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MONTHLY REPORT FOR JANUARY, 2016
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CIRCULARS AND NOTIFICATIONS ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS (MCA) IN THE MONTH OF DECEMBER, 2015

▪ **Notification dated 14.12.2015.**

The Ministry came with a notification dated 14.12.2015 enforcing Section 13 and 14 of Companies (Amendment) Act, 2015 w.e.f 14.12.2015. The said section amends Section 143 and Section 177 of Companies Act, 2013 respectively.

http://www.mca.gov.in/Ministry/pdf/Companies_Amendment_act_14_122015.pdf

▪ **Notification dated 14.12.2015**

The Ministry issued a notification on 14.12.2015 amending the Companies (Meetings of Board and its Powers) Rules, 2014 by inserting Rule 6A in Companies (Meetings of Board and its Powers) Rules, 2014 for the Omnibus approval for related party transactions on annual basis. The said notification is authorising the Audit Committee to grant approval for related party transactions on annual basis. The approval can be obtained subject to certain conditions mentioned in the notification. The approval will be valid for one Financial Year. The ceiling limit for the transaction will be Rs.1,00,00,000/- (Rs. One Crore only) per transaction.

The Rule 10 of Companies (Meetings of Board and its Powers) Rules, 2014 is being omitted w.e.f 14.12.2015.

In sub-rule (3) of Rule 15, the word "Special Resolution" shall be substituted by the word "resolution".

http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_14122015_1.pdf

▪ **Notification dated 14.12.2015**

The Ministry came with a Notification dated 14.12.2015 substituting Rule 13 of the Companies (Audit and Auditors) Rules, 2014. Rule 13 will be Reporting of Frauds by auditor and other matters.

Rule-13(1)- If an auditor of a company, in the course of the performance of his duties as statutory auditor, has reason to believe that an offence of fraud, which involves or is expected to involve individually an amount of rupees one crore or above, is being or has been committed against the company by its officers or employees, the auditor shall report the matter to the Central Government.

Rule-13 (5)- The provision of this rule shall also apply, *mutatis mutandis*, to a Cost Auditor and a Secretarial Auditor during the performance of his duties under section 148 and section 204 respectively.

http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_14122015.pdf

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

- The Appellate Tribunal has held that the expression "reason to believe" as appearing in Section of 5 of Prevention of Money Laundering Act, is not the same as suspicion or doubt. Belief is a higher level of the state of mind. When it is said that a person has reason to believe a thing, it means that the circumstances and facts known to him are such that a reasonable man, by probable reasoning, can conclude or infer regarding the nature of the thing concerned. It may not be an absolute conviction or inference. But it may be a possible conclusion or prima facie conclusion. There is nothing on record to suggest amount which has been attached by the Department is a proceed of crime and hence order of Authority is bad in law. Amit Pandey Vs. Directorate of Enforcement MANU/ML/0026/2015.
- The Appellate Tribunal has held that at the adjudication stage, it is important to consider that right to property is a valuable right which is restricted on a prima facie view of the Complainant arrived at on the basis of material in his possession and without affording any opportunity to the defendant. Adjudication proceedings under the provisions of section 8 of PMLA is the first stage where for the first time an opportunity is granted to defendant to put up his defence in order to explain and to show that the property attached is acquired out of legitimate means; it is not involved in money laundering and it is not liable to be attached. Section 8(4) of PMLA provides that on confirmation of order of provisional attachment, the Enforcement Director shall forthwith take possession of the property attached under section 5 of PMLA. Thus, if an order confirming provisional attachment of property is passed without giving reasonable opportunity, the defendant will be deprived of his valuable rights in the property under attachment and the principal of natural justice shall have to be followed. Surendra Kr Sharma Vs Enforcement Directorate MANU/CM/0019/2015.
- The Appellate Tribunal has held that when appellant did not have any nexus with the accused Shri Paramjit Singh Sandhu or his wife Smt. Parminder Kaur, that he did not know about the criminality attached to the subject property and that the appellant is a bona fide purchaser of the subject property in good faith for consideration. We accordingly hold that the subject property i.e. residential house No. B-32-E, 14/6290 Plot No. 53 - 54, New Akash Nagar, Village Bhura, Jalandher By Pass, Ludhiana in the hands of appellant is not proceeds of crime and is therefore, not liable to provisional attachment and confiscation under PMLA are set aside. Sanjeev Kumar Vs. Enforcement Directorate MANU/MC/0034/2015.

