AIFTP – WZ, (M) 9819239838 E-mail: hardikmarfatia@hotmail.com

HOTEL ACCOMMODATION

Sr. No.	Name of Hotel	Room Tariff		Delux		Super Delux		Executive Apartment Single	Extra Person
		Standard Single	Double	Single	Double	Single	Double		
1	Hotel Rama Krishna 148, Nehru Road, Vile Parle(E), Mumbai - 400 057 Tel - 26177777 / 8888 • Fax - 26146666 Email : reservation@rkhoteles.com Website :- www.rkhoteles.com	2000	2500	2500	3000	3000	3500	6000	750 Excluding Tax
2	Hotel Columbus Prop. Hotel Jyotdeep Palace Pvt. Ltd. 344, Nanda Patkar Road, Vile Parle (E), Mumbai - 400 057 Tel - 26182029 / 26184357 /42144343 Fax - 42144344 Email - info@hotelcolumbus.in	3000	3000	3500	3500	4000		6000	600 Excluding Tax
3	Quality Inn Parle International B. N. Agarwal Commercial Complex, Vile Parle (E), Mumbai - 400 057 Tel - 26162476 / 85 / 26102122 / 24 Fax - 26128215 Email - inco@hotelparleinternational.com Website - www.hotelparleinternational.com	5400	6400	8000	9000				1000 Excluding Tax

4	Hotel Atithi Blink Hotels Pvt. Ltd. 77A-B, Nehru Road, Vile Parle (E) Mumbai - 400 099 Tel - 26187941 to 43, 26116124 / 25 26130874 / 75 • Fax - 26111998 Email - atithihotel@vsnl.net Email - atithi@atithihotel.net Website - http://fhraindia.com/hotel/mumbai/atithi	3200	4000	4200	5500	4700	5500		800 Excluding Tax
5	Hotel Bawa International Near Domestic Airport, Vile Parle (E), Mumbai - 400 099 Tel (O) 26113636 Fax - 26107096 Email - reservations@bawahotels.com Website - www.bawahotels.com	7000			9000				
6	Hotel Park View 37, Lallubhai Park Road, Andheri (West), Mumbai - 400 058. Tel: 26287222 • Fax :26249340 Email : parkview@viewhotelsinc.com Website : www.viewhotelsinc.com	3400	4000						600 Excluding Tax
7	Hotel Karl Residency 36, Lallubhai Park Road, Andheri (West) Mumbai - 400 058. Tel : 26250550 Fax : 26250551 / 26702823 Email : karlresidency@karehotel.com website : www.karehotels.com	5000	6000						1000 Excluding Tax
8	Ibia Mumbai Airport Plot No. F. 77, Near Domestic Airport, Junction of Nehru Road, / Western Express Highway, Vileparle (E), Mumabi - 400 099 Tel (O) 67087777 Fax - 67087778				5000				17.65% Tax
9	Hotel Sahara Star Opp. Domestic Airport, Mumbai - 400 099 Tel (O) 39895000 Fax - 39895001 Toll Free - 18 00 226 645 Email - reservations@saharastar.com				16000				
10	The Orchid - Five Star Ecotel Hotel				10000	11000			Excluding Tax
11	Hotel Satellite 213 / 214, Dixit Road, Vile Parle (E), Mumabi - 400 057 Tel (O) 26117452 / 26110459 / 26102639 Fax - 26173695	2000	2200	2700	3000				400 Excluding Tax

ANNUAL GENERAL MEETING

The Annual General Meeting of the Members of All India Federation of Tax Practitioners (Western Zone) will be held on Tuesday, the 28th June, 2011 at 215, Rewa Chambers, 31, New Marine Lines, Mumbai - 400 020 at 6.00 p.m. to transact following business:-

AGENDA

1. To read and approve the minutes of the last AGM held on 21-07-10.
2. To receive and adopt the Annual Report of the Managing Committee (WZ) for the year 2010-11.
3. To consider and adopt the audited accounts of the Federation (WZ) for the year ended 31st March, 2011.
4. To appoint Auditors for the year 2011 - 2012 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (WZ)
Sd/-
(Chirag Parekh)
(Avinash Lalwani)
Hon. Jt. Secretaries

