



All India Federation of Tax Practitioners

(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

Regd. Office : 215, Rewa Chambers, 31, New Marine Lines, Mumbai 400 020.

Tel.: 022-22006342 / 43 / 49706343 | E-mail: aiftpho@gmail.com | Website: www.aiftponline.org

NATIONAL PRESIDENT

D. K. Gandhi

Delhi

☎ (O) 011-41733021

M : 9810216801

✉ advocatedkgandhi@gmail.com

DEPUTY PRESIDENT

Pankaj Ghiya

Jaipur

☎ (O) 0141-2621679

M : 9829013626

✉ pankajghiyaipur@gmail.com

SECRETARY GENERAL

Jamuna Shukla

Varanasi

☎ (O) 0542-2506506

M : 9450361366

✉ cajamuna@gmail.com

TREASURER

Vijay Kewalramani

Thane

☎ (O) 022-41235960

M : 9820073165

✉ info@kewalramani.in

IMMEDIATE PAST PRESIDENT

M. Srinivasa Rao

Eluru

M : 9885796999

✉ sai9malladi@yahoo.com

VICE PRESIDENTS

Dr. Naveen Rattan

Amritsar

M : 9417311987

✉ rattanadvocates@gmail.com

Vinay Kumar Jolly

Jaipur

M : 9414043300

✉ jolly0450@yahoo.com

Anand Kumar Pasari

Ranchi

M : 9431125350 / 9835145957

✉ anandpasari17@gmail.com

Santosh Gupta

Nagpur

M : 9890033480

✉ santjai@rediffmail.com

S. Venkataramani

Bengaluru

M : 9845563292

✉ venkat@venkataramani.in

JOINT SECRETARIES

Rakesh Agrwal

Ghaziabad

M : 9811118109

✉ advocaterakesh@gmail.com

Dr. Hemant S. Modh

Jabalpur

M : 9425154217

✉ modhsons@gmail.com

Vivek Agarwal

Kolkata

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✉ vivagarwal01@gmail.com

Chirag S. Parekh

Mumbai

M : 9821634128

✉ chiragnp7@gmail.com

C. Sanjeeva Rao

Visakhapatnam

M : 9848193852

✉ taxdoctor28@gmail.com

Ref. No.

Hon'ble Mr. Kiren Rijju

Minister of Law & Justice,

Government of India,

New Delhi

Date..... June 3, 2022

Sub: An appeal to appoint the regular President for the Income-tax Appellate Tribunal (ITAT) from amongst the eligible Vice-Presidents of the ITAT at the earliest

Honourable Sir,

The All India Federation of Tax Practitioners (AIFTP) has the privilege of presenting to Your honour its best compliments and profound respects.

2. The AIFTP is an Apex body of Tax Practitioners of India. It has more than 10,100 tax practitioners as members across the country and more than 100 Tax Bar Associations as its members. The All India Federation of Tax Practitioners inter alia has the ITAT Bar Association's Co-ordination Committee whose objective is to promote co-ordination, co-operation and mutual support and exchange amongst the numerous Tribunal Bar Associations of the country so as to render the functioning of the Tribunal optimally useful to its stake-holders. While so engaged it makes representation from time to time for promoting superior administration of justice by the Income Tax Appellate Tribunal (Tribunal).

3. The Tribunal by itself is a hallowed judicial body dispensing justice in Direct Tax Matters for over 70 years and has numerous been described as the 'Mother Tribunal' by eminent jurists and governmental dignitaries over the years. The Tribunal has been



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privileged with eminent Counsels like Late Shri N. A. Palkhivala, Late
Ref. No. Date

Shri Malik, Late Shri G. P. Kapadia, Late Shri R. J. Kolah, Late Shri S. P. Mehta, Late Shri N. K. P. Salve, Late Shri Debi Pal Late Shri N. M. Ranka, Late Shri K. H. Kaji, Shri Y. P. Trivedi, Shri Soli Dastur and several others regularly appearing before it on behalf of clients. Representation before the Tribunal has always been of an extraordinarily high order. Former Members of the Tribunal have adored the Benches of the Supreme Court and several High Courts in the past. Of interest and relevance is the fact that one of the noted jurist of sub-continent Justice Mohamad Munir who was the Chief Justice of the Pakistan Supreme Court was a former President of this Tribunal. Former President of the Tribunal Justice Ranganathan retired as a Supreme Court Judge. The first lady Judge of the Supreme Court of India Honourable Justice Fathima Beevi was a former Judicial Member of the Tribunal. Besides Honourable Justice M. R. A. Ansari, Honourable Justice S. C. Manchanda, Honourable Justice D. R. Khanna, Honourable Justice Sethuraman, Honourable Justice T. D. Sugla, Honourable Justice U. T. Shah, Honourable Justice R. V. Easwar Honourable Smt. Justice P. Madhvi Devi and several other judges were initially members of the Tribunal.

4. Recently the ITAT Bar Association's Co-ordination Committee had a meeting on April 22, 2022, where the pending issue concerning the appointment of a Regular President was considered and discussed.

