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CIRCULARS AND NOTIFICATIONS ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS (MCA) IN THE MONTH OF JULY, 2015

Companies (Management and Administration) Amendment Rules, 2015 dated 28/08/2015

- MCA has notified the Companies (Management and Administration) Amendment Rules, 2015. In the Companies (Management and Administration) Rules, 2014,- (i) in Rule 23, in sub-rule (1) for the words "not more than five lakh rupees", the words 'not less than five lakh rupees' shall be substituted. AND (ii) For physical form MGT-7, e-form MGT-7 shall be substituted.

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

- In case the Official Liquidator has sold the property of the company under liquidation without proper publicity and advertisement at much lesser value as compared to the current market price, the confirmation of sale is liable to be set aside. Teckinvest India Pvt. Ltd. Vs. Assam Power and Electrical Ltd. 2015 (127) CLA 452 SC.
- The Supreme Court has held that the Official Liquidator does not have jurisdiction to decide the claim of secured creditors who have been kept aside by the Company Judge from the liquidation proceedings and they have been permitted to pursue their legal remedy as per the State Financial Act. Lakshmi Fibre Ltd. Vs. A.P.Industrial Corporation Ltd. 2015 (127) CLA 456 SC.
- The appeal before the High Court U/s 10F of the Companies Act, 1956 against the final judgment and order of the CLB shall lie only when the question of law arises and not where mixed question of law and facts arise in the appeal, the appeal is liable to be dismissed on this technical ground. S. Nartarajan Vs. S.B.Global Mills Ltd. 2015 (127) CLA 497 Madras.
- The Company cannot reject transfer of shares on the ground of inadequacy of consideration shown in the transfer deed more particularly when the transferor has no objection and there is no complaint by the transferor that the signature of transferor has been forged or fabricated. The Company is directed to rectify the Register of Member and put the name of transferee as the Member. 3A Capital Services Ltd. Vs. HMG Industries Ltd. 2015 (127) CLA 518 CLB.
- When the fraud has been practiced by the Respondent by procuring UPC, which have no legal backing for the purpose of showing that there

was notice of Board Meeting and Resolution was properly passed and which subsequently filed with the Registrar of Companies, the CLB has set aside the resolution on the ground of fraud being played by the respondent and has ordered that status-quo ante shall prevail. Baleshwar Sharma Vs. Anirva Developers Pvt. Ltd. 2015 (127) CLA 543 CLB.

INCOME TAX CIRCULAR AND NOTIFICATION - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- The CBDT has issued Circular No. 14/2015 dated 17.08.2015 in which it has provided important clarification on various issues related to grant of approval and claim of exemption u/s 10(23C)(vi) of the Income-tax Act, 1961
- The CBDT has issued a Notification dated 17.08.2015 in which it has laid down rules on the computation of period of stay in India in certain cases. The rules come into effect with retrospective effect from 01.04.2015
- The CBDT has issued a directive dated 14.08.2014 in which it has expressed concern that officers of the level of DCIT/ACIT are being nominated for representing cases before the Authority of Advance Rulings and that such officers are not able to effectively represent the Departmental view on complex issues. Hence in future, the officer of rank of CIT/PCIT will represent the case before AAR.
- The CBDT has issued scrutiny guidelines for compulsory manual selection of cases during financial year 2015-16 vide instruction no. 08/2015 dated 31.08.2015.
- The CBDT issued a notification dated 17.08.2015 defining how to compute period of stay in respect of an individual being a citizen of India and member of crew.
- The CBDT vide notification dated 07.08.2015 in view of the powers conferred by section 285BA has amended the rules relating to registration of persons, due diligence and maintenance of information, and the Board for matters relating to statement of reportable accounts.
- Press Release dated 06.08.2015 : As a part of a major initiative to usher in certainty in taxation, the Central Board of Direct Taxes (CBDT) entered into two unilateral Advance Pricing Agreements (APAs) on 3 August, 2015 with two Multi-National Companies (MNCs) which includes the first APA with a "Rollback" provision. With this, the CBDT has so far signed 14 APAs of which 13 are unilateral APAs and one is a bilateral APA. The 14 APAs signed relate to various sectors like

telecommunication, oil exploration, pharmaceuticals, finance/banking, software development services and IT'S (BPOs).