Place: Mumbai
Date: 25th May, 2011

- Note. 1. Accounts for the year ended on 31-3-2011 and the report of the Managing Committee for the Western Zone can be collected from the office of the Federation from 24th June, 2011 onwards between 11.30 a.m. to 5.00 p.m. The accounts and report can be made available to the members through e-mail on request to the office.
2. If there is no quorum by 6.00 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

ANNUAL GENERAL MEETING

The Annual General Meeting of the Members of All India Federation of Tax Practitioners (Eastern Zone) will be held on Saturday, the 25th June, 2011 at Conference Room of ICCR, 9A, Ho Chi Minh Sarani, (Opp US Consulate), 3rd Floor, Kolkata - 700 071 at 2.30 p.m. to transact following business:-

AGENDA

1. To read and approve the minutes of the last AGM held on 26-06-10.
2. To receive and adopt the Annual Report of the Managing Committee (EZ) for the year 2010-11.
3. To consider and adopt the audited accounts of the Federation (EZ) for the year ended 31st March, 2011.
4. To appoint Auditors for the year 2011 - 2012 and fix their honorarium.
5. To transact any other business with the permission of the Chair.

Yours faithfully,
For A.I.F.T.P. (EZ)
Sd/-
(C. K. Chatterjee)
Zonal Secretary

Place: Kolkata
Date: 24th May, 2011

- Note. 1. If there is no quorum by 2.30 p.m., the meeting will be adjourned by half an hour and the members present at such adjourned meeting shall form the quorum.

REPORT ON NATIONAL TAX CONFERENCE-2011

INAUGURAL SESSION – 23rd April, 2011

Chief Guest for the Inaugural session was Hon'ble Justice Mr. Deepak Verma, Supreme Court of India while the session was presided over by Hon'ble Mr. Justice Arun Kumar Mishra, Chief Justice, Rajasthan High Court and Shri H.M. Bungar, M.D., Shree Cements Ltd. The judges were welcomed by garlanding and making them wear traditional safa of Rajasthan. Welcome address was extended by Mr. M.L Patodi, Mr. P.M. Chopra, Mr J.M Lodha and Mr J.K Ranka briefed about AIFTP activities.

The function also recorded release of Souvenir of NTC 2011 compiled by CA. Mahesh Gehlot, Tax World (RTCA, Chief Editor Dr. S. L Jain), Delhi VAT by Mr. H.C. Bhatia, AIFTP Journal, etc.

The guest of the inaugural session delivered their address to the august gathering with the emphasis on tax system. At the end mementos were presented to the chief guest and Guest of Honour.

The Inaugural session was in the presence of various High Court Judges (Raj.) and judicial officers of the various Dept. Members of ITAT, etc.

The Conference was attended by around 450 delegates from different parts of central zone and India like Jabalpur, Rajnagar, Ranchi, Durg, Ahmedabad, Mumbai, Ratlam, Kochi, Delhi, Bengaluru, Indore, Ujjain. In Rajasthan, Delegates attended from around 40 places like Bikaner, Pali, Balotra, Jaipur, Sirohi Beawar, Bhilwara, Barmer, Nohar, Hanumangarh, etc.

The Inaugural session was ended by extending vote of thanks by CA. Vishnu Daga.

FIRST TECHNICAL SESSION

The First technical session was chaired by Hon'ble Dr. Justice Vineet Kothari, Rajasthan High Court which was on Direct Tax Code delivered by CA Harish N. Motiwalla CA Harish N. Motiwalla, Mumbai.

SECOND TECHNICAL SESSION

The Second technical session on Recent Judgments in TDS on Resident & Non-Resident payments taken by CA Padam Khincha, Bengaluru was chaired by Adv. S.K. Poddar along with CA. Sudhir Bhansali and Hon'ble CA A.L. Gehlot, Member, ITAT, Rajkot as guest of honour.