5. In keeping with a misconceived 2013 amendment of the IT Act, during the last five and half years, retired Judges of High Courts have been successively appointed as Presidents of the Tribunal. As



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per the feedback received from the members of the Bar the overall
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functioning of the Tribunal has not been appreciably impacted in any way through such external inductions at the top level of the Tribunal. The short tenure of less than two and half years of a President so inducted, coupled with the difficulty of such incumbents in administering the functions of the Tribunal spread around 30 locations with different varieties of complexities and range of diversities poses a formidable challenge generally difficult to be confronted or resolved. Problems also arise due to the less than optimal exposure to the provisions of the direct tax laws and accounts which by themselves pose a tough challenge to anyone so besieged it. All that gets accentuated due to the unfamiliarity with the disposition and calibre of the incumbent inducted from outside with over 126 members constituting it.

6. The Association is, therefore, of the considered view that the Regular President of the Tribunal, must, as was in the pre-amended period, be appointed exclusively from amongst the eligible Vice-Presidents of the Tribunal. We most humbly submit the relevant reasons for doing so as under:-

(i). The Income Tax Appellate Tribunal has Benches in 28 Cities. It has a sanctioned strength of 126 members. It may be acknowledged and appreciated that the job of President involves not only discharging judicial duties but also dealing with unlimited administrative issues. Essentially, therefore, an intimate and accurate knowledge of every Members' potential, ability and suitability is a must for arriving at any fair and correct decision in respect of the constitution of Benches at different stations.



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(ii). The objective and the purpose of establishing the Tribunal
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around seven decades ago was that justice should be delivered in fiscal disputes in an informal manner without adhering to the niceties of legal rules and procedure including the Evidence Act. The Benches should be manned by Members who were conversant with fiscal laws and had intimate knowledge of accounts. Thus, the system of dispensing justice at the Tribunal is thus totally dissimilar to that of the High Courts where the agenda is to decide on questions of law by a Judge who himself is well-versed in law as a critical subject. In such a situation to call for a retired judge from the High Court to administer the Tribunal would essentially entail a complete shift in the mental makeover and shift of the concerned incumbent.

(iii). The edifice of Tribunal is different and distinct from that of Constitutional Courts. The Tribunal is the final adjudicator on facts. It majorly culls out the dispute unlike constitutional bodies, which decide the disputes on points of law. The orientation of the Tribunal Member is this totally dissimilar to that of a Judge of a Constitutional Court where the latter has to decide the question of law in the context of the settled facts as are presented to him.

(iv). The law that the Tribunal adjudicates is specialized, complex and ever-changing. The issues are drenched with the colours of accounting standards. It is unlike the settled and stable law which constitutional courts deal with generally. Apart from expressing opinion on substantial questions of law as per available precedents, the Tribunal has the onerous



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Ref. No. responsibility of sitting, collating and stating facts. That task has
Date.....

always presented a formidable challenge to any incumbent not appointed from amongst the in-house Vice-Presidents.

(v). A retired Judge when appointed to man the Tribunal has first to unlearn the judicial process so assiduously acquired to him over a period of over a decade or so and rework the adjudicatory process as would be suitable and amenable to the Tribunal in term of its conventions and practice. That reworking may be useful to him/her only for a limited period of 2 – 2 ½ years. The usefulness of that exercise itself for such a limited period would inhibit the Judge so appointed from functioning freely, fearlessly and effectively.

(vi). A President who has worked as a Member (Judicial or Accountant) for many years at various Benches at different locations would have wide experience, understanding, knowledge about the functioning of the Tribunal as well as complex and intriguing ground realities and the nature of day-to-day problems relating to those Benches.

(vii). Any member, has to undergo transfer to a Bench at a different location at least one in four years. A person is selected in-house as a President after 15-20 years of service at the Tribunal, would be fully aware of functioning of various Benches of Tribunal of the disposition and capability of every Member which would make it easy for the President to best balance the competing requirements of different Benches.

(viii). With the greatest respect to the capacity of a Retired High Court Judge, it may be stated with due deference that being alien to the ground realities may not be conducive to the task



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(ix). Further, also, for a Member, elevation to President's post would be the highest achievement and a dignified career path. However, if such a post is not given to the Members, it may dampen the morals and spirit to work for the institution by the in-house incumbents.

7. We, therefore, appeal to Honour to appoint a regular President of the ITAT exclusively from amongst the existing Vice Presidents now.

8. The suggestions as made by us are entirely done in the interest of further enhancing the reputation, popularity and utility of this Mother Tribunal through better administration of justice.

9. If a personal hearing is given to us, we could buttress our suggestions more effectively and to your entire satisfaction.

For ITAT Bar Association's Co-ordination Committee

Mr. D. K. Gandhi
National President
A.I.F.T.P.

Mr. K. Sampath
Chairman
ITAT Bar Associations'
Co-ordination Committee

CC:

1. Prof. S. P. Singh, Hon'ble Union Minister of State, Ministry of Law and Justice
2. Dr. Niten Chandra, Hon'ble Law Secretary of India
3. Shri T. V. Somanathan, Hon'ble Finance Secretary (India)