COMPETITION ACT - BY SHRI PRADEEP K. MITTAL-9811044365

- The Commission has held that the Informant failed to place any evidence or material on the basis of which it can be said that there exists any agreement among the Opposite Parties with regard to fixation of high interest rates charged from customers/general public. The clauses of section [3\(3\)](#) of the Competition Act relating to anti-competitive agreements among the market players engaged in providing identical services is applicable to the facts of the instant case. Mohd Tariq Vs. Hongkong & Shanghai Banking Corporation MANU/CO/0086/2011.
- The Competition Commission refused to take cognizance of a complaint filed by the Petitioner by holding that the Informant has the choice of selecting specialized contractors to carry out the construction of hook-up facility and it is not dependent upon Respondent Company only for constructing the same. Further, it was also held that the Respondent has also not insisted on any precondition for providing access to EWPL through a hook-up facility. Therefore the alleged conduct does not amount to an abuse under section [4](#) of the Competition Act.

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

- When CLB has dismissed the company petition saying that on a petition for rectification of register of member, the disputed issues like signatures have been forged or there is an overwriting in the share transfer forms, could not be adjudicated since the CLB has summary jurisdiction. The findings of the CLB are not perverse and are in accordance with the law. Bharam Gauda A Patil Vs. Sanjay Founders Pvt. Ltd. 2015 (129) CLA 319 Bombay.
- The limitation to file a complaint against the Company and its defaulting Directors by Registrar of Companies in the Court of Additional Chief Metropolitan Magistrate shall start from the day the inspector has filed the inspection report with the ROC. The High Court has held that time taken by the RD or by Central Government to consider and grant approval to ROC cannot be excluded for the purpose of granting the period of one year from the limitation prescribed under the provisions of Section 468 of Cr.P.C. Kavi Arora Vs. ROC 2015 (129) CLA 328 Delhi.
- The employee of the Company is competent to file winding up petition against the Company who has refused to pay his salary and wages and on which there is no dispute and the said employee will be treated as creditor of the Company. J.Alam Vs. Zoom Developers Pvt.Ltd. 2015 (129) CLA 199 M.P.

- The decision of the majority of shareholders approving the Corporate Debt Reconstructing Scheme is final and binding on the Company and its shareholders/creditors. In a petition U/s 397 of the Companies, 1956 no stay can be granted against creation of charge or for implementation of the Corporate Debt Reconstructing Scheme can be granted. Serum Institute of India Ltd. Vs. Orchid Chemicals & Pharmaceuticals Ltd. 2015 (129) CLA 212 CLB Delhi.
- Removal of Director in a Private Company in an illegal manner amounts to acts of oppression. Inadequacy of the purchase consideration cannot be a valid ground for holding invalidity of transfer of shares when, undoubtedly, share transfer deeds have been signed. In the event of non-fulfillment/breach of any private arrangement between two promoters, to which the Company is not a party, cannot be a subject matter of Petition U/s 397 and 399 of the Companies Act, 1956. N.N Panchal Vs. Jap Agro Foods Private Limited 2015 (129) CLA 225 CLB.
- The allotment of shares shall be liable to be declared invalid when the allotment is not in the interest of the Company but the act of mala fide and in the interest of the Promoters. In case one set of shareholders have not received the notice of EGM, all business transacted thereat are also illegal and are liable to be set-aside. Rakesh Soni Vs. Neo Finance Pvt.Ltd. 2015 (129) CLA 251 CLB.