THIRD TECHNICAL SESSION

The Third technical session after lunch spoken by Adv. T.C. Jain, Jaipur, Adv. Ms. Nikita R. Badheka, Mumbai on Issues & Judgments on Central Sales Tax Act & Works Contract.

While highlights on Road Map of GST given by CA Sanjay Dhariwal, Bengaluru. The session was chaired by Adv. P.C. Joshi, Mumbai and J.R. Lohiya, Additional Commissioner, was the Guest of Honour.

FOURTH TECHNICAL SESSION

In the fourth technical session Adv. Gajendra Maheshwari, Ernest & Young, New Delhi threw light on Service Tax with reference to Builders & Contractors. The Chairman for the session was Adv. Ganesh Purohit. (Sr.) and the Guest of Honour Shri K.L. Goyal, IRS, Commissioner, Central Excise & Customs, Thane Range.

CULTURAL EVENING

The end of first day was witnessed by colourful cultural evening reflecting Rajasthan culture in form of ghommar and kalbalia dance. The guest of honour and chief guest of the evening were Shri Bhupendra Kumar Dak (Police Comm, IPS) CA. Rahul Mohnot (President, Birla white), Shri CA. Kailash Bhansali (MLA, Jodhpur).

FIFTH TECHNICAL SESSION 24TH APRIL, 2011

The day began with Fifth technical session on the topic "Issues and Recent Judgment on capital gains" and Limited Liability Partnership". The session was chaired by Sr. Adv. Premrata Bansal (Del. HC) and guest of honour Shri CA. R.C Sharma ITAT Member Indore. The paper on Issues and recent judgment on capital gains" was delivered by CA. Ashwin C Shah and "Limited Liability partnership" was delivered by CA. Pankaj Jain.

SIXTH TECHNICAL SESSION

The Sixth technical session was a Brains' trust session chaired by Adv. N.M. Ranka, Senior Advocate, Jaipur on Brains' Trust Session by Trustees Adv. S.R. Wadhwa, New Delhi, Adv. V.P. Gupta, Delhi High Court, Adv. H.C. Bhatia, New Delhi, Adv. R.C. Agarwal, Jaipur, CA Amit Kothari, CA Pradeep Jain. The focus of this session was to solve queries of delegates on various tax related issues.

SEVENTH TECHNICAL SESSION

The Seventh technical session on Capital Market highlighted by CA Sumer Patwa, chaired by CA Suresh Rathi with Guest of Honour CS Mukesh Bansal, Chairman, Jodhpur Chapter, ICSI.

VALEDICTORY SESSION

The Valedictory session's chief guest Hon'ble Mr. Justice Rajesh Balia (Retd.) with Guest of honour Shri Dilip Shivpuri, IRS, Chief Commissioner of Income Tax. The welcome address was delivered by Shri M.L. Patodi (President, AIFTP) Shri P.M. Chopra (Chairman CZ) and Shri JM Lodha (Conf. Chairman) and the guests were welcomed by making them wear safa and a bouquet. The talk was delivered by the chief guest and guest of honour as to the role of taxpayers.

The mementos were presented to the chief guest and guest of honour. The Vote of thanks was delivered by CA. Mahesh Gehlot by extending his thanks to delegates, press and media and all the associations for their co-operation and support.

Renewal Subscription to AIFTP Journal and Voluntary Contribution to Palkhivala National Tax Moot Court Competition and Research on Tax

Dear Members,

We have posted bill for renewal subscription of AIFTP Journal and Palkhivala Foundation on 24th March, 2011. Members are requested to send the DD or Cheque in favour of "All India Federation of Tax Practitioners" payable at Mumbai as early as possible.

Members can also download the subscription and an appeal from our website; i.e., www.aiftponline.org and send us the subscription.

