

PKMG LAW CHAMBERS

ADVOCATES AND SOLICITORS **MONTHLY LAW REPORT FOR APRIL, 2018**

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REGULATORY UPDATES (Notifications/Circulars)

Notification&Circular No.	Date of Issue	Subject
<p style="text-align: center;">1. Ministry of Corporate Affairs</p> <p>Notification- S.O. 1465(E).</p>	<p>02/04/2018</p>	<p>Subject: Amendment in Notification No. 529(E).</p> <p>In exercise of the powers conferred by sub-section (6) of section 129 of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby makes the following amendments in the notification of the Government of India, Ministry of Corporate Affairs, number S.O. 529(E), dated the 5 th February, 2018, namely:-</p> <p>2. In the said notification, in the opening paragraph, the words “for seven years” shall be omitted.</p> <p><u>Now, it shall be read as under</u></p> <p>S.O. 529(E).<i>In exercise of the powers conferred by sub-section (6) of Section 129 of the Companies Act, 2013 (18 of 2013), the Central Government, in the interest of public, hereby directs that the provisions of Accounting Standard 22 or Indian Accounting Standard 12 relating to deferred tax asset or deferred tax liability shall not apply,with effect from the 1st April, 2017, to a Government company which:—</i></p> <p><i>(a) is a public financial institution under sub-clause (iv) of clause (72) of section 2 of the Companies Act, 2013; (b) is a Non-Banking Financial Company registered with the Reserve Bank of India under section 45-IA of the Reserve bank of India Act, 1934; and</i></p> <p><i>(c) is engaged in the business of infrastructure finance leasing with not less than seventy five per cent. of its total revenue being generated from such business with Government companies or other entities owned or controlled by Government .</i></p>

<p>2. MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION - G.S.R. 348 (E)</p>	<p>09/04/2018</p>	<p>Subject- Amendment in the Chartered Accountants(Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007</p> <p>In exercise of the powers conferred by clauses (c) and (d) of sub-section (2) of section 29A read with sub-section (4) of section 21 and sub-sections (2) and (4) of section 21B of the Chartered Accountants Act, 1949 (38 of 1949), the Central Government hereby makes the following rules further to amend the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, namely:-</p> <p>1. (1) These rules may be called the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Amendment Rules, 2018</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, in rule 17, in sub-rule (1), for the words “five thousand rupees”, the words “ten thousand rupees” shall be substituted.</p>
<p>3. MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION-G.S.R. 349(E).</p>	<p>09/04/2018</p>	<p>Subject: Amendment in the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007</p> <p>In exercise of the powers conferred by clauses (c) and (d) of sub-section (2) of section 38A read with sub-section (4) of section 21 and sub-sections (2) and (4) of section 21B of the Cost and Works Accountants Act, 1959 (23 of 1959), the Central Government hereby makes the following rules further to amend the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, namely:-</p> <p>1. (1) These rules may be called the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Amendment Rules, 2018.</p>

		<p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, in rule 17, in sub-rule (1), for the letters and figures “Rs.1000”, the words “ten thousand rupees” shall be substituted</p>
<p>4.MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION-G.S.R. 350(E)</p>	<p>09/04/2018</p>	<p>Subject: Amendment in the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007</p> <p>In exercise of the powers conferred by clauses (c) and (d) of sub-section (2) of section 38A read with sub-section (4) of section 21 and sub-sections (2) and (4) of section 21B of the Company Secretaries Act, 1980 (56 of 1980), the Central Government hereby makes the following rules further to amend the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, namely:-</p> <p>1. (1) These rules may be called the Company Secretaries (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Amendment Rules, 2018.</p> <p>(2) They shall come into force on the date of their publication in the Official Gazette.</p> <p>2. In the Company Secretaries (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, in rule 17, in sub-rule (1), for the letters and figures “Rs.5000”, the words “ten thousand rupees” shall be substituted</p>
<p>5.MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION-G.S.R. 363(E)</p>	<p>10/04/2018</p>	<p>Subject: Amendment in the Companies (Share Capital and Debentures) Rules, 2014</p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:—</p> <p>1. Short title and commencement. –</p> <p>(1) These rules may be called the Companies (Share Capital and Debentures) Amendment Rules, 2018.</p> <p>(2) They shall come into force on the date of</p>

