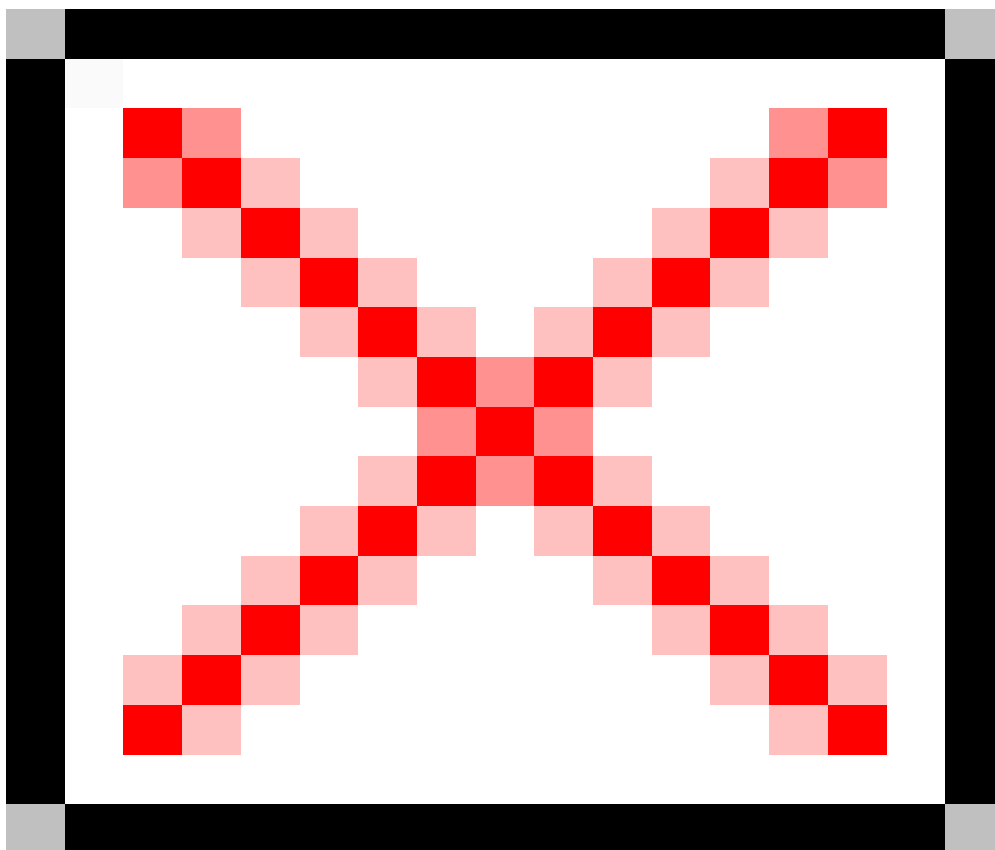


DDT in Limca Book of Records - Fifth Year in a Row

**TIOL-DDT 2845**

13 05 2016

Friday



**YOUR** DDT has entered the Limca Book of Records - AGAIN - in the [2016 edition](#)

as the longest running daily online column on tax matters. This is the longest running daily column by a single author on any matter in any publication. This is the [fifth time](#) in a row that DDT has entered the Limca Book of Records.

As the citation shows, DDT had completed 2630 issues by June 30, 2015. That is the cut-off date for Limca Book of Records for entries for the year 2016. After that date, DDT has come out with more than 200 issues, as today's DDT is numbered 2845.

DDT is grateful for all the support from the Netizens, the Government and colleagues, who made this possible. DDT's mission is not to make records, but to make the records straight for you.

### *Constitutional Cap on Tax Rate*

THE Congress Party wants a constitutional cap of 18% in the proposed GST, which the Government is not prepared to accept. "**How can there be a maximum rate of tax fixed by the constitution?**", is the point of the Finance Minister.

There is a precedent in the Constitution.

As per Article 276(2) of the Constitution, "

***The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two thousand and five hundred rupees per annum.***"

So, there is a ceiling fixed by the Constitution. This issue was raised in the Rajya Sabha when the Finance Bill was discussed and again the Finance Minister strongly objected.