**INCOME TAX CIRCULAR, NOTIFICATION AND PRESS RELEASE -
BY SHRI MANOJ KUMAR MITTAL CA - 9810764620**

- The CBDT has issued a press release dated 27.10.2015 stating that the Income-tax Department is committed to the 'Digital India' initiative of the Government of India. The Finance Minister today launched an "e-Sahyog" pilot project which furthers the Department's commitment to work in an e-environment and reduces the need for the taxpayer to physically appear before tax authorities
- The CBDT has issued a press release dated 19.10.2015 stating that the Rules for determining ALP have been amended to allow for introduction of a "range concept" for determination of ALP and "use of multiple year data" for undertaking comparability analysis in transfer pricing cases. The amended regime will be applicable for computation of ALP of international transactions and specified domestic transactions undertaken on or after 1/04/2014.
- In order to improve the taxpayer services, enhance the efficiency and to usher in a paperless environment for carrying out the assessment proceedings, CBDT dated 19.10.2015 has decided to initiate the concept of using email for corresponding with taxpayers and sending through emails the questionnaires, notice etc. at the time of scrutiny

proceedings and getting responses from them using the same medium on a pilot basis. This would eliminate the necessity of visiting the Income-tax Offices by the taxpayers, particularly in smaller cases, involving limited issues and where taxpayer is able to provide details required by the AO without necessitating his physical presence

- The CBDT has issued Instruction No. 15/2015 dated 16.10.2015 in which it has set out revised and updated guidance for implementation of transfer pricing provisions. The Instruction sets out the circumstances in which a reference can be made to the TPO by the AO, the role of the TPO when such a reference is made, the role of the AO after determination of the ALP by the TPO, etc. The Instruction is of crucial importance to all taxpayers and professionals engaged in the practice of transfer pricing law.
- The CBDT has issued a press release dated 14.10.2015 stating that the condition of obtaining the certificate for claiming expenditure under section 80DDB in respect of specified ailments from a specialist working in a Government hospital has been amended. As per amended Rule 11DD, the prescription can be issued by any specialist mentioned in the amended Rule. Henceforth, it will not be mandatory to obtain a certificate from a specialist working in a Government hospital.
- The CBDT has issued Instruction No. 14/2015 in which important directives have been set out with regard to framing of scrutiny assessments in cases of assessee engaged in the business of Mining
- The CBDT has issued a directive dated 07.10.2015 in which it has noted that the implementation of its previous directive that Assessing Officers should give prompt and proper effect to the appeal orders of the CIT(A) is found wanting. The CBDT has sternly directed the Pr. CCsIT, DGsIT and CCsIT to urgently monitor that the Assessing Officers give timely effect to the CIT(A)'s order and that there is no grievance caused to taxpayers
- The Central Government vide notification dated 29.10.2015 has notified the old tolerance limit under the proviso 7 to section 92C of 1% for whole sale trading and 3% for others.
- Govt. clarifies tax treatment of offshore rupee-denominated bonds, it states that Gains arising in case of appreciation of rupee against foreign currency, in which the investment is made, would be exempted from capital gains tax.

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

- The amount of service tax collected by the assessee from its various clients is not to be included in gross receipt while computing its income under the provisions of section 44BB. DIT vs. MITCHELL DRILLING INTERNATIONAL PVT. LTD. (2015) 94 CCH 0031 Del HC
- 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 assesseees 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. OIL AND NATURAL GAS CORPORATION LTD. vs.COMMISSIONER OF INCOME TAX AND ANOTHER, (2015) 376 ITR 0306 (SC)
- Arranger was not in charge of entire or part of the transaction of arranging services, hence, it cannot be termed as managerial or consultancy services and Arranger fee cannot be held to be taxable u/s 9(1)(vii) also and therefore, no TDS was deductible on such payment. (2015) 123 DTR 0030 (Mumbai)(Trib),