		<p>their publication in the Official Gazette.</p> <p>2. In the Companies (Share Capital and Debentures) Rules, 2014, in rule 5, for sub-rule (3) of, the following sub-rule shall be substituted, namely:- <i>“(3) Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary: Provided that in case the company has a common seal it shall be affixed in the presence of persons required to sign the certificate.</i></p> <p>Explanation. - For the purposes of this sub-rule, it is hereby clarified that,-</p> <p><i>(a) in case of an One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary or any other person authorized by the Board for the purpose.</i></p> <p><i>(b) a director shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography or digitally signed, but not by means of rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.”</i></p>
<p>6. MINISTRY OF CORPORATE AFFAIRS</p> <p>NOTIFICATION-G.S.R. 362(E).</p>	<p>10/04/2018</p>	<p>Subject: Central Government hereby makes the following alteration to the Schedule I of the Companies Act, 2013,</p> <p>In exercise of the powers conferred by sub-section (1) of section 467 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following alteration to the Schedule I of the said Act, namely:-</p> <p>2. In the Companies Act, 2013, in Schedule I, -</p> <p>(i) in Table F, in paragraph II, - (a) in subparagraph (2), for item (ii), the following item shall be substituted, namely:-</p> <p><i>“Every certificate shall specify the shares to which it relates and the amount paid-up thereon and shall be signed by two directors or</i></p>

by a director and the company secretary, wherever the company has appointed a company secretary: Provided that in case the company has a common seal it shall be affixed in the presence of the persons required to sign the certificate.

Explanation.- For the purposes of this item, it is hereby clarified that in case of an One Person Company, it shall be sufficient if the certificate is signed by a director and the company secretary, wherever the company has appointed a company secretary, or any other person authorized by the Board for the purpose.”;

(b) in sub-paragraph (79), after item (ii), the following explanation shall be inserted, namely:-

“Explanation.-: For the purposes of this subparagraph it is hereby clarified that on and from the commencement of the Companies (Amendment) Act, 2015 (21 of 2015), i.e. with effect from the 29th May, 2015, company may not be required to have the seal by virtue of registration under the Act and if a company does not have the seal, the provisions of this subparagraph shall not be applicable.”

(ii) in Table H, in paragraph II, in subparagraph (30), after item (ii) but before the ‘Note’, the following explanation shall be inserted, namely:- “Explanation.- For the purposes of this sub-paragraph it is hereby clarified that on and from the commencement of the Companies (Amendment) Act, 2015 (21 of 2015), i.e. with effect from the 29th May, 2015, company may not be required to have the seal by virtue of registration under the Act and if a company does not have the seal, the provisions of this subparagraph shall not be applicable.”

Companies Act, 2013 Case Studies
By Advocate Pradeep Kumar Mittal, +91-9811044365

- ✚ It is a settled law that the court or the tribunal cannot pass an interim order, which amounts to grant of final relief without deciding the main case on merit. If any such order is passed by tribunal then it is liable to be set aside and all consequential orders shall be declared illegal. **E.Veda bagath singh and ors. Vs. the madras race club and ors. MANU/NL/0067/2018**

- ✚ If a petitioner claims transmission of shares to him under a will on which a civil suit is pending challenging the validity and authenticity of the said will. The petition is held to be premature and the company has to maintain status quo in respect of such shares till disposal of suit. **Rajesh kapoor vs. tirupati balaji hotel (P.) LTD.& ORS. Manu/NL/0613/2017.**

- ✚ NCLAT held that the provision under section 173(2) of the companies act, 2013 gives right to a director to participate in board meetings through video conferencing is mandatory. Companies cannot avoid such mandate due to non availability of resources. **Achintya kumar barua alias manju baruah vs. ranjit barthkur MANU/NL/0048/2018.**

- ✚ NCLAT held the if the company had made issue of shares with due compliance of legal procedure to overcome financial difficulties. The order of NCLT setting aside issue of shares in undue haste held invalid and liable to be set aside. **Surgi aid lifecare(P.) ltd.&ors. Vs. rahuldev vyas MANU/NL/0223/2017.**

- ✚ NCLT has power to sanction proposals under section 232 read with section 233 which provides a complete code and the principal of single window clearance in the companies act,2013.unless any objection made by official liquidator or RD and petitioner adhere to strict compliance of law. **Interglobe enterprises ltd. & ors. MANU/NL/2030/2017.**

- ✚ NCLAT held that in case of stale claims, it is open to resolution applicant whether to accept such claim or not.while submission of resolution plan, the committee of creditors may decide such question. If any adverse decision is taken by them, the aggrieved creditor can object against resolution plan before the NCLT. **M/S Speculum plast (P.) ltd. vs. PTC techno (P.) ltd. MANU/NL/0060/2018.**

