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**COMPANIES ACT 1956 - BY SHRI PRADEEP K. MITTAL-
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- The Division Bench of Madras High Court in the case of Mangalam Vs. Citrex Products Ltd MANU/TN/1586/2014 has on the issue of maintainability of civil suit where two issues were involved (a) rectification of register of member (b) ownership of immoveable property, has observed as under:-
 - It would not be appropriate to bifurcate the reliefs and compel the original plaintiffs to sue for part of the cause of action before the Company Law Board under Section 111 of the said Act, while for the remaining cause, undisputably, the suit would have to proceed. It is trite to say in view of the said judicial pronouncements that there cannot be ouster of the civil court, unless it is specifically said so. The jurisdiction conferred under Section 111 of the said Act relates to only rectification of register and not to immovable properties. Thus, can it be said that the plaint as laid has clubbed inappropriately different cause of action? The answer to this, in our view, is in the negative. The plaint has to be read as a whole.
- The Company Law Board has held that CLB has jurisdiction to try decide the dispute about the transmission of shares and CLB has repelled the contention of the party that the CLB cannot decide about the title to the shares by holding that under Section 111(7) of Companies Act, 1956 which specifically permits the CLB to decide title to the shares. *Bihari Dalwani Vs. Prem Kutir (P) Ltd* MANU/CL/0027/2014.
 - The Delhi High Court has held that even if a document was tampered/forged prior to institution of the legal proceedings, the Court will have jurisdiction to entertain an application under section 340 of the Code if the document has been produced in Court proceedings. Further making of false averment in the pleading pollutes the stream of justice. It is

an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated as an offence. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. Arun Dhawan Vs. Lokesh Dhawan MANU/DE/3244/2014.

CORPORATE LAWS - BY SHRI PRADEEP K. MITTAL-9811044365

- The Hon'ble Supreme Court in the case of Tata Motors Limited v. Pharmaceutical Products of India Limited & Anr., reported in MANU/SC/7737/2008 : (2008) 7 SCC 619. In this case, BIFR had framed the scheme and pending the appeal against the scheme framed by the BIFR, the Company Court was moved under Sections 391 and 394 of the Companies Act. The jurisdiction of the Company Judge in a case where reference had been made to BIFR would be subject to the provisions of SICA. Section 26 of SICA bars the jurisdiction of the civil court. The jurisdiction of the civil court is barred in respect of any matter for which AAIFR or BIFR is empowered.
- The court has allowed interest at the rate of 16% per annum while allowing the suit for recovery of money on the plea that the nature of transaction is that of commercial. The court also rejected the defence raised by the defendant that the goods supplied by the plaintiff to the defendant has been lifted and taken back from their site without their consent. The court held that the plea raised by the defendant is false, sham and baseless. Rathi Steel Limited Vs. S& S Technologies Ltd 2014 (215) DLT 420 DHC.
- The High court has allowed the company petition under Section 433 Companies Act, 1956 for winding since the respondent failed to pay the admitted rent and obviously incurred the liability to pay interest. However, as regards the claim of service tax payable by the tenant, the court observed that the petitioner to file suit for recovery of money separately. The company petition admitted limited to the

extent of liability towards the arrears of rent and accrued interest thereon. Shanti Prakash Gupta Vs. Ebony Retail Holdings Limited. 2014 (215) DLT 434.

- The Division Bench of Delhi High Court has held that Registrar or the Secretary is of the opinion or view that the company making the reference is not a sick industrial company and therefore reference should not be registered, they need not register the reference but refer the matter to the Board. The Board, thereafter, would decide whether the reference should be registered. This would ensure that the Registrar or the Secretary do not become adjudicating authorities. Zenith Infotech Limited Vs. UOI manu/DE/3531/2014.
- If the reference of Sick Company is pending before BIFR for consideration, it will not be entitled to injunction against the encashment of bank guarantee which had been furnished by the Sick Industrial Company on the ground that the encashment shall cause substantial injustice to the sick company. Voltas Ltd Vs. NCC Ltd MANU/DE/3357/2014.
- The Division Bench of Delhi High Court has held that condition of making pre-deposit (for seeking stay against recovery of demand) in terms of the second proviso to Section 18(1) of the Securitization Act is mandatory for entertaining any appeal under Section 18(1). The court further held that there is no reason to exempt the appeals arising out of the orders passed by DRT on interlocutory applications merely on the ground that the said orders do not have the effect of staying the action or measures taken by the secured creditor under Section 13(4) of the Securitization Act for enforcement of security interest. Satnam Agri Products Ltd Vs. UOI MANU/DE/3270/2014.
- The Division Bench of Gujarat High Court has held that there is nothing illegal in the action of the respondent No. 3- (Bank of Baroda) asking the respondent No. 2 -Axis Bank to freeze the account of the petitioner which is opened by the petitioner without disclosing the fact that it is enjoying credit facility from the respondent No. 3 bank and for recovery of its dues of about Rs.

