

# **PKMG LAW CHAMBERS**

**ADVOCATES AND SOLICITORS**  
**MONTHLY REPORT FOR MARCH, 2015**  
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**CIRCULARS AND NOTIFICATIONS ISSUED BY THE  
MINISTRY OF CORPORATE AFFAIRS (MCA) IN THE MONTH  
OF FEBRUARY, 2015**

- **Circular No.02/2015 dated: 11/02/2015**

The Ministry of Corporate Affairs came with a circular, dated 11.02.2015, extending the time for filling of Notice of appointment of the Cost Auditor in Form CRA-2 without any penalty or late fee upto 31.03.2015.

- **Order dated: 13/02/2015**

The Ministry of Corporate Affairs vide its order called The Companies (Removal of Difficulties) Order, 2015, dated 13.02.2015, amended Section-2(85)(i) by substituting word “or” ,occurring at the end, by “and” and Section-186(11)(b) by inserting the following para after item (iii).  
“(iv) made by a banking company or an insurance company or a housing finance company making acquisition of securities in the ordinary course of its business.

- **Notification dated: 24/02/2015**

The Ministry of Corporate Affairs came with a Notification, dated 24.02.2015, amending the Companies (Registration Offices and Fees) Rules, 2014 by inserting a sub rule (7) in rule 10. The inserted sub rule says that for any further information or documents called in respect of application or e-form or document filed electronically with MCA shall be furnished in Form no.GNL-4 as an addendum.

**PREVENTION OF MONEY LAUNDERING ACT- BY SHRI  
PRADEEP K MITTAL-9811044365**

- If the existence of scheduled offence is negated after completion of trial by Magistrate and the accused is acquitted, the attachment of the property on the ground that these properties were the result of proceeds of crimine, must be vacated. Further, in the absence of scheduled offence, the

question of any proceeds does not arise. Rajiv Chanana Vs. Dy Director of Enforcement 2015 (316) ELT 422 DHC.

**COMPETITION ACT:- BY SHRI PRADEEP K. MITTAL-9811044365**

- The Competition Commission has dismissed the complaint by observing that on the basis of the information in public domain about the total saleable area of major real estate developers, a comparative analysis reveals that DLF has the highest total saleable area of around 89.6 lakh sq. ft. followed by Unitech having area of 74 lakh sq. ft. (excluding Unitech Cyber Park). The Opposite Party has the total saleable area of 6.6 lakh sq. ft., hence the Respondent does not appear to be in a dominant position. Abhinandan Kr Vs. MVL Ltd MANU/CO/0008/2015.
- The complainant has alleged that Opposite Party committed that the Project would be ready for delivery by mid of 2009, but the Buyers' agreement was executed after a period of seven months from the date of the payment of booking amount. Informant has alleged that the Buyers' Agreement had unreasonable, exploitative and heavily loaded terms and conditions which were in favour of the Opposite Party. Informant had no exit option because of high switching cost as he had already paid substantial amount of money to the Opposite Party. The Commission has observed that Respondent is not in a position to exercise dominance and hence complaint is not maintainable before Competition Commission. Ramesh Mehta Vs. North Star Apartment (P) Ltd MANU/CO/0007/2015.
- The Competition Commission observed that the Opposite Party No. 1 is one of the departments of the Government of Haryana, entrusted with the responsibility of construction and maintenance of roads, bridges and government buildings in the state. The activities being performed by the Opposite Party No. 1 cannot be covered in the definition of 'enterprise' because it is not directly engaged in any economic and commercial activities. Since, the Opposite Party No. 1 cannot be considered as an enterprise in terms of the provisions of section 2(h) of the Act, provisions of section 4 of the Act cannot be attracted in the matter. Accordingly, the Commission holds that no, prima facie, case is made out against the Opposite Parties for making a

reference to the Director General for conducting investigation into the matter. Rajat Verma Vs. Public Works (B&R) Deptt Haryana MANU/CO/0001/2015.

- A complaint by the dealer alleging unfair practice by terminating agreement, unilateral terms and conditions, bank guarantee, higher penalty rate cannot be agitated before CCI since Volks Wagon does not hold dominant position in the passenger Car segment in India and, therefore, Volks Wagon is not a dominant player LSI-301-Compat 2015 Delhi.

**COMPANIES ACT 1956/2013 - BY SHRI PRADEEP K. MITTAL-9811044365**

- The Delhi High Court has held that the CLB has no authority to direct the Central Government to order an investigation U/s 247 (1A) of the Companies Act, 1956 in relation to the Company, who has been impleaded as one of the parties in a petition U/s 397 and 398 of the Companies Act, 1956. The High Court held that since the investigation can be ordered only against the Company against whom the proceedings U/s 397 and 398 of the Companies Act 1956 have been initiated and not against the company who has been impleaded for facilitating the trial of the company petition under Section 397 and 398 of Companies Act, 1956. Uniworth Textile Ltd. Vs. Assets Construction Co. India Ltd. LSI-302-2015 Delhi.
- The petitioners, workmen, approached Industrial Tribunal for recovery of the outstanding dues. It further reveals that the Division Bench of this Court issued recovery certificate for recovery of dues of workman. There is nothing on record to show that the respondent-Company is a going concern. The facts establishes that respondent-Company is unable to pay its debts and has lost its financial substratum and is therefore liable to be wound up under Sections 433 and 434 of the Companies Act, 1956. V Patil Vs. Gujarat Land Trucks Ltd MANU/GUJ/0038/2015.
- The High Court has held that direction as to listing of shares on a petition under Section 391(2) and 394 of Act (sanction of Scheme of Merger/Arrangement) cannot be made to a statutory authority. - Listing of Respondent's shares on Stock Exchange/s within specified time could not be held to *raison d'etre* of sanctioned scheme - Respondent was on record with averment that shares would be listed on Stock

Exchanges - Therefore, Respondent could not be directed to list its shares in stock exchange/s within specified time. Jindal Securities (P) Ltd Vs. Sistema Shyam Teleservices Ltd MANU/RH/0037/2015.