Insolvency and Bankruptcy Code, 2016 Judgements **By Advocate Pradeep kumar Mittal +91-9811044365**

- ✚ NCLAT sets aside the order of initiation of corporate insolvency resolution process passed by the NCLT on the mere ground of violation of the rules of natural justice. It has been held that notice of date of hearing was issued on the respondent but returned unserved will render the petition not maintainable u/s 7 of IBC,2016. **Ranjeet karnal vs. bell finvest (India)Ltd. MANU/NL/0035/2018.**
- ✚ It has been held that Authorized Representative can act on behalf of financial creditor or operational creditor or corporate applicant to do needful in legal proceedings. The power of attorney is also considered as a reliable mode for delegation of authority for the purpose of filling any application under section 7,9 or 10 of IBC,2016. **Vijay kumar jain vs. DBS Bank Ltd. & Ors. MANU/NL/0050/2018.**
- ✚ Supreme Court of India sets aside NCLAT order wherein insolvency application filed under section 9 of the IBC,2016 was dismissed. It has been held that a lawyer is authorized to issue demand notice on Operational Creditor's behalf. **LSI-148-SC-2018(NDEL).**
- ✚ NCLT Mumbai dismisses corporate debtor plea and allow the financial creditor to amend the original insolvency petition. It states that section 7(5) of the IBC,2016 allows rectification of an 'incomplete' application while also providing that the NCLT shall grant 7 days to rectify the defect in the application to the applicant. **LSI-149-NCLT-2018(MUM).**
- ✚ NCLT Mumbai admits the petition under section 10 of IBC,2016 filled by corporate applicant.NCLT held that objective of restructuring of corporate applicant can be achieved through moving petition under section 10 of IBC,2016.on perusal of the object of the code, is to promote entrepreneurship and balance interest of all stakeholders. **LSI-153-NCLT-2018(MUM).**

Income Tax Circulars, Notifications and Press Release By CA Manoj Kumar Mittal, +91-9810764620

Finance bill 2018 received the assent of president on 29th March, 2018

The Finance Act 2018 received the assent of the President on the 29th March, 2018. There are several important amendments made by the Finance Act 2018 to the Income-tax Act, 1961, including the taxation of long-term capital gains (LTCG) at 10%. As per the Finance Act 2018, the long term capital gains on investments in equities exceeding Rs 1 lakh will be taxed at 10% without allowing benefit of indexation. The gains made till January 31 will be grandfathered.

CBDT Directive Reg Processing Of Returns Under Section 143(1) Of The Income-tax Act

The CBDT has issued an important directive dated 28th March 2018 on the subject of processing of returns under section 143(1) of the Income-tax Act. The CBDT has pointed out that from Assessment Year 2017-18, discretion of Assessing Officer in processing returns under scrutiny has been completely removed and therefore, all returns have to be processed as per provisions of section 143(1) of the Act. This is irrespective of the fact whether in cases under scrutiny, the Assessing Officer is contemplating taking recourse under section 241A of the Act to withhold the refund so arising on ground of concern for recovery of revenue. The CBDT has specified the methodology to be followed by AOs for such processing.

E-Assessment: CBDT Directive Reg Format Of S. 142(1) Notice

The CBDT has issued a directive dated 19th March 2018 by which it has revised the format in which notices under section 142(1) should be issued to assessee. The CBDT has stated that the concept of electronic assessment proceeding was introduced last year and its scope was gradually enlarged. The e-assessment proceeding is now facilitated through e-filing portal. The CBDT Instruction No. 01/2018, dated 12-02-2018 has mandated that except for search related assessments and exceptional circumstance mentioned therein all other pending scrutiny assessment cases shall be conducted only through the 'E-Proceedings' functionality in ITBA/E-filing.

CBDT Talks Tough! Warns CsIT(A) And CCsIT Against Back-Dating Orders, Malafide Intent And Corruption

The CBDT has finally taken formal notice of the alleged malpractices being indulged in by Commissioners of Income-tax (Appeals) with the active/passive connivance of the Chief Commissioners.

The CBDT has issued a stern directive dated 8th March 2018 stating that the defiance by the CsIT(A) of the Manual of Office Procedure relating to the passing of appellate orders "*gives rise to suspicions about backdating of orders and/ or malafide intent*" on the part of the concerned officer.

The CBDT has also sent a clear warning to the Chief Commissioners of Income-tax that if they do not rein in the wayward ways of the CsIT(A)'s and "*prevent misdemeanor*", they will be "*vicariously*" held guilty of "*corruption*".