40.00 Crores, the respondent No. 3 bank has initiated recovery proceeding against the petitioner. The petitioner cannot be heard to say that bank account has been freezed without giving an opportunity of personal haring. Vishal Malleables Ltd Vs. Reserve Bank of India MANU/GJ/0995/2014.

**INCOME TAX CIRCULAR, NOTIFICATION,AND CASES -BY
SHRI MANOJ KUMAR MITTAL - 9810764620**

- The CBDT has issued a letter dated 23.12.2014 setting out the guidelines for compounding of offences under Direct Tax Laws. The guidelines shall come into effect from 01.01.2015 and shall be applicable to all applications for compounding received on or after the aforesaid date. The Guidelines classify offences into two parts and set out the criteria for compounding of offences under each category. The procedure to be adopted for making the compounding application and the manner in which they should be dealt with is also explained in detail.
- The CBDT has issued an instruction dated 18.12.2014 No. 286/98/2013-IT(Inv-II) that in case of Search/seizure, no coercion or pressure shall be used by the officer to admit undisclosed income as when it is seen that many such admissions are retracted in the subsequent proceedings since the same are not backed by credible evidence. Such actions defeat the very purpose of Search/Survey operations as they fail to bring the undisclosed income to tax in a sustainable manner leave alone levy of penalty or launching of prosecution. Further, such actions show the Department as a whole and officers concerned in poor light. The CBDT has drawn attention to earlier Instructions and Guidelines issued by the CBDT from time to time through which the Board has emphasized upon the need to focus on gathering evidences during Search/Survey and to strictly avoid obtaining admission of undisclosed income under coercion/undue influence.

- The CBDT has also issued the warning that any instance of undue influence/coercion in the recording of the statement during Search/Survey/Other proceeding under the I.T.Act,1961 and/or recording a disclosure of undisclosed income under undue pressure/coercion shall be viewed by the Board adversely.
- CBDT has released CIRCULAR NO: 17/2014 Dated 10th December, 2014. Circular contains the rates of deduction of income-tax from the payment of income chargeable under the head 'Salaries' during the financial year 2014-15 and explains certain related provisions of the Act and Income-tax Rules, 1962 (hereinafter the Rules). Circular helps employer to correctly deduct TDS on Salary of its employees for Financial year 2014-15 or Assessment Year 2015-16 and it also held Salaried Assessee to Correctly calculate his/her tax liability. Circular explain provision related to All component of Salary and their Taxability- which includes allowances, perquisites, retirement benefits and Other benefits.
- The CBDT has issued a notification no. 79/2014 dated 12.12.2014 inserting rule 2BBB providing that for the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty percent. of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year."(Income Tax 13th Amendments rule)
- The CBDT has issued a notification dated 12.12.2014 inserting rule 11-OB after rule 11-OA providing for guidelines/procedure for notification for semiconductor wafer fabrication manufacturing unit as specified business under sub clause (xiii) of sub section (8) of section 35AD of the Income Tax Act.(Income Tax 14th Amendments rule)

**CASE LAWS AND INTERNATIONAL TAXATION -BY SHRI
MANOJ KUMAR MITTAL - 9810764620**

- The Mumbai ITAT in the case of DCIT vs Rajeev G kalathil 51 taxmann.com 514 held that, in a case where assessing officer disallowed purchase and made addition as one of supplier of assessee was declared a hawala dealer by VAT Department, Assessing Officer did not do further investigation and did not call for details of bank accounts of suppliers to find out whether there was any immediate cash withdrawal from their accounts - Further, proof of movement of goods was not in doubt - Whether since there was not sufficient evidence to endorse view taken by Assessing Officer, addition on account of bogus purchases was not be made.
- It further held that TDS in itself does not mean that whole amount mentioned in it should be taxed in a particular year; deduction of tax and completion of assessment are two different things while finalizing tax liability of assessee and Assessing Officer is required to take all facts and circumstances and not only TDS certificate.
- 7.00 In the case of DCIT v Sahara India Commercial Corporation Ltd, 52 taxmann.com 383, the Lucknow ITAT held that Payment towards 'publicity' bears the character of 'advertisement' for the purpose of deduction of tax at source under section 194C – However, no penalty U/s 271C could be imposed on assessee for non-deduction of tax at source if recipient was a loss making entity and it filed all its returns including the amount so received.
- The Delhi High Court in the case of M/s Radials International vs Assistant CIT, 367 ITR 1 held that whether a particular transaction of sale and purchase of shares is business or capital held that the characterization of a transaction i.e. as a portfolio management or investment is not determinative. The nomenclature of a document or deed is not conclusive of what it seeks to achieve; the court has to consider all parts of it, and arrive at a finding in regard to its true effect.