- The shareholder have no right to move Central Government or file an application before CLB where a petition under Section 397 and 398 of Companies Act, 1956 is pending for removal of statutory auditors – it is only the company who is entitled to move an application either for appointment or removal of statutory auditor of the company. SP Gupta Vs. Packwell Manufacturers (Delhi) (P) Ltd 2015(124) CLA 16Delhi HC.
- Where a petition under Section 397 and 398 is pending before CLB, an application under Section 8 of Arbitration Act, 1996 has filed, it is necessary for CLB to examine as to whether dispute is arbitrable or not since the CLB enjoys the powers which the Arbitrator does not. At the same time, question of arbitrability of dispute has to be examined and also the fact that the petitioner wishes to go out of the company Fourcee Infrastructure Equipments (P) ltd Vs. General Atlanta Singapore Fund (P) Ltd 2015(124) CLA 30 (CLB).
- In a compounding application before CLB where the offence is punishable with fine only, then there is no reason as to why there shall be any opposition to compounding application. Where the penal provision is made compoundable, the accused has an option to seek compounding of the offence rather than the contesting the case and inviting judgment on merits. Union of India Vs. Tech Mahindra Ltd 2015(124) CLA 65 (T & AP).
- In case of private dispute between a party and the company whose petition is pending before High Court for sanction of scheme under Section 391 of the Companies Act, 1956, cannot be gone into. Further, the exchange ratio as determined by CA and approved by the majority shareholders cannot be questioned by such party by saying that there is another way of valuation of shares unless there is a serious prejudice to the public interest. SKS Ispat & Power Ltd Vs. SKS Cement Ltd 2015 (125) CLA 75 Bom.
- In case the Income Tax Department raises objection on the premise that the Income Tax dues are recoverable, such objection is liable to be rejected in view of the fact Scheme of Merger clearly provides that all

liabilities of the transferor company shall be discharged by the Transferee Company. Hence, the petition is entitled to be allowed and the scheme is sanctioned. Ludhiana Holding Ltd Vs. Oswal Woollen Mills Ltd 2015 (124) CLA 88 (P&H).

- The notice on a petition under Section 433(e) of Companies Act, 1956 for winding cannot be issued routinely unless there is undisputed debt payable and at the same time, there is defiance on the part of Respondent Company in making legitimate dues and payments of Petitioner Company. P Vijay K Prasad Vs. Auro Mira Biopower India (P) Ltd 2015(124) CLA (Snr2) Madras.
- When the contract or transaction took place when a person was minor – though the cheque may have been dishonoured after such minor has become major, yet such minor cannot be punished for the offence under Section 138 of NI Act because the contract with minor are void and if the contract is void such minor cannot be punished for cheque dishonour. Anagha Prasad Vs. Abu 2015 (124) CLA (snr4). Kerala.
- **Payment of Salary made to Managing Director/whole time director – liability of Service Tax or not?**

The monthly salary paid to managing director or whole time director is not liable to payment of Service Tax unless it is shown that the director is rendering consultancy services (not as an employee) as per Notification No.45/2012-ST. The CBEC has also clarified vide Circular No.115/9/2009-ST dated 31.07.2009.

<b>DIRECT TAX PROPOSAL 2015 - BY SHRI MANOJ KUMAR MITTAL - 9810764620</b>
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## **DIRECT TAX PROPOSAL 2015**

### **Income Tax Slab**

There is no change in Income Tax Slab.

### **Surcharge**

Surcharge increased as 12% in case of **person (other than company)** having total income exceeding 1 crore however subject to limit of amount more than 1 crore rupees. A.Y.2016-17

In the case of **domestic companies** having total income more than 1 crore but less than Rs. 10.00 crores, surcharge @ 7% in case income exceeds 10.00 crores, surcharge @ 12%.

In the case of **companies other than domestic companies** having total income more than 1 crore but less than Rs. 10.00 crores, surcharge @ 2%, in case income exceeds 10.00 crores, surcharge @ 5%.

Marginal relief will be available.

In other cases, 115O, 115QA, 115R, 115TA-Surcharge at the rate of 12% levied.

### **Education and Secondary Higher Education Cess**

No change in Education & Secondary Higher Education Cess of 3%

### **Rate of TDS in case of royalty or fee for technical service u/s 115A**

Rate of TDS u/s 195 has been reduced to 10% in case of royalty or FTS.

### **Surcharge**

Surcharge in the case of a non resident person (other than a company) shall be levied @12% where the income or aggregate of income paid or likely to be paid and subject to the deduction exceeds Rs. 1 crore.

Surcharge in the case of a company other than a domestic company shall be 2% if income paid and subject to deduction exceeds Rs. 1 Crore but not Rs.10 Crores or 5% in case income exceeds Rs.10 Crore.

### **Benefit u/s 80C (2) (viii) for investment in Sukanya Samriddhi Account Scheme and Section 10(11A)**

Tax benefit u/s 80C(2)(viii) will be available for investment in Sukanya Samriddhi Account Scheme and interest accruing on such deposit and withdrawal from it will be exempt u/s 10(11A) of the Income Tax Act.

W.e.f. A.Y.2015-16

### **Deduction u/s 80D-Medical Insurance (MI), Preventive Health Check up(PHC) and Medical expenses incurred**

S.N.	Person referred	Amount	Remark
a	Individual or HUF (MI or PHC)	25000.00	In case of senior citizen, 30000.00
b	On parents( if not senior citizen (MI or PHC)	25000.00	In case of senior citizen, 30000.00
c	Individual or HUF ( Medical expenditure	30000.00	It is for <b><u>Very Senior Citizen. Provided the deduction under clause a and c would not exceed Rs. 30000.00</u></b>

d	Parents(Medical expenditure incurred)	30000.00	It is for <b><u>Very Senior Citizen</u></b> <b><u>Provided the deduction under clause b and d would not exceed Rs. 30000.00</u></b>
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Very Senior Citizen- A person above the age of 80 years

Examples

- i) For Individual or his family  
Health insurance premium (a) 21000.00
- ii) For Parents  
Health Insurance of mother (b) 18000.00  
Medical Expenses on father (Very SC) (d) 15000.00
- iii) Deduction u/s 80D Rs. 21000+Rs. 30000=Rs. 51000  
w.e.f. 2016-17

**80DDB- deduction in respect of Medical expenditure for chronic disease**

Deduction in case of medical treatment of very senior citizen provided upto Rs. 80000/-

Certificate of prescription may be obtained from specialist doctor.  
W.e.f. A.Y.2016-17

**Deduction U/s 80DD (Medical Expenditure) and 80U for persons with disability and severe disability**

The deduction under this section has been increased from Rs.50000/- to Rs.75000/- in case of suffering from disability and Rs.1,25,000 from Rs.1,00,000 if suffering from severe disability.