The FM said,

***How did this 18 per cent cap and this idea of constitutional cap come? When Mr. Pranab Mukherjee, the hon. President today, introduced the GST, there was no cap. When Mr. Chidambaram referred it to the Standing Committee, there was no cap. When the Standing Committee's recommendations came, there was no cap. When you finalized those recommendations and went out of the Government, there was no cap. So, throughout the UPA, there was no cap as far as the GST is concerned. So, the cap never existed.***

***Now, suddenly, you say that there must be 18 percent cap provided in the Constitution itself. I have no difficulty with 18 per cent. I have no difficulty with the figure of 18 percent. Taxes must be reasonable. So, the idea of 18 percent is, if all the taxes of the Centre and States taken together, it should not be a very high rate of taxation, it should not exceed 18 per cent. But let me just assume a crisis situation. Now, there is a fallacy to have a uniform cap.***

***Situation one - there is a drought in the country, and five States come and say that they are suffering from drought and they need more money and more taxes. So, for one year, they want to charge 20 per cent. Are we then going to first amend the Constitution? And we all know how difficult it is to amend the Constitution? And, not only both the Houses of Parliament will amend it, but we will also send it to all the States to amend it.***

***The second fallacy of 18 per cent is that there cannot a uniform tax for all the commodities. You will have commodities which the aamadmi uses. We will say that it can be 6 per cent, 12 per cent, depending on the commodity. That is for the GST Council. Then, you may have luxury products. Should a BMW car manufactured in India be taxed only at 18 per cent? It should be taxed at much higher rate. Why do you want a Constitutional cap? A luxury product will have to be taxed at a much higher rate. Why do you want a cap in the Constitution?***

***The Article with a Cap - 276 :***

***If I was asked to single out, and if you ask the Chief Ministers of the States to single out one provision of the Constitution, which deserves to be deleted forthwith, it is Article 276. If you want to know the history of Article 276, this is a problem where, in a Constituent Assembly, you have too many lawyers as Members. Because you had too many lawyers as Members, they never thought of the Scheduled Castes and the Scheduled Tribes, they never thought of the farmers, but they had one provision in the Constitution which said that a tax on professionals would have a cap of Rs.500. So, this came into the Constitution because of the overwhelming presence of the lawyers in the Constituent Assembly. And this provision is being cited by him and by my predecessor that this is the golden rule.***

***Two wrongs never make a right. Therefore, the sooner Article 276 is deleted, the better it is. I could understand having a Constitutional cap for any weaker section of society, but it is not correct to say that local authorities will not tax professionals beyond Rs.2,500, and in 2016, a Class-IV employee in the Government or in the private sector also pays more tax. So, to cite such a provision, which is a misconceived provision in the Constitution, as a precedent for the entire party's argument is not right. My submission to you is that if India needs to grow, we have to look at our capacity at reforming ourselves, bringing major tax reforms and every State has agreed. Therefore, please reconsider your position. I have no difficulty with the 18 per cent, but by putting an 18 per cent cap in the Constitution itself and surrendering Parliamentary and State Legislatures' jurisdiction on taxation to a Judge to decide, I think, the last of the powers left with the Legislatures itself would also be surrendered.***

And the Finance minister is factually wrong when he said the cap was fixed at Rs. 500/-. It was only Rs. 250/-.

This Rs.250/- was enhanced to Rs. 2500 in 1988 by the 60th Amendment to the Constitution. The Statement of Objects and Reasons for the Constitution Amendment Bill stated,

**Clause (2) of article 276 of the Constitution specifies that the total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in a State by way of taxes on professions, trades, callings and employments leviable by a State Legislature under clause (1) of that article shall not exceed two hundred and fifty rupees per annum. The proviso to that clause, however, enables the continuance of the levy of such tax at a rate exceeding two hundred and fifty rupees per annum in any State, municipality, etc., if in the financial year immediately preceding the commencement of Constitution there was in force in that State, municipality, etc., any such tax exceeding that rate.**

**Some of the State Governments have represented that this ceiling of two hundred and fifty rupees which was fixed in 1949, needs to be revised upwards taking into consideration the price rise and other factors. It is also pointed out that the profession tax has, at present, become almost regressive because of the ceiling since even people with high salaries have to pay this tax at only the maximum amount of two hundred and fifty rupees per annum. The upward revision of profession tax will also help the State Governments in raising additional resources.**

**It is accordingly proposed to amend clause (2) of article 276 of the Constitution to increase the ceiling of profession tax from two hundred and fifty rupees per annum to two thousand and five hundred rupees per annum. As the proviso to this clause is no longer relevant, it is proposed to omit it .**

### ***Service Tax on spectrum - telecom industry in precarious financial position - ASSOCHAM***

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proposed 15 per cent service tax on all spectrum allotment by the Centre and spectrum transactions between licensees will place telecom industry in precarious financial position thereby putting at risk major government initiatives of Digital India, Smart Cities and rural penetration of data connectivity and services, according to ASSOCHAM.