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

- Where Revenue and assessee had not followed any of the prescribed method envisaged in r 10B of the Income-tax Rules for determining the Arm's Length Price as provided u/s 92C of the Act, then method of computation adopted by both was erroneous and matter was justified to be remitted so as to compute the ALP as per the provisions of the Act. (2015) 45 CCH 0088 ChenTrib
- It is not open to the Revenue to reject segmental working prepared by the assessee in respect of two functionally different international transactions without pointing out any defect. (2015) 169 TTJ 0257 (Mumbai)

CASE LAWS - BY SHRI MANOJ KUMAR MITTAL CA - 9810764620

- The provisions of Sec.40(a)(ia) of the Act are meant to ensure that the Assessee's perform their obligation to deduct tax at source in accordance with the provisions of the Act. Such compliance will ensure revenue collection without much hassle. When the object sought to be achieved by those provisions are found to be achieved, it would be unjust to disallowance legitimate business expenses of an Assessee. Despite due collection of taxes due, if disallowance of genuine business expenses are made than that would be unjust enrichment on the part of the Government as the payee would have also paid the taxes on such income. In order to remove this anomaly, this amendment has been introduced. In case of payment to non-resident, the government does not have any other mechanism to recover the due taxes. Hence, no amendment was made in section 40(a)(i). The legislature has not given blanket deduction u/s 40(a)(ia). For the aforesaid reasons, it was held that Finance Act, 2003, to the extent indicated above, was curative in nature, hence, it was retrospective and it would operate w.e.f. 1st April, 1988 (when the first proviso came to be inserted). RAVI SPICE PROCESSORS P. LTD. vs. ACIT, (2015) 45 CCH 0094 BangTrib
- Where profits arising out of the sale of land were utilized for charitable activities of the Trust as per the provisions of s 11, 12 & 13, then benefit u/s 11 could not be denied to the Charitable Trust. ITO vs. MAGUNTA RAGHAVA REDDY CHARITABLE TRUST (2015) 45 CCH 0090 ChenTrib
- Additions made, without based on any incriminating material found during search operation, are not sustainable in the eyes of law. ACIT vs. DELHI HOSPITAL SUPPLY PVT. LTD. (2015) 45 CCH 0092 DelTrib
- The provisions of Section 80P(4) would not attracted unless the cooperative society was recognized by RBI as a cooperative bank as per the rules made under Reserve Bank of India Act. ITO vs. KPTC & HESCOM EMPLOYEES CO-OP CREDIT SOCIETY LTD. (2015) 45 CCH 0093 BangTrib
- Processing charges and other expenses incurred by assessee in connection with the loan borrowed being in the nature of interest as per the definition of interest given in section 2(28A) are allowable as nosiness expenditure. DEPUTY COMMISSIONER OF INCOME TAX vs. BELAIR LOGISTICS LTD. (2015) 44 CCH 0096 HydTrib