W.e.f. A.Y.2016-17

**Deduction u/s 80CCC- Deduction in respect of contribution to certain pension fund**

The limit under this section has been enhanced from Rs.1,00,000.00 to Rs.1,50,000.00 within over all limit provided u/s 80CCE.

W.e.f. A.Y.2016-17

**Section 80CCD-Deduction in respect of contribution to pension scheme of central government**



The limit provided u/s 80CCD of Rs 1,00,000 has been removed and an additional deduction of Rs. 50,000 has been allowed.

W.E.F. AY 2016-17

### **Enabling of filling of Form 15G/15H for payment under life insurance policy**

Section 197A has been amended so as to provide recipient of life insurance amount an opportunity to file 15G/H for non deduction of tax at source u/s 194DA. As section 194DA provide for deduction of TDS @ 2% from payment made under life insurance policy which are chargeable to tax.

W.e.f. 1st June 2015

### **Relaxation of requirement of obtaining TAN IN certain cases**

The requirement of obtaining TAN for deduction u/s 203A shall be relaxed in certain transactions which will be notified like a case of payment u/s 195.

### **80G- 100% deduction in respect of contribution to National fund for control of drug abuse, Swachh Bharat Kosh and Clean Gange Fund**

The 100% deduction u/s section 80G for contribution to

- - National Fund for control of drug abuse A.Y.2016-17
- - Swachh Bharat Kosh A.Y.2015-16
- - Clean Ganga Fund by resident only A.Y.2015-16

### **Sec 269SS and 269T- Scope enhanced**

The scope of Section-269SS or 269T has been enhanced and now Sec-269SS provides that no person shall accept from any person any

- Loan or
- Deposit or
- Any sum of money whether as advance or otherwise, in relation to transfer of immovable property
- Otherwise than by an account payee cheque or account payee bank draft or by electronics transfer
- If the amount exceeds Rs. 20,000/-.
- Similar amendment has been provided in section 269T
- The consequential amendment has been made in Section 271D and 271E regarding levy of penalty. W.e.f.01.06.2015

## **Chapter X-A and Sec 144BA –GAAR**

GAAR Postponed till A.Y.2018-19

### **Section 32AD- Additional Investment allowance**

A new section 32AD introduced to provide for an additional investment allowance of an amount equal to 15% of the cost of new assets acquired and installed by an assessee, if-

he sets up an undertaking or enterprise for manufacture or production of any article or things on or after 01.04.2015 in any notified backward areas in the state of Andhra Pradesh and State of Telangana; and

The new assets are acquired or installed for the purpose of said undertaking or enterprises during the period beginning from 1st April 2015 to 31<sup>st</sup> March 2020.

This deduction is available over and above deduction available under section 32AC.

The plant and Machinery will not be transferrable upto 5 years.

### **Sec 32(1)( iia)-Additional depreciation @ 35%**

The existing limit of 20% additional depreciation over and above the deduction allowed for general depreciation u/s 32(1)(ii) is enhanced to 35% of actual cost of p&m acquired by an manufacturing undertaking which is set up in the notified backward area of the state of Andhra Pradesh or state of Telangana on or after 1st April, 2015.

50% Deprecation in case acquired for less than 180 days and balance 50% in next year

W.E.F.A.Y.2016-17

### **Sec 194LD- Extension of eligible period of concessional tax rate under section 194LD**

Sec 194LD provide for lower withholding tax rates at the rate of 5% in case of interest payable to FII or QFI at any time on or after 1st april 2013 to 1st June 2015. This period has been extended till 30June 2017.

W.e.f. 1st June 2015.

## **Sec 80JJAA- Deduction for employment of new workman**

There are two amendments in this provision:-

- This is now applicable to all assessee not only corporate assessee
- The base limit of workman to count additional wages has been reduced from 100 to 50.
- W.E.F 2016-17

## **Sec 92BA- DTP-The threshold limit enhanced**

The threshold limit for applicability of DTP provisions enhanced from 5 crores to 20 crores.

W.E.F. A.Y. 2016-17

## **Sec 2(15) – Charitable Purpose**

The Yoga has been included specifically in the definition of charitable purpose in the line of education.

Similarly the definition of charitable purpose has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to trade commerce or business for a cess or fee or any other consideration, irrespective of use or application or retention of the income from such activity unless:

- Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility.
- The aggregate receipt from such activity or activities, during the previous year, do not exceed 20% of the total receipts of the trust or institution undertaking such activities for the previous year.

W.e.f. AY 2016-17

## **Sec 90, 90A, 91 – Foreign Tax Credit**

The CBDT has been directed to notify rules relating to claim of foreign tax credit paid outside India.

W.e.f 01.06.2015

## **Wealth Tax Act**

It is abolished w.e.f.2016-17

### **Sec 9 (1)(v)-interest income**

The explanation has been inserted to provide that in the case of a non resident, *being a person engaged in the business of banking*, any interest payable by the PE in India of such nonresident to the head office or any PE or any other part of such non –resident outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the PE in India and PE shall be deemed to be a person separate and independent of the non resident of which it is a PE and the provision of the act relating to computation of total income, determination of tax and collection and recovery would apply. Accordingly, the PE in India shall be obliged to

- Deduct tax at source on any interest payable to either HO or any branch of it outside India.

A.Y.2016-17

Sumitomo Banking Corporation 136 ITD 66 (SB)(Bom)

ABN AMRO BANK

Article 14(3) of Indo-USA DTAA

### **Sec 11/13- relating to accumulation of income by charitable trust or institution**

For claiming exemption u/s 11 regarding accumulated fund, the following amendment has been introduced:-

- The option of accumulation has to be exercised before due date of filling return of income as specified under section 139(1) of the Act for filling return of income.
- Similarly, the return has to be filed before the due date of filling ITR.
- Otherwise the benefit of accumulation will not be available and such income would be taxable.

A.Y.2016-17

### **Sec 115JB- MAT**

Clause (iib) has been inserted in explanation 1 so as to provide that the amount of income,, *being the share of income of an assessee on which no income tax is*

payable in accordance with the provisions of the section 86if any such amt is credited to the P& L a/c shall be reduced from the book profit for the purpose of calculation of income tax under that section. Similarly, clause (fa) has been inserted in explanation 1 to provide that book profit shall be increased by an amount of expenditure relatable to such income.

Similarly, a new clause (iic) is also proposed to be inserted in explanation 1 so as to provide that the income of FII from transaction in securities shall be excluded from the book profit and similarly, a new clause (fb) in explanation 1 inserted that book profit shall be increased by the amt of expenditure relatable to such income.