- The CBDT has issued a directive dated 27.08.2015 stating that in view of the judgement of the Supreme Court in CIT-VIII, Delhi Vs. Suman Dhamija holding that the monetary limits specified in Instruction No. 3/2011 dated 09.02.2011 shall apply only to appeals filed after that date and not to pending appeals, the department should file Miscellaneous/ Review Petitions to seek revival of the department's appeals which have been dismissed on the interpretation that the said Instruction No. 3/2011 applies to pending appeals.
- The Central Board of Direct Taxes (CBDT) has issued guidance notes dated 31.08.2015 on implementation of reporting requirements for the US law called "Foreign Account Tax Compliance Act" (FATCA). Under FATCA, foreign financial institutions that fail to give information about their American clients to US authorities would face 30 per cent withholding tax. FATCA provides for 30 per cent withholding tax on US source payments made to foreign financial institutions (FIs) unless they enter into agreement with Internal Revenue Service (IRS) to provide information about accounts held with them by USA persons or entities controlled by USA persons
- A Committee on Direct Tax Matters chaired by Justice A.P. Shah, was constituted to examine the issue of applicability of Minimum Alternate Tax ('MAT') on FIIs/FPIs for the period prior to 01.04.2015. The Committee has submitted its final report to the Government on 25.08.2015. The Committee has recommended that section 115JB of the Income-tax Act, 1961 ('Act') may be amended to clarify the inapplicability of the provisions of section 115JB to FIIs/FPIs having no permanent establishment (PE)/place of business in India. The Government has accepted the said recommendation and it has been decided to carry out appropriate amendment in the Act so as to prescribe that MAT provisions will not be applicable to FIIs/FPIs not having a place of business/permanent establishment In India, for the period prior to 01.04.2015.

CASE LAWS - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- Word 'purchase' used in sub-section (2) of section 54 is not restricted or confined to registered sale deed or even possession but has a wider connotation, thus where the assessee had made entered into construction linked payment plan for purchase of residential property with builder within two years for purchase of property assessee was entitled to claim exemption u/s 54, even when legal title in property was not passed or transferred to assessee within a period of two years from

date of sale of the first property. CIT vs Kuldeep Singh 226 TAXMAN 0133 (Delhi)

- Transfer of shares made by assessee company/Corporate entity to its step down subsidiary without consideration is a valid gift and cannot be regarded as transfer of capital asset for purpose of capital gains taxation, as provided in section 47(iii). REDINGTON (INDIA) LIMITED. vs. JCIT, (2014) 40 CCH 0527 Chen Trib
- Expenditure incurred by assessee on laying of power transmission lines which upon erection, would constitute the exclusive property of another party, would be revenue in nature since same was incurred to facilitate assessee's own business and fixed capital of the assessee was untouched. ACIT vs. DHAMPUR SUGAR MILL PVT. LTD. (2015) 370 ITR 0194 (All)
- Where the entire interest expenditure was attributable to business in which resultant income was assessable to tax, disallowance u/s 14A is not warranted. ACIT vs. DHAMPUR SUGAR MILL PVT. LTD. (2015) 370 ITR 0194 (All)
- In computation of income of the assessee for the A/Y, the precedence has to be given to unabsorbed depreciation before allowing unabsorbed investment allowance. SESHASAYEE PAPER & BOARDS LIMITED vs. DCIT, (2015) 374 ITR 0619 (SC)
- Where AO had neither expressed satisfaction nor gave cogent reason that the assessee's claim u/s 14A was incorrect, and then no disallowance u/s 14A was warranted. DBH INTERNATIONAL PVT. LTD vs. INCOME TAX OFFICER vs (2015) 44 CCH 0561 Del Trib
- Ice-cream and the Mawa fall in the genus of the dairy/milk products and thus are covered by the nature of declared dairy business of the assessee and same was allowable was revenue expenditure. ACIT vs. GRAVIS FOODS PVT LTD. (2015) 44 CCH 0560 Mum Trib