- The Madras High Court has held that the complainant has not at all established the alleged fact that the cheque, in question has been issued only in respect of an enforceable debt. Further, the evidence available on the side of the accused has clearly established to the effect that the cheque, in question as well as pronote in blank form have been obtained by the appellant/accused at the time of execution of Ex-P1 and by falsely utilizing the same. Since the cheque, in question is not supported by consideration and the same has not been given in favour of the complainant in respect of an enforceable debt, the Court cannot automatically come to a conclusion that accused has committed an offence punishable under Section 138 of the Negotiable Instruments Act. K S Balaram Investment Vs. V Sankaran MANU/TN/3462/2015.
- The Division Bench of Himachal High Court has held that a plain reading of the aforesaid provision i.e. Section 18 shows that a person aggrieved by an order made by Debt Recovery Tribunal under Section 17 of the Securitisation Act is entitled to prefer an appeal to the Appellate Tribunal and the deposit of 50% of the amount of debt due from the appellant. However, as per the third proviso, the same may be reduced by the Appellate Tribunal upto 25% for the reasons to be recorded in writing.
- The condition of making pre-deposit in terms of Section 18(1) of the Securitisation Act is mandatory for entertaining any appeal and there is no reason to exempt the appeals arising out of the orders passed by the DRT on interlocutory applications. Amy Agro (P) Ltd Vs. State Bank of Patiala MANU/HP/1006/2015.
- In a Complaint U/s 138 of NI Act when there are allegations that the Directors are in charge and responsible for day today management of the Company, the complaint is not required to be quashed by the High Court. The Supreme Court has relied upon SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla 2005 (68) CLA 192. (Editorial Note: The Supreme Court has completely overlooked his earlier judgments wherein the Supreme Court has viewed that merely saying that the person is in charge and responsible for day-to-day affairs of the Company is not enough and the complaint must spell out in what manner and in what way, the accused are responsible for day-to-day affairs of the Company. Tamil Nadu Newsprint & Papers Ltd. Vs. D. Karunakar 2015 (129) CLA 315.
- Employees of a Company can file a company petition under clause (e) of Section 433 of the Companies Act,1956 as a creditor in respect of his unpaid wages or salary and emoluments. Jonathan Allen Vs. Zoom Developers (P) Ltd. 2015) 129 CLA 199 (MP)

- Winding up is not a matter of right but it is discretion of court on any one of the grounds mentioned in Section 433 of the Companies Act. Though the statutory notice raises the presumption as to inability to pay its debts, the same is rebuttable. Where the facts alleged require cross-examination of a large number of persons, the petition for winding up is not maintainable and the same is liable to be dismissed. *Tasneem Patel Vs. AAT Academy India Ltd.* (2015) 129 CLA 42 (Mad.).
- It is settled proposition of law that the provisions of the Limitation Act would apply in a company petition filed under Section 111/111A of the Companies Act, 1956. *Neelesh Kanade Vs. Edifice Properties (P) Ltd. and Others* (2015) 129 CLA 83 (CLB).
- Where the company is not only tendered the amount admitted by it but also tendered the amount disputed by it for which debt notes were issued, this itself showed that the company was able to pay its debts and could not be considered commercially insolvent. Further, where there was a substantial dispute with regard to the delayed payment charge, the omission on the part of the Respondent Company to pay charges could not be inferred as indicating that it was unable to pay debts. *Nakshatra Steel Sales & Services Ltd. & Others. Vs. Radlay Metal Products (P) Ltd.* (2015) 129 CLA (Snr.) 4 (Del)
- The time period taken by the Regional Director (RD) to take decision to direct the Registrar of Companies (ROC) to launch prosecution for offences u/s 211(3A)/(3B)/(3C)/(7) cannot be excluded for the purpose of computing the period of limitation as both the RD and ROC are competent to launch prosecution once they have knowledge of the commission of the offences.
- Limitation of one year starts when the inspection reports are filed by the inspector either with the RD or the ROC, and since for the offences under Section 213(3A)/(3B)/(3C)/(7), no consent/sanction for prosecution from the Central Government is required, sub-section (3) of Section 470 of the Code of Criminal Procedure cannot be relied upon by the Respondents for exclusion of any time period and the complaint stands barred by limitation having been filed after expiry of one year from date of knowledge. *Kavi Arora Vs. Registrar of Companies* (2015) 129 CLA 328 (Del.).
- The offences in the present case are not continuing in nature and limitation commenced as per clause (b) of sub-section (1) of Section 469 of Code of Criminal Procedure, 1973 (Code) when actionable knowledge was gained by the Competent Authority. Complainant cannot take shelter of sub-section (3) of section 470 of the Code for exclusion of time taken by Central Government to give instructions to the ROC. Summoning order and other proceedings are liable to be

quashed. Kavi Arora Vs. Registrar of Companies (2015) 129 CLA 328 (Del.).