"Service tax on spectrum assigned by the government to telecom operators is detrimental to the growth of industry while increasing cost of provision of service and directly impacting the common man," said the Associated Chambers of Commerce and Industry of India (ASSOCHAM) in a communication to the union minister for finance, Mr. Arun Jaitley.

ASSOCHAM says:

1. This is against the National Telecom Policy, 2011 which emphasised upon affordability and accessibility.
2. Restrict the proposed service tax on all spectrum allotments to only transactions involving spectrum trading between private operators,
3. Credit on such transactions should not be deferred.
4. The move of increasing the spectrum cost is going to impact the health of the industry and will adversely affect the investible corpus of telecom operators, leading to challenges in rolling out new technology, networks like 4G.
5. This will materially affect and dent the ability of operators to participate and bid in future auctions while impacting some of them from survival perspective.
6. India's telecom industry which is already burdened with heavy debt, highest taxes/levies, thin operating margins and spectrum prices are at least 130 per cent of global norms, additional taxes will only force the industry to increase tariffs and impact the entire population.
7. Assignment of spectrum is a sovereign function and are not considered as an economic activity globally, and are as such not liable to tax; Taxing sovereign functions is extremely regressive and the impact of this for developing countries like India is far more punitive than developed economies.

## ***The Income Declaration Scheme 2016 & The Direct Tax Dispute Resolution Scheme 2016 - Suggestions Invited***

**THE Income Declaration Scheme, 2016** incorporated as Chapter IX of the Finance Bill 2016 and

### ***The Direct Tax Dispute Resolution Scheme 2016***

incorporated as Chapter X of the Finance Bill 2016 are expected to come into force on the 1st of June, 2016 after the Finance Act 2016 receives the Presidential assent.

The CBDT requests stakeholders and general public to bring out issues/points which in their opinion would require further clarification/guidance. These issues/points may be submitted by 25th May, 2016 at the email address [media.cbdt@gmail.com](mailto:media.cbdt@gmail.com) or by post to:

Commissioner of Income Tax  
Media & Technical Policy  
Official Spokesperson  
Central Board of Direct Taxes  
Room No.151,  
North Block,  
New Delhi-110001.

Why this fascination for @gmail.com by both the Revenue Boards? Don't they have NIC which can give them a lovable @nic.in? And the Government instructions are not to use private email ids for official correspondence.

### ***Equitable distribution of cases among Sr./Jr Standing Counsels and Special Public Prosecutors - CBEC Instructions***

**IT** has come to the notice of the Board that there is an uneven distribution of cases among the Sr./Jr. Standing Counsels as well as SPPs (Special Public Prosecutors) at some zones/places. It is noticed that at some places most of the cases have been allocated to a particular Counsel, while the other Counsel are not assigned a single case or have been assigned very few cases by the concerned authorities

Board affirms that such inequitable distribution of cases among the Counsels engaged by the Department is not desirable as it affects the quality of the litigation work as some Counsels would be overburdened while others will not have much work. Further, it is difficult to gauge the performance of the Sr./Jr. Standing Counsels/SPPs on panel, if very few/nil cases are assigned to them.

Hence, Board wants the Chief Commissioners to ensure that there is a proper and equal distribution of case among the Sr./Jr. Standing Counsels and the SPPs for effective utilization of their services.

Board should also tell the Chief Commissioners to ensure that the Counsels are paid properly and promptly. Many Counsels have told me that their payments are irregular and badly delayed.

[CBEC Letter in F. No. 278A/25/2016-Legal., Dated May 11 2016](#)

### ***LTC for Babus - Food in Trains - Allowed***

**IN** certain trains like Rajdhani, Shatabdi and Duronto, free food is provided, or rather the price of the ticket includes the price of food.

Now, there is a doubt whether these food charges are also to be allowed to the Government servants when they go on Leave Travel Concession (LTC)

The matter has been examined in consultation with Department of Expenditure, Ministry of Finance and it is clarified that if the Government servant has to compulsorily avail the catering facility and the cost is included in the rail fare for Rajdhani/Shatabdi/Duronto trains, the fare charged shall be reimbursable in full as per the entitlement/eligibility of the Government servant.

The clarification should have also mentioned about the Gatimaan express else the Administration might go for a strict interpretation of the Memorandum and deny similar benefits to Government servants who opt for the train with train hostesses!

[DoPT Office Memorandum No. No. 31011/11/2015-Estt \(A.IV\)., Dated: May 12, 2016](#)

Until Monday with more **DDT**

**Have a nice weekend.**

Mail your comments to [vijaywrite@tiol.in](mailto:vijaywrite@tiol.in)