TRANSFER PRICING CASE LAWS - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- Where the assessee had paid the Royalty and technical knowhow fees at the rate of 8% on export sales and at 5% on domestic sales and the

TPO did not examine the reasons for the variation in the rate of royalty, further the TPO did not give any valid reason for accepting the payment made in respect of export sales, when the rate of royalty for export sales was higher than the rate paid on domestic sales, the issue required fresh examination. *SULZER PUMPS INDIA LIMITED vs. JCIT* (2015) 44 CCH 0178 MumTrib

INTERNATIONAL TAXATION CASE LAWS - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- When amount received by assessee was not in nature of "Fee for technical services" as per definition of Article 13(4)(c) of the India-UK DTAA, there was no necessity to examine about its taxability u/s 9(1)(vii). *IMG MEDIA LIMITED vs. DDIT (INTERNATIONAL TAXATION)*, (2015) 44 CCH 0553 MumTrib
- Income derived by non-resident in respect of professional services or other independent activities of similar character performed in India can be taxed in India if he is present in India for period or periods aggregating to 90 days or more in relevant fiscal year or has fixed base regularly available to him in India for purpose of performing his activities. *OUTOTEC INDIA PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX*, (2015) 44 CCH 0312 Del Trib
- The above facts would indicate that the pith and substance of each of the contracts/agreements is inextricably connected with prospecting, extraction or production of mineral oil. The dominant purpose of each of such agreement is for prospecting, extraction or production of mineral oils though there may be certain ancillary works contemplated thereunder. If that be so, we will have no hesitation in holding that the payments made by ONGC and received by the non-resident assessee's or foreign companies under the said contracts is more appropriately assessable under the provisions of Section 44BB and not Section 44D of the Act. On the basis of the said conclusion reached by us, we allow the appeals under consideration by setting aside the orders of the High Court passed in each of the cases before it and restoring the view taken by the learned Appellate Commissioner as affirmed by the learned Tribunal. *ONGC vs CIT*, 376 itr 306 (SC)

CORPORATE LAWS - BY SHRI PRADEEP K MITTAL ADVOCATE - 9811044365

- Where a petition under Section 111A of the Companies Act seeking directions of the Company Law Board for transfer of shares and rectification of register of members pursuant to a Memorandum of Understanding between two groups of shareholders is filed, but there are allegations that consideration for shares was not received and signature of the Transferor have been forged, such disputed questions of fact cannot be gone into under summary jurisdiction of the Board and the petition is liable to be dismissed. *B Subitha Kumar Vs. El Shaddai Biologicals Ltd. and Ors.* (2015) 127 CLA 428 (CLB).

CENTRAL EXCISE -BY SHRI PRADEEP K. MITTAL-9811044365

- The Tribunal, at the time of consideration of stay application, must come to the prima facie opinion about the merit of the case, which should be backed by proof of reasons for coming to such conclusion directing the party to make pre-deposit otherwise the order of the Tribunal directing the party to make deposit as a condition precedent for hearing of appeal, is liable to be set-aside and the Tribunal is directed to consider the stay application afresh. *Mono Steel Vs. Union of India* 2015 (322) ELT 259 Chhattisgarh.
- Delivery charges recovered by the Petroleum Company for delivery of gas cylinder is not includable in the assessable value U/s 4 of the Central Excise Act. *Hindustan Petroleum Corporation Ltd. Vs. CCE* 2012 (322) ELT 262 Karnataka.
- When the duty has been paid on supplementary invoice raised due to price revision and the duty is reflected in the monthly return so filed by the assessee with the Department, the Department cannot seek invocation of extended period of limitation of 5 years since the Department has been put to notice. *CCE Vs. V.V. Industries Pvt. Ltd.* 2015 (322) ELT 269 Punjab & Haryana.
- In case, the order of commissioner does not deal with retraction of statements of the director of the assessee, buyer of finished goods and supplier of raw material and upon appreciation, Tribunal has set aside the demand confirmed by the Commissioner, no question of law arises for High Court to consider the tax appeal what to speak of substantial questions of law. *Commissioner Vs. FACT Paper Mills Ltd.* 2015 (322) ELT Page 283 Gujarat.
- When the assessee has not maintained separate account for the Cenvat Credit taken and used for manufacture of dutiable as well exempted

goods, the assessee has the option to pay 8% of the value of the exempted goods and take the Cenvat Credit even on exempted goods. CCE Vs. Escorts Ltd. 2015 (322) ELT 325 Punjab & Haryana.