Income Tax Case Studies

By CA Manoj Kumar Mittal, +91-9810764620

Case Laws

Domestic Case Laws

Sky Light Hospitality LLP vs ACIT, [2018] 92 taxmann.com 93 (SC)

Re-assessment notice issued in name of erstwhile company despite company ceasing to exist as it had been converted into LLP would not invalidate re-assessment proceedings as same merely a clerical error which could be corrected under section 292B.

Director of Income-tax (Exemption) vs Delhi Public School Society, 92 taxmann.com 132 (Delhi)

Main object of assessee society was to establish educational institutions. Memorandum of association of assessee society, as well as joint venture agreements entered into by assessee society with satellite schools validated motive of an educational purpose that assessee aimed through its business activities. Assessee had maintained accounts which had been audited in detail for relevant years and such accounts had been maintained in compliance to seventh proviso to section 10(23C)(vi) and section 11(4A). On review of assessee's audited accounts, it could be observed that surpluses accrued by assessee society were being fed back into maintenance and management of DPS schools themselves. Thus, usage of gains arising out of its agreements were incidental to its educational purpose

outlined by its objective. Therefore, it is concluded that assessee fulfilled requirements under section 10(23C)(vi) to qualify for exemption.

Virag Tiwari vs PCIT-21, 2018] 91 taxmann.com 172 (Delhi)

PMGK Scheme, 2016 is a self-contained complete code and does not envisage grant of benefit or credit of advance tax paid at any stage; before, during pendency of Scheme or thereafter.

Director, Prasar Bharati vs CIT, [2018] 92 taxmann.com 11 (SC)

Payment by Prasar Bharati Doordarshan Kendra to various accredited advertising Agencies to secure more business was in nature of commission paid to agencies liable to TDS under section 194H and since appellant failed to deduct TDS while making these payments to Agencies, they committed default of non-compliance of section 194H, therefore, provisions of section 201 were rightly invoked by Assessing Authority

CIT vs Lata Mangeshkar Medical Foundation, 92 taxmann.com 80 (Bombay)

Period of limitation should not come as an hindrance to do substantial justice between parties; however, at same time, a party cannot sleep over its right ignoring statute of limitation and without giving sufficient and reasonable explanation for delay, expect its appeal to be entertained merely because it is a State.

International Tax Laws

Ess Distribution (Mauritius) S.N.C.E.T Compagnie vs ACIT, 87 taxmann.com 16 (Delhi)

Where assessment was sought to be reopened in case of assessee, a Mauritius based TV program distributor, on ground that subscription fees received by it from Indian AE was taxable under section 9(1)(i) while, in fact, assessee had not conducted any business with 'AE' during relevant year, reason for reopening of assessment was invalid

IT/ILT: Where issue of determination of business income attributable to Indian PE formed part of original assessment and there was no fresh tangible material available with Assessing Officer to form reasons to believe that any further amount had escaped assessment, reopening of assessment was not justified.

ExxonMobil Company India (P.) Ltd. vs Additional CIT, 92 taxmann.com 5 (Mumbai - Trib.)

Where assessee paid certain amount to a Singapore based company for providing global support services which included management consulting, functional advice, administrative, technical, professional and other support services since foreign company had not made available any technical knowledge, experience, skill, know-how, or process which enabled assessee to apply technology contained therein on its own, payment made by assessee could not be considered as fees for technical services as defined under article 12(4)(b) of India-Singapore DTAA.

ADIT (IT) vs Bay Lines (Mauritius), 91 taxmann.com 110 (Mumbai - Trib.)

Where sole agent of assessee a Mauritian resident in India also did work on behalf of other principals and earned a substantial part of its income from them, it did not constitute assessee's dependent agent PE and accordingly assessee's business profits were non-taxable in India as per article 7 of India-Mauritius DTAA

Where effective place of management of assessee a Mauritius based company was neither in India nor in Mauritius but in a third state (UAE), assessee would not be entitled to benefit of article 8 of India-Mauritius DTAA.

Pricewaterhouse Coopers LLP USA vs CIT, 91 taxmann.com 444 (Kolkata - Trib.)

Where Assessing Officer had made due enquiries with regard to receipts of assessee from services rendered outside India which receipts were not taxable in India under article 15 of DTAA between India and USA, exercise of jurisdiction under section 263 was not justified

DCIT vs Credit Suisse AG, 90 taxmann.com 181 (Mumbai - Trib.)