- The Delhi High Court in the case of M/s Madhukar Khosla vs ACIT, 367 ITR 165 held that the foundation of AO's Jurisdiction and the reason for a reassessment notice are reason to believe. Now, this should have a relation or link with a objective fact, in the form of information or facts external to the material on the records. Such external facts or material constitute the driver or the key which enables the authority to legitimately reopen the completed assessment. In the absence of this objective trigger, the assessing officer does not possess the jurisdiction to reopen the assessment. It is at the next stage that the question, whether reopening of assessment amounts to review or change of opinion. In other words, if there are reason to believe based on new," tangible material", then the reopening amounts to imperishable review.
- The Karantaka High Court in the case of CIT vs ITC hotel 50 taxmann.com 424 held that unless notice is served on assessee, proceedings under section 147 is one without jurisdiction.
- The ITAT Mumbai in the case of Shah Rukh Khan vs ACWT, 52 Taxmann.com 252 held that 'Shahrukh Khan' gave interest-free loan to his wife, Gauri Khan, who in turn, purchased a residential house and jewellery from said loan amount. The department clubbed the value of loan amount in the net wealth of 'Shahrukh Khan'. Extending cash loan, to wife does not come within the definition of asset as provided under Section 2(ea) of the wealth tax Act, thus, it could not be said that there was a transfer of asset; the impugned loan amount was not includible in net wealth of assessee
- The Bombay High Court in the case of Artist Tree Pvt Ltd vs CBDT 52 taxmann.com 152 held that CBDT could not refute admitting belated refund claim filed by an assessee on the ground that assessee was a habitual late filer of return of income and wanted to avoid scrutiny by late filing, especially when there was no malafide intension of assessee behind late filing of return
- The ITAT Kolkata in the case of M/s Indian Chamber of commerce vs ITO 52 taxmann.com 52 held that Though income of Chamber of

Commerce held as business receipt, yet Sec. 11 relief available as profit motive absent

- On 19-12-2014, Central Board of Direct Taxes has signed a bilateral Advance Pricing Agreement (APA) with a Japanese Company. This is India's first bilateral APA. The APA is for a period of five years. The APA has been finalized in a period of about one and a half years, which is shorter than time normally taken in finalizing APAs internationally. This APA is to bring more certainty in transfer pricing matter.
- The Mumbai Tribunal in the case of M/s Tata Motor European Technical Centre Plc vs ADIT 52 taxmann.com 411 held that Indian Transfer Pricing Regulation does not put any fetters on selection of foreign comparables, if conditions are as such that the Indian comparables do not stand the test of comparability with the tested party.

CENTRAL EXCISE –BY SHRI PRADEEP K. MITTAL-9811044365

- The commissioner has passed an adjudication order without awaiting receipt of a reply to Show Cause Notice and also without giving an opportunity of personal hearing, adjudication order is liable to be set aside and quashed on a writ petition – instead of regular appellate remedy as provided under Section 35 of the central Excise Act. Aroma Chemicals Vs. Union of India 2014(310) ELT 427 (All.)
- When clandestine production and removal of goods has been worked out from a comparative analysis of records which do not suffer from any serious infirmity. Managing Director of the company also admitting suppression of production and their clearance without payment of excise duty. The plea that there is error in private records is irrelevant when clandestine production has been worked out on the basis of statutory records. The concurrent

findings of facts cannot be re-appreciated by the High Court. Markas Engineering (P) Ltd Vs. CCE 2014(310) ELT 431 (Bom).