- At the time when the Cenvat Credit was taken, the finished product was dutiable and immediately thereafter one of the finished products has become exempted, the Cenvat Credit so taken is not liable to be reversed since at the time of taking Cenvat Credit the finished product was liable to payment of duty. CCE Vs. HMT (TD) Ltd. 2015 (322) ELT 342 Punjab & Haryana.
- Even if the two Companies between whom there is business dealings and these two Companies are holding subsidiary companies, they cannot be held to be related person unless both have interest in the business of each other. The interest should be mutual. In the absence of mutuality of interest, the parties cannot be declared as related person. CCE Vs. Goodyear C Asia Tyre Pvt. Ltd. 2015 (322) ELT 389 SC.
- Cutting of conveyor belt into smaller size does not amount to manufacture within the meaning of Section 2F of the Central Exise Act unless the Department establishes that the said smaller pieces has resulted/transformed into a new marketable product. CCE Vs. Tejo Engineering Services Pvt. Ltd. 2015 (322) ELT 418 SC.
- During the process of die-casting aluminium parts, aluminium dross and ash emerge under a by-product, no manufacturing process involved hence no excise duty is payable on aluminium dross and ash. Bajaj Auto Ltd. Vs. CCE 2015 (322) ELT 419 SC.
- When the Show cause notice has been issued seeking to raise demand of duty, the assessee has filed reply to the Show Cause Notice but no adjudication to the Show Cause Notice has taken place for a period of 18 years. The writ petition has been filed on the ground of undue delay and the Department has no explanation except saying that the file was not traceable, the Show Cause Notice and the proceedings are liable to be quashed. Lanvin Synthetics Pvt. Ltd. Vs. Union of India 2015 (322) ELT 429 Mumbai.
- For the purpose of claiming of remission of duty on the ground of fire in the godown, the burden is on the assessee to prove that the fire was due to natural causes and on which the assessee has no control. Since in this case, the Chief Fire Officer has given a report that the fire could be due to careless smocking of beedis/cigarettes and further there is nothing on record to show the steps taken by the assessee to avoid fire accident, the assessee is not entitled to remission of duty due to loss of goods because of the fire accident. CCE Vs. Gangeshwar Ltd. 2015 (322) ELT 444 Allahabad.

SERVICE TAX –BY SHRI PRADEEP K. MITTAL-9811044365

- The Service Tax paid on insurance policy taken for Group Health Insurance Scheme of employees, Cenvat Credit is permissible when no premium has been charged from the employees. The Service Tax paid on construction of Hostel and Gym within the Global Training Centre is not permissible as the construction was not done for setting up of office premises where from the services were provided. On an issue where two views were possible because of various circular instructions from the Department, extended period of limitation shall not be invocable as there is no deliberate intent on the part of assessee to evade payment of tax and duty. Infosys Ltd. Vs. Commissioner of Service Tax 2015 (39) STR 862. Tri.
- The amount deposited by the Assessee either at the time of investigation or at the time of adjudication of the Show Cause Notice are in the nature of deposit made under protest and, therefore, the principle of unjust enrichment shall not apply and the appeal of the assessee has ultimately been allowed and refund is ordered to be granted and the assessee will be entitled to refund CCE Vs. Pricol Ltd. 2015 (39) STR 190. Tri.
- When the Tribunal is remanding the case back to the adjudicating authority, the Tribunal cannot order for deposit of the amount, which was kept by the Appellant at the time of consideration of stay application. When the appeal was filed for the first time, the Order of the Tribunal, which require the Appellant to continue to keep the amount, is set aside and the adjudicating authority shall adjudicate the Show Cause Notice afresh and without any direction of deposit of any amount by the assessee. Vuvidha Sign Studio Pvt. Ltd. Vs. CCE 2015 (39) STR 196 Delhi High Court.
- When the assessee is establishing service centre in different offices of transport department in discharge of the statutory functions under the Motor Vehicle Act 1988 and the services so rendered does not amount to customer care promotion, marketing services or auxiliary services, the assessee is not liable to payment of Service Tax. CCE Vs Smart Chip Ltd. 2015 (39) STR 197 (M.P).
- When the Appellant is working as job worker under Notification No.214/86-CE and is carrying out the activity of machining and flame hardening on forging received from the principal manufacturer and after doing the job-work, the same has been returned to the principal manufacturer and the principal manufacturer is clearing the final product upon payment of excise duty, the assessee is not liable to pay Service Tax on such machining and flame hardening activities. Premier Ltd. Vs. CCE 2015 (39) STR 218 Tribunal.