W.e.f A.Y.2016-17

**Sec 253- order under section 10(23C), vi and via appealable Before ITAT**

The order u/s 10(23C) (vi), (via) refusing to grant approval in respect educational and medical institution has been made appealable before ITAT by inserting clause f in sub section 1 in section 253 of the Income Tax.

W.e.f. 1st June 2015

**Section 153 C-Assessment of income of any other person**

**Pre-amendment**

Where the AO is satisfied that *any money, bullion, jewellery or other valuable article or things or BOA or documents seized or requisitioned belong to any persons* other than person referred to in section 153A, then the books of accounts or documents seized or requisitioned shall be handed over to jurisdictional AO.

**Post Amendment**

Where the AO is satisfied that any money, bullion, jewellery or other valuable article or things belong to

Or any books of account or documents seized or requisitioned pertain to or

Or any information contained therein, relates to

any person other than the persons referred to in section 153A, then these shall be handed over to jurisdictional AO.

**Sec-151-Sanction for issue of notice u/s 148**

No notice or u/s 148 shall be issued without the approval of

- In case the selection within four years from the end of relevant AY, by joint commissioner
- In case of approval after four years from the end of relevant AY, by CIT or CCIT, Principal CIT or CCIT.

**Sec- 234B-Interest for defaults in payment of advance tax-w.e.f. 1st june 2015**  
**Sec- 234B-Interest for defaults in payment of advance tax-w.e.f. 1st june 2015**

Sub section 3 of section 234 B has been amended to provide that the period for which the interest is to be computed will begin from 1st day of April following the FY and end on the date of determination of total income u/s 147 or sec153A. Similarly, sub section 2A(a) has been introduced to provide that the assessee shall be liable to pay simple interest @ 1% on additional amt of income tax on income offered under sub sec (1) of section 245 from the date of relevant AY to the date of making such application and sec 2A(b) provide if the amount offered is increased by SC then, interest @ 1% on tax on enhanced income from the end of relevant AY to date of order.

**Sec 263-Revision of order by commissioner**

Explanation 2 inserted to provide that the *order deemed to be erroneous in so far as prejudicial to the interest of revenue*, if in the opinion of principal commissioner or commissioner:-

- If the order is passed without making any enquiry or verification which should have been made
- The order is passed allowing any relief without enquiring into the claim
- *The order has not been made in accordance with any order, direction or instruction issued by the Board under section 119 or*
- The order has not been passed in accordance with any decision prejudicial to the assessee rendered by the jurisdictional High Court or Supreme Court in the case of assessee or any other person

W.e.f 1st June 2015

**Sec 194C (6)**

The exemption from deduction of TDS in case of transporter having PAN NO. has been withdrawn in case of those transporter having more than 10 goods carriage and not having PAN.

A declaration to this effect has to be given by transporter.

W.e.f 1st June 2015.

**Sec 194A- TDS on interest payment**

Sec 194 A (3)(v)-exemption provided from TDS from payment of interest to members by a co-operative society under section 194 A(3)(V) does not apply to payment of interest on time deposits by the cooperative Bank to its members.

The definition of time deposits has been amended to include recurring deposits also.

Provisions of proviso to section 194A(3)(i) provide that interest income for the purpose of deduction of tax by the banking company or the co-operative bank or public company shall be computed with reference to a branch of these entities. This has been amended to provide for computation of income by banking Company or the cooperative bank or the public company which has accepted core banking solution.

Sec 194A amended to provide that deduction of tax under section 194A of the Act from interest payment on compensation amount awarded by the Motor Accident Claim Tribunal compensation shall be made at the time of payment, if the amount of such payment or aggregate amount of such payment during a F.Y. exceed Rs. 50000/-.

W.e.f. 01.06.2015

### **Amendments in provisions relating to TDS and TCS**

Sec 200A has been amended to enable computation of fee payable under section 234E of the Act at the time of processing of TDS statement under section 200A of the Act.

Sec 206C has been amended so as to allow the collector to furnish TCS correction statement.

Sec 206CB has been inserted in order to provide for processing of TCS statement in line with section 200A and levy of fee also u/s 243E

Further, intimation generated under Sec 206CB is

- Subject to rectification u/s 154 of IT Act
- Appealable under section 246A of the IT Act
- deemed as notice of demand u/s 156 of the act

Sec 220 has been amended to provide that where interest is charged for any period under section 206(7) of the Act on the tax amount specified in the intimation issued under proposed provisions, no interest shall be charged u/s 220(2) of the Act on the same amount for the same period.

Sec 200 and 206C has been amended to provide that in the case of Govt deductor making payment through book entry, the prescribed statement of TDS or TCS shall be delivered in time in such manner and setting forth such particulars as may be prescribed. The penalty of Rs. 100 per day for default under sec 272A has been prescribed.

### **Sec 195(6)-Information relating to payment to non resident.**

Sec 195(6) has been amended to provide that the person responsible for paying any sum, whether chargeable to tax or not, to a non resident not being a company or to a foreign company shall be required to furnish the information of the prescribed sum in such form and manner as may be prescribed.

Sec 271 H has been inserted to provide for levy of penalty for Rs. 1 lakh for non furnishing or inaccurate furnishing of information under section 195(6) of the Income Tax Act.

Sec 273B amended for non levy of penalty under section 271H if there is reasonable cause.

W.e.f. 1st June 2015

**Sec 192A- deduction of tax on pre mature withdrawal from RPF**

- This section has been introduced to provide for TDS @10 % on premature withdrawal from RPF.
- Threshold limit is 30,000.00
- Self-declaration in form 15G by any person having nil taxable income and 15H u/s 197A by senior citizen can be filed for non deduction of TDS.
- TDS will be at maximum marginal rate if deductee does not furnish PAN to the deductor.

W.e.f.01.06.2015

**Sec 6(3)-Residential status of a company**

- Sec 6(3) has been amended to provide that a person being a, company shall be said to be resident in India in any previous year, if :-
  - it is an Indian Company
  - Its place of effective management, at any time in that year, is in India.

**Place of Effective Management(POEM)** means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made. Further guidance will be issued.

w.e.f A.Y.2016-17

**Sec (6)(1)-determination of residential status in case of Indian crew**

- Explanation 2 has been inserted to provide that in case of individual being a citizen of India and a member of a foreign bound ship leaving India, the period or periods of stay in India shall in respect of such voyage be determined in the manner and subject to such conditions as may be prescribed.
- A.Y.2015-16

**Sec 35(2AB)-Weighted deduction in respect of scientific research expenditure**

The sub clause 3 has been amended to provide that deduction under this section shall be available if company enters into an agreement with the prescribed



authority for cooperation in such research and development facility and fulfils prescribed condition with regard to maintenance and audit of accounts and also furnish prescribed reports.