- When the assessee has been regularly filing monthly return in ER-1 – the concerned Superintendent is duty-bound to examine such return and find out any clearance of goods to its sister company. For invoking extended period of limitation, the department cannot rely upon the Audit Report of Audit Team which visited the premises of the assessee much after the filing of ER-1 Returns. Revenue Neutrality is another ground which in the mind the Tribunal to arrive at a conclusion that there is no ground of invocation of extended period of limitation. CCE Vs. Accurate Chemicals Industries. 2014(310) ELT 441 (All.).
- At the time of consideration of stay application, the difference of opinion emerge between Member (T) and Member (J) and accordingly, the matter of referred to third member, at that stage, the appellant cannot be called to pay deposit entire duty amount demanded from the appellant – as the very fact that there is a difference of opinion calls for exercise of discretion in favour of the appellant and appellant called upon to deposit the entire amount of duty. Jindal Drugs Ltd Vs. CCE 2014(310) ELT 472. (Bom).
- Plastic crates have been used for safe transportation of auto bulbs from factory to the customers and the cost of crates have been included on pro-rata basis in the cost of finished products, the cenvat credit of excise duty paid on such crates is allowable to the appellant. CCE Vs. Denso India Ltd 2014(310) ELT 487 (All.).
- Hardship is not merely confined to monetary/financial hardship but also include the different stand taken by different officers of the Department in the same case. When the same product has been treated differently by different officers, the assessee is entitled to waiver of pre-deposit. Sahil International Vs. CCE 2014(310) ELT 507 (Madras).
- Mere taking of cenvat credit would not burden the assessee with duty of paying interest so long as the credit has not been utilized by

the assessee. CCE Vs. Strategic Engineering (P) Ltd 2014(301) ELT 509 (Madras).

- The Tribunal has rejected the frivolous plea of the department that there has to be specific authorization to sign and file an appeal and held that general authorization to sign, file and argue is good enough. SCL Cements Ltd Vs. CCE 2014(310) ELT 539 (Tri).

**SERVICE TAX – BY SHRI PRADEEP K. MITTAL
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- When the appeal has come up for final hearing, the Tribunal has no power to dismiss the appeal in default or for non-prosecution – rather the Tribunal is duty bound to decide on merits in view of Section 35C of the Central Excise Act and also Rule 20 of CESTAT Procedure Rules. Balaji Steel Re-Rolling Mills Vs. CCE 2014(36) STR 1201 SC.
- The Division Bench of Kerala High Court has held in a restaurant where foods articles are served and bill is raised by the restaurant, it is beyond that dispute that service element in the supply of food and other articles of human consumption, is deemed as a sale of food only and only state is entitled to levy sales tax and no service tax is leviable. The court held that since the whole of the consideration received by a restaurant owner for supply of food and other articles of the human consumption, including the service part of the transaction, is exigible to tax by the State only and it is not open to Union to characterize the same transaction as a service for imposition and levy of Service Tax. Union of India Vs. Kerala Bar Hotels Association 2014(36) STR 1205 (Kerala).
- In case the canteen in the factory is run in the factory even if purely as a welfare measure so that the employee gets best food so that they perform better, hence it has direct nexus with the production of dutiable finished goods and hence, cenvat credit paid on “outdoor catering service” is eligible for credit. Resil Chemicals (P) Ltd Vs. CCE 2014(36) STR (kar).

- Once Service Tax has been collected, the party is bound to deposit the same with the Government under Section 11D of the Central Excise Act, 1944. LMJ International Ltd Vs. CCE 2014(36) STR 1279 (Tri).
- When the goods are received from the principal's factory or warehouse, and then storing these goods in the warehouse, receiving dispatch orders and dispatching the goods as per directions of the principal cannot be held to be activity falling within the purview of "clearing and forwarding agent" where the Agent is free to sell the goods to his own customers in small lots and, therefore, such permission given to the assessee in the present case is indicative of the fact that he is not working as "Clearing and Forwarding Agent" of the principal. B K Sales Corporation Vs. CCE 2014(36) STR 1281 (Tri).
- The benefit of Notification No.12/2003 (which exempt levy of service tax on the value equal to the value of goods and materials supplied in a composite contract) cannot be given benefit merely on the basis of overall estimation/approximations put forth and without any documentary evidence of having sold the goods and materials in respect of individual recipient of service. The appellant failed to produce the documentary evidence. The Hon'ble Tribunal however remanded to case back to the adjudicating authority since at the appellate stage, it was argued that the appellant can produce such invoices. Kalpik Interiors Vs. CCE 2014(36) STR 1283 (Tri).
- The writ petition has been filed before the High Court against the order of the Commissioner (Appeal) - though appeal lie to the CESTAT, the Hon'ble High Court dismissed the Writ Petition on the ground of "alternative remedy" available to the appellant. Federation of AP Chambers of Commerce & Industry Vs. CCE 2014(36) STR 490 (AP).
- The appeal has been filed before CESTAT and stay granted. After the expiry of six month, another application seeking extension of stay has been filed but could not be listed for hearing and during the intervening period, the department issued notice and recovery

amount of duty from the appellant – subsequent to this, the application for seeking extension of stay heard and stay extended till the decision of the appeal. On Writ Petition, the Division Bench of the Hon'ble Rajasthan High Court held that the Department is bound to refund the amount recovered during the period when the application seeking extension of stay was pending. Chhote Lal Virendra Kr Jain Vs. Union of India 2014(36) STR 495 (Raj).