- No Service Tax is payable on registration fee and examination fee since the same cannot be considered as remuneration or consideration for the services rendered to the students by the Institute who is rendering commercial/coaching services. Speed Wings Academy for Aviation Services Vs. CCE 2015 (39) STR 238 (Tribunal).
- When the foreign banks are providing services of collection and remittance of sales proceeds, such services would fall within the definition of input service and the input service receiver is liable to pay Service Tax under reverse charge mechanism. Lupin Ltd. Vs. Commissioner of Central Excise 2015 (39) STR 249 (Tribunal).
- When the assessee has taken the risk upto the customer place and the goods are supplied on FOR basis and the amount of freight has not been included in the assessable value of the goods, the Service Tax paid on outward freight is permissible to be taken as Cenvat Credit in view of the fact that the ownership of the goods and the risk remains with the assessee till delivery of goods at the customer doorstep. 2015 (39) STR 293 (Tribunal) Bhushan Steel Ltd. Vs. Commissioner, Central Excise.
- The Service Tax paid on catering services used in canteen for providing food to employees within the factory premises, which is mandatory requirement under the Factories Act, the Cenvat Credit is allowable to the assessee and cannot be allowed to the extent the amount is recovered by the Company from the employees. CCE Vs. Mahindra & Mahindra Ltd. 2015 (39) STR 298 (Tribunal).
- The Service Tax paid on courier services, which have been availed for the purpose of dispatch of cheques for payments of invoices and purchase orders and all these activities are the integral part of business and, therefore, Cenvat Credit is permissible. The Service Tax paid to travel agent who has provided air tickets for visit to various places for procurement of input and sale of finished goods, Cenvat credit is permissible CCE Vs. Mindarika Pvt. Ltd. 2015 (39) STR 309 (Tribunal).
- The Service tax paid to Pandal Keeper for providing Shamiana under which the plant and machinery is lying in open and for protection against rain and dust and the said machinery is lying before the same could be installed in the factory, the Service Tax paid is allowable as the same is used for the business purpose. Dalmia Cements Ltd. Vs. Commissioner of Central Excise 2015 (39) STR 310 Tribunal.

CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436

- The court should be liberal in setting aside ex-parte proceedings and also in restoring the suit dismissed in default because ordinarily the

litigant should be allowed to have judgment on merits and no on account of default. Rahul Vaid Vs. Balraj Vaid. 2015(222) DLT 32. DHC.