Further sub section has been amended to provide for furnishing of reports to Jurisdictional CIT or PCIT.

W.e.f. A.Y.2016-17

### **Sec 288-Appointment of an auditor**

Section 288 has been amended to provide that an auditor who is not eligible to be appointed as auditor of the company as per the provision of section 141 of the companies act shall not be eligible for carrying out any audit or furnishing of any report/certificate under any provisions of the Act in respect of that company.

Similar provision has been provided in respect of non company.

However, this is not applicable for representing before Income Tax Authority.

W.e.f. 1<sup>st</sup> June 2015.

### **Sec 271(1)(c) - definition of term tax sought to be evaded**

The term tax sought to be evaded shall be *summation of tax sought to be evaded under general provision and the tax sought to be evaded under provisions of sec 115JB or 115JC.*

However, if an amount of concealment of income is considered both under general provisions and provisions of section 115JB or 115JC, then such amount shall not be considered in computing tax sought to be evaded under provision of section 115JB or 115JC.

Further, where the provisions of section 115JB or 115JC are not applicable, the computation of tax sought to be evaded under the provisions of section 115JB or 115JC shall be ignored.

W.e.f. A.Y.2016-17

### **Sec 49(1)(iii)(e)-cost of acquisition in the hands of resulting company**

The section 49 (1) (iii)(e) amended to include transfer under clause (vib) of section 47 to provide that the cost of acquisition of an asset acquired by resulting company shall be the cost for which the demerged company acquired the capital assets as increased by the cost of improvement incurred by the demerged company.

W.e.f 2016-17

### **Sec 139- furnishing of ITR**

Section 139 has been amended to provide for filling of ITR by educational institution or hospital covered under section 10(23C)(iiiab) and (iiiac) substantially financed by government.

W.e.f A.Y.2016-17

### **Settlement Commission**

Sec 245 A, clause (i) of explanation amended to provide that where a notice under section 148 is issued for any assessment years, the assessee can approach

the settlement commission for other assessment years as well even if notice under section 148 for such other assessment years has not been issued.

However, a return of income for such other assessment years should have been furnished under section 139 or in response to notice under section 142 of the Income Tax Act.

Further clause (iv) of the explanation is amended to provide that a proceedings for any assessment years, other than the proceedings of assessment or reassessment referred to in clause (i) or clause(iii) or clause(iiiia) shall be deemed to have commenced from the date on which the return of income is furnished u/s 139 or in response to notice u/s 142 and concluded on the date on which assessment is made or on the expiry of two years from the end of relevant assessment years, in a case where no assessment is made.

Sec 245 D (6B) has been amended to provide that the settlement commission may, with a view to rectify any mistake apparent from record, amend any order passed by it u/s(4)

- At any time within six months from end of month in which order is passed
- In case of application for amendment by CIT or PCIT, within a period of six months from the end of month in which the application is made.

Sec 245H(1) is amended to provide that any order granting immunity from prosecution shall record the reasons in writing in the order passed by it.

Section 245HA (1) amended to provide that where in respect of any application made u/s 245C, an order u/s245D(4) has been passed without providing the terms of settlement; the proceedings before the settlement commission shall abate on the day on which such order under sub section 245D(4) was passed.

Sec 245K has been amended to provide that any person related to the persons who has already approached the Settlement Commission once, cannot approach the settlement commission subsequently.

132B amended to provide that assets seized u/s 132 or requisitioned u/s 132A may also be adjusted against the amount of liability arising on against the liability arising on an application made before the settlement commission u/s 245C(1).

W.e.f. 01.06.2015

### **Sec 158AA-Procedure for appeal by revenue when identical question of law is pending before Supreme Court**

Sec 158AA is inserted to provide that notwithstanding anything contained in this act, where any question of law arising in the case of an assessee for any assessment year is identical with a question of law arising in his case for another assessment year which is pending before supreme court, in a appeal or in SLP filed by revenue against the order of HC in favour of assessee, the CIT or PCIT may direct the AO to make an application to the appellant tribunal in the prescribed form within sixty days from the date of receipt of order of cit(a) stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the earlier case.

### **Consolidation of mutual fund scheme**

Sub section (xviii) in section 47 has been inserted to provide that in case of consolidation of two or more scheme of mutual fund, it will not be treated as transfer and there will be tax neutrality.

Similarly, sub section 2AD in section 49 has been inserted to provide that the cost of acquisition of assets in the consolidated shall be deemed to be the cost of acquisition to him of the of the units or units in the consolidation scheme.

### **Sec 255(3)- income limit of cases to be decided by single member bench of ITAT**

Sec 255(3) has been amended to provide that a single member bench may dispose of cases where total income as computed by AO does not exceed Rs. 15.00 lakh.  
W.e.f. 01.06.2015

### **Sec 9A- Fund Manager in India not to constitute BC of offshore funds**

Notwithstanding anything contained in sub section (1) of section 9 and subject to the provisions of the this section, in the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager on behalf of such fund shall not constitute business connection in India of the said fund.

Notwithstanding anything contained in section 6, an eligible investment fund shall not be said to be resident in India for the purpose of that section merely because the eligible fund manager, undertaking fund management activities on its behalf, is situated in India.

A.Y.2016-17

**CENTRAL EXCISE -BY SHRI PRADEEP K. MITTAL-9811044365**

- If there is no negligence on the part of Appellant and because of the pendency of appeal before the Tribunal, the appeal could not be heard, the Tribunal is entitled to extend the stay beyond the period of one year. Section 35(c) (2a) of the Central Excise Act, 1944 does not laid down a complete bar. Salassar Steel & Power Ltd. Vs. Comissioner of Central Excise 2015 (316) ELT 177 Chatisgarh HC DB.
- In case the assessment has been provisional from the day one and later on the provisional assessment has been finalized and demand has been raised, the assessee is not liable to pay interest on the demands so confirmed in the absence of provision to charge interest for the period during which the assessment remained provisional. Godrej Industries Ltd. Vs. CCE 2015 (316) ELT 192 Bombay HC DB.