Where dubai branch of assessee-swiss company received fee from an Indian company for referring an Indian resident client for bringing out issue of convertible bonds, impugned fee was in nature of 'commission' to be taxed as 'business income' and not as 'fees for technical services'.

Transfer Pricing Case Laws

Approva Systems (P.) Ltd. vs DCIT, 92 taxmann.com 82 (Pune - Trib.)

Assessee is entitled to claim deduction under section 10A on additional income offered on account of suo motu adjustment on account of transfer pricing provisions.

ACIT vs Max New York Life Insurance Company Ltd, 86 taxmann.com 239 (Delhi - Trib.)

There being no specific reference to section 92 under section 44, provisions relating to transfer pricing under section 92 would apply to assessee carrying on insurance business

Where TPO rejected CUP and made additions to assessee's ALP under TNMM by drawing a list comparables deletion of TP-addition by Commissioner (Appeals) without dealing with objections of TPO being in complete disregard of TPO's elaborate findings could not have been approved

Where methodology adopted by TPO for determining arm's length price under TNMM did not conform to methods prescribed under rule 10B(1)(e), it could not have been approved.

Symantec Software & Services India (P.) Ltd. vs DCIT, 79 taxmann.com 208 (Chennai - Trib.)

Company engaged in product development and product design services would not be comparable to assessee engaged in providing software development and technical support services to its AE.

Globerian India (P.) Ltd. vs DCIT, 92 taxmann.com 70 (Delhi - Trib.)

Where TPO proposed an adjustment to income of assessee being arm's length interest to be charged by it from its AE on extending credit facility/delay in realization of debit balances outstanding in accounts of AE within six months, since there was a grace period of 180 days to make payment of cost plus mark up by AE to assessee, question of charging any interest on receivables would not arise

Pitney Bowes Software India (P.) Ltd. vs ADIT, 92 taxmann.com 6 (Delhi - Trib.)

Non-charging or under-charging of interest on excess period of credit allowed to AE for realization of invoices amounts to an international transaction and ALP of such an international transaction is required to be determined

A company with 'Unallocable expense', in absence of availability of nature of such expenses and proper allocation keys, has to be excluded from list of comparables at threshold.

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Calendar for Legal Compliances during May - 2018				
S.NO	Event Date	Act	Application Form	Obligation
1	01 st May 2018	Companies Act	CODS-2018	[CODS-2018] allows Defaulting Companies to file its overdue documents which were due for filing.
2	07 th May 2018	Income Tax	Form No. 27C (TCS)	Submission of Forms received in April - 2018 to IT Commissioner
3	07 th May 2018	Income Tax	Challan No. ITNS-281	Payment of TDS/TCS deducted/collected in April - 2018
4	10 th May 2018	GST	GSTR - 1	Taxpayers with annual aggregate turnover more than Rs. 1.5 crore need to file GSTR 1 for March on Monthly Basis
5	15 th May 2018	Income Tax	Form No. 16 B	Due date for issue of TDS Certificate for tax deducted under Section 194-IA in the month of March, 2018
6	15 th May 2018	Provident Fund	Electronic Challan Cum Return (ECR)	E-payment of PF for April - 2018
7	15 th May 2018	Provident Fund	Form 27EQ	TCS Returns by ALL Collectors
8	15 th May 2018	ESI	ESI Challan	Payment of ESI for April - 2018
9	20 th May 2018	GST	GSTR-3B	For the month of april,Also pay Tax till this date.
10	30 th May 2018	Income Tax	Form 49C	Statement by Non-resident having Liaison Office in India(u/s 285)
11	30 th May 2018	Income Tax	Form 27D	Issue of TCS certificate by Collectors for quarter ended March - 2018
12	30 th May 2018	Companies Act	Form 11	LLP registered on or before 30 th September 2017 must file their Annual Return.
13	31 st May 2018	Income Tax	Return 24Q, 26Q & 27Q	TDS returns for March Quarter by ALL deductors
14	31 st May 2018	Income Tax	Form 61-A	AIR by Assessee liable to Tax Audit receiving cash above 2 lacs against sales. Banks Credit card companies etc for FY 2017-18
15	31 st May 2018	GST	GSTR - 6	Furnishing of return by Input Service Distributor, for the month of July, 2017 to April, 2018
16	31 st May 2018	GST	GSTR - 1	Monthly return of Outward Suppliers for April
17	31 st May 2018	Companies Act	AOC-4 XBRL	Filing of Financial Statements in accordance with Companies (Indian Accounting Standards) Rules,2015 for the financial year 16-17.

May - 2018

DISCLAIMERS

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