- In suit for possession filed by the plaintiff, the plaintiff is entitled to summary judgment in his favour as long as rent is more than Rs.3500/- per month and so long as landlord is able to prove that he is a person entitled to receive the rent or to whom rent has been paid by the tenant. However, landlord is not required to prove that he is owner. Ravi Somani Vs. Sandeep Tayal 2015(222) DLT 1. DHC.
- The court have jurisdiction to try all suits of civil nature unless the right which is sought to be enforced is either expressly or implied by barred by law. There could be implied bar which may, however, arise only special rights lays down special remedy. The implied bar need not be inferred easily. In case legislature intends to bar institutions of civil suits, it should not hesitate to say so specifically. Today Homes & Infrastructures (P) Ltd Vs. MCD 2015(222) 182 (DB).
- The civil suit having been filed in 2004 and the amendment to the suit having taken place in 2008, when the documents were available to the plaintiff all along but did not file the same, now, at the belated stage, the plaintiff cannot be allowed to file documents when the stage for filing documents has expired/lapsed. Capital Meters Ltd Vs. J Johnflex Industries 2015 (221) DLT 606 (Delhi DB).
- The parties by consent cannot confer the jurisdiction upon the Court, if otherwise, the said Court does not have the jurisdiction. Videocon Industries Ltd. Vs. GAIL India Ltd. 2015 (222) DLT 6 (CN) DHC.
- In case the Agreement to Sell is unregistered and unstamped no right can be claimed under these documents. Even if Power of Attorney is registered, the Power of Attorney does not confer any right of ownership in the immovable property. Yeshvir Singh Tomar Vs. Dr. O.P.Kohli 2015 (222) DLT 285 DHC.
- Even if two views are possible on the facts of the case then Court cannot modify same in revision petition. In revisional jurisdiction, Court is required to look into pleas taken before trial Court and other party cannot be taken by surprise to deal with an issue which was never raised before trial Court and thus no factual foundation is laid down. Kranti Kumar Parakh Vs Annraj Narain Dass & Ors. 221(2015) Delhi Law Times 491.
- Unless the judgment is signed and sealed, it is not a judgment in strict legal sense and said order can be recalled and altered to certain extent. Sri Sharada Institute of Indian Management Research Vs Rakhee Nandwana Bohra & Ors. 221(2015) Delhi Law Times 3A (CN).

- Inherent powers of High Court not to be invoked to quash proceedings arising out of complaint and alternative and efficacious remedy available to petitioner to urge pleas before Trial Court. At the stage of framing of notice under Section 251, Cr.P.C, Trial Court not expected to function like post office and mechanically frame notice but bound by law to apply its mind to find out whether *prima facie* case is made out against accused or not. Bal Ram Vs BSES Rajdhani Power Ltd. & Anr 221(2015) Delhi Law Times 4(CN).
- Pleading is not the evidence and case are required to be decided on the basis of evidence produced before the court. Court cannot proceed on the basis of mere pleadings unless same is admitted, and if disputed, must be substantiated by acceptable evidence. Sahana Pal Vs U.K. Samanta, 222(2015) Delhi Law Times 81.
- Replication does not form part of pleading. Sahana Pal Vs U.K. Samanta, 222(2015) Delhi Law Times 81.
- Dropping of proceedings at notice stage cannot possibly be equated with recalling of summoning order. Raj Buildcon Construction Ltd. 7 Ors. Vs Kotak Mahindra Bank P. Ltd. 221(2015) Delhi Law Times 23 (CN).
- If two views are possible, one favouring assessee must be adopted. This rule would apply a *fortiori* in cases where Assessee's claim consistently accepted by Revenue in the past. Mool Chand Khairati Ram Trust Vs Director of Income Tax (Exemptions) 222(2015) Delhi Law Times 102 (DB).
- Where the cheque is drawn by the employee of the appellant company on his personal account for discharging dues of the appellant company and its directors, he cannot be made liable under Section 138 of the Negotiable Instruments Act. But, if the employee holds the position of the Managing Director, he will be liable under Section 138 even though the company has not been named in the notice or complaint. Mainuddin Abdul Sattar Shaikh Vs Vijay D Salvi [2015] 127 CLA 352(SC).
- Affidavit in the form of Undertaking filed by the Defendant after dismissal of SLP and which categorical averment to pay mesne profits from 01.02.1980 till delivery of vacant possession. Hence, Defendant cannot be permitted to resile from Undertaking given to Supreme Court. Anil Kumar Khanna & Ors. Vs. Indian Tourism Development Corporation Ltd. 222 (2015) DLT 119.

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

- Where parties to the contract have agreed that the interest would not be awarded, the Contractor could not have claimed interest on the amount to be paid under the contract either before a civil court or before an arbitral tribunal. Sub-Section (7) of Section 31 categorically specifies that the arbitrator is bound by the terms of the contract as far as award of interest from the date of cause of action to the date of the award is concerned. Union of India Vs. Bright Power Projects (I) (P) Ltd. (2015) 127 CLA 357 (SC).

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