- The cenvat credit of service tax paid on input services such as accounting, financing, recruitment and quality control are in relation to the goods manufactured by him and, therefore, benefit of cenvat credit is allowable. The rules are delegated legislation and, therefore, Government has no power to amend the existing rules with retrospective operation. Mercedes Benz India (P) Ltd s. CCE 2014(36) STR 704 (Tri).

CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436

- In the matter of contract, the private party cannot be subject to rigours of Article 14 of the Constitution of India and would be free to enter into contract with anyone on any terms and contract. The stay against the encashment of bank guarantee can be granted only if fraud of egregious nature has been pleaded and established. Irretrievable injury or injustice or special equity shall mean that the party, at whose instance bank guarantee has been given, rendered remediless. Consortum of Deepak Cables India Ltd Vs. Teestavalley Power Transmission Ltd 2014(215) DLT 246 Delhi DB.
- Even if the written statement of the Defendant is not on record because the same was not filed within the time prescribed under Order 8 Rule 1 & 10 of the CPC, the Plaintiff still has to prove its case in accordance with the law. The Defendant will have a right to cross-examine the witness of the Plaintiff and also to address the final arguments. IGNOU Vs. Blue Star Pvt. Ltd. 2014 (214) DLT 120A (CN).

- If the postal article is sent through postal authorities and the remark given by Postman “unclaimed”, it necessarily means that there is a deliberate avoidance on the part of the addressee in receiving the postal article and, therefore, postal article is deemed to have been received by virtue of legal fiction under Section 27 of General Clauses Act. *S.S.Wadhawan Vs. Vevek Arya* 2014 (214) DLT 616.
- Where the sale agreement between the parties provide for that the such agreement shall be subject to applicable law and territorial jurisdiction in accordance with law of State of Washington, the Court in Washington shall alone have territorial jurisdiction with respect to all disputes arising out of the sale agreement. The Court at Delhi or in India will have not have any territorial jurisdiction at all. *Space Lab Medical Inc Vs. Alpha & Omega Diagnostics India Ltd.* 2014 (214) DLT 397 Delhi.
- The judgment on an application under Order 12 Rule 6 CPC (passing judgment on admission but without trial) can be passed if the Defendants has admitted the relevant facts but if he is giving on his own interpretation to defeat the claim of the Plaintiff, it is a good ground for passing of judgments on the basis of admission made. However, where the Defendants have raised objections which go to the very root of the case, the Plaintiff will not be entitled to any decree. *Krishna Kumari Vs. Sunil Kumar* 2014 (214) DLT 404. DHC.
- The limitation for filing suit for recovery of money is a period of three years to be calculated from the expiry of 90 days from the date of presentation of documents for payment. Repeated reminders from the Plaintiff to Defendant No.2 and 4 demanding payment will not extend the period of limitation. *Kavita Exports Pvt. Ltd. Vs. WSA Lines Pvt.Ltd.* 2014 (214) DLT 742. DHC.
- Unimpeachable and undisputed documents can be allowed to be filed even at the stage of final arguments. *Tola Ram & Sons Vs. State Bank of India* 2014 (215) DLT 5. DHC.

- The purchase order can be equated to a written contract within the meaning of Order XXXVII of CPC and, therefore, the suit for recovery of money under summary procedure shall be maintainable merely on the basis of purchase orders. The written contract does not mean it should be signed written contract. Purchase Order is a written Contract. *Nine-to-Nine Media Works Pvt. Ltd. Vs. Attero Recycling Pvt. Ltd.* 2014 (213) DLT 958.DHC.
- In case, the interim Order of the Court is ambiguous and is reasonably capable of more than one interpretation, proceedings for contempt shall not be liable to be entertained. *Y.Agrawal Vs. Rajesh Agrawal* 2014 (213)DLT 783 Delhi High Court DHC.

ARBITRATION & CONCILIATION ACT, 1996 - BY SHRI PRAVEEN K. MITTAL-9810826436

- The High Court has not condoned the delay in re-filing of petition under Section 34(2) of Arbitration & Conciliation Act, 1996 when the re-filing has been done beyond the normal period allowed is 90 days and another period of 30 days with cogent explanation. In this case, initially the petition was filed within the time permissible under the law but, however, re-filing has been done (beyond the period of 90 days plus 30 days) after removing the objections raised by the Registry of the High Court. *Lalit Kala Akademi Vs. Swapn Construction & another* 2014 (215) DLT 652.

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