Thanking you,

For All India Federation of Tax Practitioners

J. K. RANKA

Secretary General

SUBSCRIPTION RATES W.E.F. 1-4-2011

1.	Life Membership of the AIFTP				₹	2,500/-
	Additional subscription of AIFTP Journal (for 1 year)				₹	600/-
	Additional subscription of AIFTP Journal (for 3 years)				₹	1,500/-
2.	For Non-Members					
	Subscription of AIFTP Journal (for 1 year)				₹	800/-
	Subscription of AIFTP Journal (for 3 years)				₹	2,000/-
	Single copy of the AIFTP Journal				₹	50/-
3.	Corporate Membership					
	Nature of fees	Type I (5 Yrs.)	Type II (10 Yrs.)	Type III (15 Yrs.)	Type IV (20 Yrs.)	
		₹	₹	₹		
	Admission	500/-	500/-	500/-	500/-	
	Subscription	5,000/-	7,500/-	11,500/-	15,000/-	
	Total	5,500/-	8,000/-	12,000/-	15,500/-	

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

DIRECT TAXES

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

SUPREME COURT

1) S. 271C : Failure to deduct TDS

Failure on the part of assessee to deduct and pay tax collected at source will attract penalty of a sum equal to amount of tax which he failed to deduct or pay to the authority. Failure to pay the tax to the credit of the Central Government in certain cases, or to pay the tax collected at source would be punishable with imprisonment.

Rajeswar Tiwari and Others vs. Nanda Kishore Roy. (2011) 333 ITR 534 (SC)

HIGH COURT

2) S. 10B : Exemption – Export Oriented Unit – Pre-amended provision – Export less than 75% – Exemption allowed

Where the 100% Export Oriented Unit is established and has commenced production prior to 1st April, 1994, exemption u/s 10B is allowable even if its export is less than 75% as under pre-amended provisions. The benefit of exemption is available by merely obtaining a certificate of EOU under IDR Act.

CIT vs. Baehal Software Ltd., (2011) 54 DTR 185 (Kar.) (Refer Circular No. 684, dt. 10th June, 1994)

3) S. 37 : Business Expenditure – Expenditure on Foreign Tour of wife of MD – Board Resolution passed – Allowable

Where amount was spent on the foreign tour of the wives of the Managing Director and Deputy Managing Director. Only expenditure incurred on the wives of the Managing Director shall be allowable as a reason of Board Resolution authorizing the same. As the amount spent on the foreign tour of the wives of Deputy Managing Director is not authorized by the Board Resolution, same shall not be allowable.

J.K Industries Ltd. vs. CIT, (2011) 54 DTR 179 (Cal.)

4) S. 68 : Cash Credit – Share application money – Identity of subscriber established – Burden of proof shifts on revenue

Where identity and existence of the investor/subscriber is established by duly furnishing the name, age, address, date of filing the application shares, number of shares of each shares, the onus shifts on

to the Revenue to prove that the share application was bogus.

CIT vs. STL Extrusion P. Ltd., (2011) 333 ITR 296 (MP)

5) S. 80G : Deduction – Donation to charitable institutions – Expenditure on religious activity in preceding two PY less than 5% – Renewal of approval not to be refused

Where assessee society is registered u/s 12AA as well as u/s 80G(5), renewal of approval not be refused if the expenditure incurred by it on religious activity in preceding two PY is less than 5% of total income.

DIT (E) vs. International Society for Krishna Consciousness, (2011) 54 DTR 126 (Kar.)

TRIBUNALS

6) S. 9(1)(vi) : Income deemed to accrue or arise in India – “Equipment-Use” Royalty If Payer has no control over equipment – DTAA – India-UK – [Article 12(3)(b)]

The activity of transmitting raw data to user, processing of the data by such user by using software belonging to assessee and transmission of such data to assessee does not involve “use of any process” so as to constitute royalty under Article 12(3)(a).