- When the Appellant is an illiterate person and has provided services which are mainly in the nature of labour work and Appellant has been relying upon, being illiterate, his CA who has been representing him all along. The Appellant has been guided by the CA and, therefore, the delay of 189 days has occurred in filing an appeal before the Appellate Tribunal is liable to be condoned. The assessee has shown bona fide by depositing 75% of the amount involved and hence the Tribunal was not justified in dismissing the appeal on the ground of delay. Chhatar & Company Vs. CCE 2015 (316) ELT 218 (Gujarat) HC DB.
- While imposing penalty U/s 11AC of the Central Excise Act finding of mensrea is also necessary. The consequences arising out of Section 11AC of the Central Excise are not automatic. Dhillon Oil & Fats Pvt.Ltd. vs. CCE 2015 (316) ELT 242 Punjab & Haryana HC DB.
- The invoice carrying the old name of the assessee although the change of name was intimated to the Range office, therefore, the Cenvat Credit on the basis of invoice having old name cannot be disallowed. Ama India Enterprises Lvt. Ltd. Vs. CCE 2015 (316) ELT 268 Tribunal.
- PP Wrapper which were used by way of outer packing in which HDPE Bags were received and the bags were meant for packing of cement, credit is available on PP Wrapper. The cenvat credit is also available on grinding media ball used in the grinding mill and ball mill which is meant for manufacture of cement, cenvat credit is admissible. CCE Vs. Ambuja Cements Ltd. 2015 (316) ELT 272 Tribunal.
- The Cenvat Credit by way of Capital Goods is allowable on MS Tanks, which is a part of plant and machinery used for manufacture of dutiable final product. The Departments' plea is that MS Tank was not relatable to the manufacture of product and, therefore, Cenvat Credit is not allowable on such MS Tanks is rejectable. CCE Vs. Chemplas Sunmar Ltd. 2015 (316) ELT 246 Madras HC DB.
- The raw material was sent to the job worker to process the same and the processed materials was sent back to the principal manufacturer who has used the same for manufacture of final dutiable product, the Department cannot object that waste and the scrap so generated at the job worker's premises should be brought back by the supplier and in case, the same is not brought back, the supplier is liable to pay duty. Admittedly, in the

present case waste and scrap has arisen in the job worker's premises. V.C. Commercial Vehicles Ltd. Vs. CCE 2015 (316) ELT 251 Bombay HC DB.

- Sludge Acid Oil and Spent have arisen in the course of refining of vegetable oil is waste and, therefore, entitled to the benefit of Notification No.89/95 and, therefore, no duty is payable. Arihant Solvex Pvt. Ltd. Vs. CCE 2015 316 ELT 290 Tribunal Delhi.
- Any excess amount collected over and above the insurance premium paid by the assessee to the Insurance Company are not liable to be included in the assessable value calculated under Section 4 of Central Excise Act and, therefore, no duty is payable as has been held by the Hon'ble Supreme Court in the case of Baroda Electric Meters Ltd and followed in this case. U.P. Twiga Fibre Glass Ltd. vs. CCE 2015 (316) ELT 304 (Tribunal).
- In case there is allegations of violation on the part of Petitioner in respect of past export consignment, the Export Inspection Agency Certificate for samples of Export Consignment cannot be withheld. The writ petition under Article 226 is maintainable before the High Court although there is alternative remedy available to the party since the action of the Department is wholly arbitrary. M.B.Exim Pvt. Ltd. Vs. Exports Inspection Agency 2015 (316) ELT (3) Delhi.
- M.S. Flats, Angles, Channels, Plates used for placement of wornout/damaged parts of plant and machinery, Cenvat Credit is available by way of Capital Goods under erstwhile Rules of 57Q of Central Excise Rules 1944. CCE Vs. Madras Aluminium 2015 ELT 316 Madras HC DB.
- The moveable and immoveable properties are mortgaged with Gujarat Industrial Investment Corporation Ltd for having taken loan, the Central Excise Department can call upon the GIIC not to sell the these property as the Department has a first charge for recovery of excise dues and are competent to call upon GIIC not to sell those properties which were mortgaged with them. GIIC Ltd Vs. Union of India 2015(316) ELT 434 (Gaj DB).

**SERVICE TAX – BY SHRI PRADEEP K. MITTAL  
9811044365**

- The financial leasing services and hire purchase of vehicles/machineries squarely falls under the explanation of financial leasing services as defined under Section 65(12) of the Finance Act, 1994. But from the reading of the aforesaid provisions of law and judgment of the Apex Court, it can be held that the service tax is the tax on an activity carried out and consideration received for carrying out such activity is only taxable by the Act. Interest being a consideration for the liquidity forgone by the Bank due to lending of the fund, that is not brought within the purview of the Finance Act, 1994 for taxation in absence of any consolidated service charges included in such interest receipt and discernable. *Karur Vyasa Bank Ltd Vs. CCE MANU/CC/0016/2015.*
- The appellant is eligible for credit on Rent-a-Cab service. Credit availed on Out-door catering, Insurance service, Pandal and Shamiyana services, testing and analysis, these services for carrying out business activities and business meetings which are related to promotion of their business. In view of the Hon'ble High Court of Bombay judgment in the case of *CCE v. Ultratech (supra)*, the issue has already been settled in favour of the respondents and they are eligible for the credit on the above services. *CST Vs. Ford Business Service Centre (P) Ltd MANU/CC/0014/2015.*
- The payments made to canteen contractor in respect of food and snacks supplied to the workers/staff, if recovered from workers/staff, then the assessee is not entitled to avail credit on such amount. *Cema Electric Vs. CCE 2015(37) STR 718 Guj DB.*
- Fabrication, erection and installation of Tank at site results into an immovable property and, therefore, no excise duty would be payable but, however, the activities would certainly be liable to Service Tax as “Erection, Commissioning and Installation Service”. *V G Enterprises Vs. CCE 2015(37) STR 744 (Tri).*
- The final order passed by the authorities and sent by “registered post” shall be deemed to have been sent by “speed post” as “speed post” and “registered post” are both have to be treated as “registered post” *Jay Balaji Jyoti Steels Ltd Vs. CESTAT 2015(37) STR 673 (Orissa) DB.*

- The Division Bench of the Gujarat High Court has held that U/s 85 (4) of the Finance Act, 1994 gives ample powers to Commissioner (Appeals), inter-alia, remand the case back to the adjudicating authority in case proper enquiry has not been conducted by the adjudicating authority. CCE Vs. Associated Hotels Ltd. 2015(37) STR 723 Gujarat.
- The Reserve Bank of India borrowing activities have been carried out for and on behalf of Govt. of India and, therefore, it is lending and borrowing money by the Govt. and being a sovereign function, therefore, there cannot be any liability to pay service tax on commission received for the sale of RBI Bonds.
- The amount has been received for rendering cargo handling charges and business auxiliary charges to the Ministry of Chemicals and Fertilizers (a Government of India Department,) for sale of Urea by Ministry at a total cost – transport and handling charges, the activity performed is sovereign function of the Govt. of India and, therefore, no service tax is payable in respect of services provided by the Appellant to the Ministry of Chemicals & Fertilizers. 2015 (37) STR 796 (Tribunal) Ahmedabad.
- The process undertaken by the Appellant of laying down the tracks and joining with thermite welding process and making them fit for vehicle movement and, therefore, rails have to be precisely aligned, the activity does not result in deliverable goods to the railways and it cannot be said to be production of processing goods not amounting to manufacture and, therefore, no duty is payable. Harshad Thermic Industries Pvt. Ltd. Vs. CCE 2015 (37) STR 808 Tribunal.
- In case the Inspector (Review) has prepared a note for the purpose of filing of appeal on behalf of the Department and there is an endorsement by the Supdt. (Review) and the Commissioners/Chief Commissioners of Central Excise have merely appended their signature without expressing any opinion and, therefore, it can be safely inferred that there is no application of mind by the Committee of Commissioners and, therefore, there was no valid decision in the eyes of law for the purpose of filing and appeal hence the Appeal of the Department is wholly incompetent and is liable to be dismissed on this ground itself. CCE Vs. Narmada Drinks Pvt. Ltd. 2015(37) STR(815) Tribunal.
- The Appellant, who is working as C&F Agent for Tata Chemicals Ltd., and have not paid the service tax on the amount of godown rent, loading

and unloading charges from wagon and trucks loading and unloading charges of godown and other miscellaneous expenses, the Tribunal held that all these expenses are required to be included for the purpose of calculating the service tax payable on providing C&F Agent Services.

- In case the main contractor has deposited the entire amount of service tax on full construction value then the sub-contractor cannot be taxed once again in respect of the same service on that part value in the services provided by him. When the revenue has earned its share of service tax whether coming from main contractor or from sub-contractor, the situation is revenue neutral. DNS Contractor Vs. CCE 2015 (37) STR 848 Tribunal Delhi

**CORPORATE LAWS –BY SHRI PRADEEP K. MITTAL-  
9811044365**

- Company Law Board not barred from entertaining application under Section 340 Cr.P.C if the forged and fabricated documents filed by the Respondent inducing Court to believe that Respondent was having higher shareholding. Arun Dhawan & Anr. Lokesh Dhawan 216 (2015) DLT 533.
- Registrar of Companies does not have any objection with regard to restoration of name of the company subject to filing of all statutory documents, i.e annual returns and balance sheets with requisite fee as well as additional fees as applicable on date of actual filing of documents. Rakesh And A Realtors (P) Ltd. Vs. Registrar of Companies 216 (2015) DLT 52.
- Where in terms of the scheme of amalgamation all liabilities of the transferor company are being transferred to the transferee company and the undertaking given by the transferor company that the statutory dues of the income-tax Shall be discharged by the transferee company in accordance with law, the objections of the Income-tax Department are suitably covered and they stand overruled and, therefore, there is no reason to decline prayer for sanction of the scheme of amalgamation. Ludhiana Holdings Ltd Vs Oswal Woollen Mills Ltd (2015)124 CLA 88 (P&H)



- A Creditor registered with the Registrar of Companies shall remain the Secured Creditor if the formalities for creating the charge having been duly followed. Therefore, in the absence of any proceeding, the status of the creditor as a Secured Creditor continues. It cannot be treated as Unsecured Creditor. Infrastructure Leasing & Financial Services Ltd. Vs. BPL Ltd. (2015) 124 CLA 417 (SC).
- Demerger amounts to reconstruction as per article 20(d) of Schedule 1 of Gujarat Stamp Act, 1958 and the Applicant is required to pay for the change of ownership as per clause (g) of Section 2 and the article 20(d) of Schedule 1 of that Act. Alembic Pharmaceuticals Ltd. Vs. Chief Controlling Revenue Authority (2015) 124 CLA 264 (Guj).
- Company Law Board has no power under Section 111 of the Companies Act, 1956 to decree suit for specific performance for issue of shares, simultaneously ordering rectification of register. Advansys (India) (P) Ltd. Vs. Ponds Investment Ltd. (2015) 124 CLA 197 (Bom).
- Where original creditor Company has merged with another Transferee company, the transferee company can file the winding up petition under clause(e) of Section 433 and Section 434 against the Respondent company when the Respondent company does not suffer any additional disadvantage on being subject to winding up proceedings by the transferee company and initiation of any proceedings against the Respondent company under the Securitisation Act will not be any bar to winding up proceedings nor a reference to arbitration will mean that the debt is disputed. Indiabulls Housing Finance Ltd. Vs. South Asian Agro Industries Ltd. (2015) 124 CLA 179 (T&AP).
- To attract a case under Section 141, a specific role must have been played by a director of the company for fastening vicarious liability for the offence of dishonor of cheque by the company, where the appellant is neither a director nor in –charge of or involved in the day-to-day affairs of the company at the time of the alleged offence, the appellant cannot be vicariously held liable for the offence, and such a case would be a fit case for quashing the Complaint. Pooja Ravinder Devindasani Vs State of Maharashtra and another (2015)124 CLA 162 (SC).

## **SEBI ACT - BY SHRI PRADEEP K MITTAL -9811044365**

- SEBI passed an order directing the company to refund amounts mobilized through alleged “private placement” of unsecured Optionally Fully Convertible Bonds (OFCBs), without complying with statutory stipulations relating to public issue. The SEBI out-rightly rejected the contention of notice company that the issue was ‘private’ and specifically held that by writing 'private not for circulation' on application forms , the issue (which is other “Public” for all intents and purposes”) will not ceases to be “Public” in view of the fact that Sahara has issued application forms to public at large notice company having name of applicants on it and further observed that with single board resolution, the company has issued OFCBs to 45,005 persons and mobilized Rs. 76 Crores under 68 different schemes, without complying SEBI ICDR Regulations. The SEBI order refund of the amounts relying on the observations in Sahara India Real Estate Corporation Limited & Others Vs. SEBI & Anr.[LSI-313- SEBI-2014-(MUM)]