In order to constitute ‘use of equipment’, the customer should actually have domain or control over the equipments it should be at its disposal. (A. Y. 2004-05)

Standard Chartered Bank vs. DDIT (Mum.)(Trib.)
Source: www.itatonline.org

7) S. 23 : Income from House Property – Annual Value – Notional Rent – Interest Free Deposit

For applying provisions of section 23(1)(a) of the Act, municipal valuation/ratable value should be the determining factor. Since the rent received by the assessee was more than the sum for which the property might reasonably be expected to be let from year to year, the actual rent received should be the annual value of the property under section 23(1)(b) of the Act. Notional interest on interest – free security deposit/rent received in advance should not be added to the same.

Dy. CIT vs. Reclamation Realty India Pvt. Ltd., ITA No. 1411/Mum. 2007, dt. 26-11-2010, ITAT 'D' Bench, BCAJ p. 25, Vol. 42-B, Part 5, February 2011 / Source: www.itatonline.org (Trib.)

8) S. 28(i) : Business Income – Capital Gains – Gains arising from PMS transactions – Not business profits

Transactions carried out via PMS are in nature of transactions meant for wealth maximization and not encashing profits on appreciation in value of shares. In case where assessee is engaged in systematic activity of holding of portfolio through PMS manager, it cannot be said that main object of holding the portfolio is to make profit by sale of shares. The high number of transactions are misleading as these are computer split transactions and not independent transactions. Hence, gains arising out of PMS transaction has to be assessed as Capital Gain and not business income. (A.Y. 2006-07)

ITO vs. Radha Birju Patel (Mum.) (Trib.) Source: www.itatonline.org

9) S. 50C : Capital Gains – Stamp Duty Valuation – Does not apply to transfer of “leasehold rights” as it is not “land or building”

Section 50C is a deeming provision which extends only to a capital asset which is “land or building or both”. A deeming provision cannot be extended beyond the purpose for which it is enacted. If a capital asset cannot be described as “land or building or both”, section 50C cannot apply. A lease right in a plot of land is neither “land or building or both”. The distinction between a capital asset being “land or building or both” and any “right in land or building or both” is well recognized. “Land or building” is distinct from “any right in land or

building”. Consequently, section 50C does not apply to leasehold rights. (A.Y. 2006-07)

Atul G. Puranik vs. ITO (Mum.) (Trib.) Source: www.itatonline.org

10) S. 50C : Capital Gains – Stamp Valuation – Full value of consideration – Transfer – Granting Development Rights for demolition and reconstruction of building results in “transfer of land & building”. [Ss. 2 (47), (45)]

Where there is transfer of existing land & building which was demolished by builder for fresh construction and documents were registered in such cases there involves a “transfer of land/FSI in case of grant of development right. Thus, it does include cost of acquisition.

Chairanjeev Lal Khanna vs. ITO (Mum.)(Trib.) Source: www.itatonline.org

11) S. 80-IB : Deductions – Industrial Undertakings – Excise Refund – Subsidy – Despite Liberty India, Excise Refund Eligible for section 80-IB

Following Delhi High Court decision in *CIT vs. Dharampal Premchand (2009) 317 ITR 353*, it was held that excise duty refund was eligible under section 80-IB on the ground that (a) there was a direct nexus between the refund of excise duty and the undertaking and (b) if the proper accounting methodology was followed for the payment and refund of excise duty, the net effect on the P&L A/c was nil. Also, the refund of excise duty is the assessee’s own money coming back and is not income at all. (A.Y. 2007-08)

J. K. Aluminium Co. vs ITO (Delhi) (Trib.) Source: www.itatonline.org

**SEMINAR ON
SEARCH & SURVEY UNDER THE INCOME TAX ACT**

AIFTP (East Zone) has organized a Seminar on “Search & Survey” under the Income Tax Act on Saturday, the 25th June, 2011 at 2.30 p.m. at ICCR Conference Hall, 9A, Ho chi Minh Sarani, Kolkata – 700 071.

Speakers : Shri S. K. Poddar, Deputy President, Dr. Ashok Saraf, Shri Narayan Jain, Shri Paras Kochar.

Shri Indu Chatrath will preside over.