## **CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436**

- If there is no dispute and there exists admissions with respect to existence of relationship of landlord and tenant, tenancy being only a monthly tenancy which has been terminated by means of notice under Section 106 of the Transfer of Property Act, 1882 taken with the fact that the service of summons in the suit can be taken as a notice in the suit and the tenancy does not have the protection of DRC Act, 1958, the Landlord is entitled for relief of possession under Order 12 Rule 6 CPC. Inderjit Singh Cheema & Anr. Vs. Next World Immigration Services Associates 2015 I AD (DELHI) 346.
- If the notice under section 251 Cr.P.C was framed against the Accused. However, no application under Section 145(2) of the Negotiable Instruments Act for cross-examination of Complainant witness was filed by the Accused. In view of the judgment of Supreme Court in the case of Dashrath Rup Singh Rathod Vs. State of Maharashtra 2014 (9) SCC 129, the Complaint is liable to be returned for filing the same in the court having appropriate jurisdiction if the cheque is drawn on the bank

outside the jurisdiction of court. Harpreet Singh Vs. State of NCT of Delhi & Anr. 2015 (147) DRJ 325.

- The Registrar or Secretary of BIFR have not power to decline the registration of Reference on the ground that the Petitioner Company is not carrying on any manufacturing activity while scrutinizing the Reference filed by Petitioner Company and they should refer the matter to the Board and the Board would decide whether the reference should be registered. The Registrar or Secretary of BIFR do not become adjudicating authorities and their power is restricted to scrutiny alone. Zenith Infotech Ltd. Vs. UOI 2015 (147) DRJ 58 (DB).
- Complaint under Section 138 of N.I. Act will be maintainable only at the place where cheque stands dishonoured and merely because cheque has been presented at non-home branch of the drawee bank being the cheque which is “payable at par/multi-city chequex”, it will not change the character of drawee bank and would not confer the territorial jurisdiction on Delhi Courts. Boston Beverages Pvt. Ltd. Vs. Kingston Beverages & Ors. 2015 (147) DRJ 286.
- It is held that if the Accused denied having issued the cheque in question and sought reference of the documents for expert opinion and the expert opinion clearly stated that the specimen admitted signatures of the Accused did not match the signatures on the documents in question and differed in some fundamental respects. It was also opined in the expert opinion that the divergences between the two signatures were beyond the range of, inter alia, intended disguise, the complaint under Section 138 of NI Act is liable to be dismissed. Jawahar Chit (P) Ltd. Vs. Ritika Chaudhary 216 (2015) DLT 587.
- If on the face of it the suit is barred by limitation, the court can exercise its discretion to reject the plaint unless the court finds that the issue of limitation is to be determined after the trial in doubtful matter. The court can suo moto exercise its powers under Order 7 Rule 11 CPC without there being a formal application for the said purpose. Harish Relan Vs. Kaushal Kumari Relan & Ors. 216 (2015) DLT 299.
- There cannot be any compounding of offence without the consent of Complainant. B.S.E.S. Radhani Power Ltd. Vs. Jagat Ram. 216 (2015) DLT 280.

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

- Where the arbitrator is sought to be appointed through the assistance of the court, the court has the powers to examine the existence and validity of the arbitration agreement. In case there is no valid arbitration agreement, the court may decline the appointment of arbitrator. The same principle shall apply where an application under Section 8 of Arbitration Act, 1996 has been filed. *NRC Ltd Vs. Kalyan Dombivli Municipal Coprn* 2015 (124) CLA Snr 1. Bom.
- The party has not raised a plea that the arbitrator has no jurisdiction and submitted their Statement of Defense and participated in the arbitration proceedings. Later on, in the Objection filed under Section 34(2) of Arbitration Act, 1996, challenging the Award made by the Arbitrator, the party cannot be raised a plea of arbitrator having no jurisdiction and more so when in the original petition under Section 34(2), there was no such objection but objection was sought to be introduced by way of amendment application. *MSP Infrastructure Ltd Vs. MP Road Development Corporation Ltd* 2015(124(CLA) 155 SC.
- Once the Judicial Authority takes a decision under Sub-Section (1) of the Section 8 declining to refer the dispute pending before it to arbitration and the said decision having become final, thereafter, Sub-Section (6) of Section 11 route before the Chief Justice is not available to either party as it is hit by the principle of res judicata. *Anil Vs. Rajendra* (2015) 124 CLA 351 (SC).
- It is held that before arbitration proceedings are effectively pursued, parties must resort to mutual discussions within a time bound reasonable period and in case, mutual discussions or conciliation proceedings do not successfully conclude within the time bound then the arbitration proceedings for determination of the rights can be continued in case there is a provision of mutual discussions for amicable settlement in the arbitration clause before invoking the arbitration clause. *Ravindra Kumar Verma Vs. BPTP Ltd. & Anr.* 2015 (147) DRJ 175.
- The question whether the mandate of the Arbitrator stands legally terminated or not can be examined by the court as provided in Sub-Section (2) of Section 14 of the Arbitration and Conciliation Act, 1996.

Lalit kumar V Saghavi (D) Th. LRs Neeta Lalit Kumar Vs. Dharamdas V Sanghavi and Others (2015) 124 CLA 357 (SC).

- All objections to the jurisdiction of Arbitral Tribunal can be raised under Section 16 and Sub-Section (2) of that Section mandates that a plea that the Arbitral Tribunal has no jurisdiction shall not be raised later than the submission of statement of defence by the party. The objection to jurisdiction cannot be raised under Section 34 of the Arbitration and Conciliation Act, 1996. MSP Infrastructure Ltd. Vs. MP Road Development Corporation Ltd. (2015) 124 CLA 155 (SC).
- Court would interfere with Arbitral Award, if interpretation adopted in making of award is neither plausible nor reasonable, and is in conflict with terms of contract agreement. MC-Rotem-Melco Consortium & Ors. Vs. Delhi Metro Rail Corporation Ltd. 217 (2015) DLT 11.
- Unsuccessful Party in its application before Arbitrator under Sections 12 and 13 of Act for termination of mandate of Arbitrator on ground that he has become '*de facto* and *de jure*' unable to perform his function as an Arbitrator cannot approach the Court on same grounds under Section 14 of Act seeking termination of his mandate and such an aggrieved party has to wait for Award to be pronounced and, thereafter if aggrieved by it, challenge it under Section 34 of Act on grounds available to be urged in accordance with law. MBL Infrastructures Ltd. Vs Telecommunication Consultants India Ltd. & Ors. 217 (2015) DLT 212.

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