For further details, please contact

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INTERNATIONAL TAXATION

CA Dhanesh Bafna, CA Madhav Khandelwal, Sujeeth Karkal, *Advocate*

AUTHORITY FOR ADVANCE RULING

1. Transfer of shares to group non-resident company without consideration – Ss. 45, 48, 56(2)(viiia), 92 and 195 – Income-tax Act, 1961

The first applicant Goodyear Tire and Rubber Company ('GTRC') was a company incorporated in USA. The second applicant Goodyear Orient Company (Private) Ltd. ('GOCPL') was a wholly owned subsidiary of GTRC and a company incorporated in Singapore. GTRC holds 76% shares in the Indian company named Goodyear India Ltd. ('GIL') and rest 26% were held by the public shareholders. GTRC, as a part to restructure its group, had proposed to transfer its shares held in GIL to GOCPL, without any consideration. GIL is a company listed on BSE. The Authority ruled as follows:

i. In the hands of GTRC

- In absence of any consideration, the transfer of shares held in GIL is not taxable under section 45 read with section 48;
- Even if any income arose to GTRC on transfer of listed company shares (Long term capital asset), the same is otherwise exempt under section 10(38);
- Since, no income arose to GTRC, the transfer pricing provisions of sections 92 to 92F are not applicable; and
- Hence, no liability to deduct TDS under section 195.

ii. In the hands of GOCPL

- Since GIL is a company in which public is substantially interested and the GOCPL is a wholly owned subsidiary of GTRC i.e., a company in which public is not substantially interested, the provisions of section 56(2)(viiia) are not attracted.

- Since, no income arose to GOCPL, the transfer pricing provisions of sections 92 to 92F are not applicable; and
- Hence, no liability to deduct TDS under section 195.

Goodyear Tire and Rubber Company, In re (2011-TII-07-ARA-Intl.)

TRIBUNAL

2. Use or right to use of process / equipment – S. 9(1)(vi) & Article 12 – Income-tax Act, 1961 & India-Singapore DTAA

The assessee, entered into an agreement with Sema Group, Singapore, for the provision of data processing support to the assessee for its business in India. The lower authorities held that the payments made by the assessee to Sema were in the nature of "royalty" u/s 9(1)(vi) and Article 12 of the DTAA. The Tribunal held as follows:

- i. The activity of transmitting raw data to Sema, processing of the data by Sema using software belonging to the assessee and the transmission of the processed data to the assessee did not, at any stage, involve the "use of any process" by the assessee so as to constitute "royalty" under Article 12(3)(a).
- ii. When the assessee took advantage of a facility of use of sophisticated equipment installed and provided by another, it could not be said that the recipient/customer "used" the equipment. The assessee merely made use of the facility and did not use the equipment on its own. Therefore, it cannot be said that the payment is a royalty within the meaning of Article 12(3)(b) of the treaty.
- iii. The payment made by assessee to Sema was in the nature of business income and in absence of any permanent establishment of Sema in India, the income is not liable to tax in India. Hence, the assessee was not

under any obligation to deduct tax at source under section 195.

Standard Chartered Bank vs. DDIT (ITAT, Mum.)
(Source: itatonline.org)

3. Selection of comparables – S. 92 – Income Tax Act, 1961

The Tribunal held that when loss making companies have been taken out from the list of comparables by the Transfer Pricing Officer, the

companies which showed super normal profits should also be excluded. The fact that initially the assessee had himself included the said comparable in the list could not act as a estoppel particularly in light of the fact that the AO had chosen only those companies which are showing profits and had rejected the others which showed loss.

Sapient Corporation Pvt. Ltd. vs. DDIT (2011-TII-50-ITAT-Del.-TP)



APPEAL TO MEMBERS

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J. K. RANKA
Secretary General

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as on 20-05-2011**

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Eastern	2	901	33	0	936
Northern	0	821	17	0	838
Southern	0	750	13	3	766
Western	3	1567	32	14	1616
Total	5	4757	116	20	4897

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