- Statement of Affairs to be made to Official Liquidator and in the case of default in compliance, complaint under Sections 454(5) & (5A) of the Companies Act cannot be made mechanically. Court is required to carefully consider whether alleged default was there and same should be without reasonable excuse. Karun Raj Narang, Ex. Director, M/s Eastern Medikit Ltd. & Ors. Eastern Medikit Ltd. through the Official Liquidator, 225 (2015) Delhi Law Times 520 (DB).

CENTRAL EXCISE –BY SHRI PRADEEP K. MITTAL-9811044365

- If the final judgment of the Excise Tribunal is beyond the allegations leveled by the Department in the Show Cause Notice (SCN), the final judgment is bad in law since it is settled principle of law that the order/final judgment cannot travel beyond SCN. Caprihans India Limited Vs. CCE 2015 (325) ELT 632 Tri (SC).
- If the pre-deposit has been made through Cenvat Credit and later on the party is entitled to refund of pre-deposit so made earlier, the party is entitled to seek refund of cash in stead of amount being credited to Cenvat Account since the unit has been closed or shifted to area where there is exemption from payment of excise duty. CCE Vs. Birla Textiles Mills 2013(325) ELT 651 (Delhi).
- Where the Department wishes to club the clearances of goods made by the alleged dummy units to deny the party the benefit of SSI Exemption, it is mandatory that the SCN must be issued to these alleged dummy units – otherwise the whole exercise is bad in law. CCE Vs. Urbane Industries 2015 (325) ELT 726 (Madras).
- When the Invoices shows that the old machine has been sold after the use of the same for more than ten years, cenvat credit so taken at the time of acquisition, becomes zero and the party is not liable to reverse any amount as a cenvat credit. The party wrongly reverse the credit at the time of sale of machine and, therefore, entitled to take credit. Intas Pharmaceuticals Ltd Vs. CCE 2015 (325) ELT 787 (Tri).
- The Company has not been selling the Motor Cycle by following the assessable value comprising of cost of production plus reasonable profit , price driven by market force and, therefore, the interest on the deposit at the time of booking the Motor Cycle cannot be considered as additional consideration. CCE Vs. Hero Honda Motors Ltd. 2015 (326) ELT 8.

- When it is claimed by the Department that the Final Order has been sent by registered post but the Department could not produce AD - service is not complete within the meaning of Section 37C of Central Excise Act. OSA Shipping (P) Ltd Vs. CCE 2015 (325) ELT 486 Madras.
- If the order passed is contrary to the allegations contained in the SCN – when SCN says that no new product emerges but, however, Tribunal holding that new products emerges. The order of the Tribunal is liable to be set aside on this ground alone and the appeal is the appellant is allowed. Caprihans India Ltd Vs. CCE 2015 (325) ELT 632 (SC).
- The appellant made pre-deposit, at the time of grant of stay, through Cenvat Credit account and the Tribunal now allowing Cash Refund of such Cenvat Credit so reversed on the analogy that the manufacturing unit is now exempted to exempted hill area. No infirmity in the order of the Tribunal and the appeal of the Department is liable to be dismissed. CCE Vs. Birla Textile Mills 2015 (325) ELT 651 (Delhi DB).
- It has been consistent view of the Tribunal that for the purpose of clubbing clearances of alleged dummy unit so as to deny the benefit of SSI exemption to the principal unit, such dummy units are required to be given Show Cause Notices. In the absence of SCN to dummy units, the demand on principal unit cannot be confirmed. CCE Vs. Urbane Industries 2015 (325) ELT 726 Madras DB.
- The person whose statement has been relied upon by the Department in support of their case, he must be made available for cross –examination by the assessee – otherwise his testimony cannot be relied upon by the Department. The person who is neither witness nor made statement, assessee cannot ask the department to produce such witness. Dhariwal Industries Ltd Vs. CCE 2015 (325) ELT (Karnataka).
- The assessee clearing inputs to its sister units by reversing the cenvat credit and also on payment of interest but, however, cenvat of CVD has been left out due to bonaifde mistake, credit reversed is available to sister unit, it cannot be alleged that there was a fraud, collusion or willful statement or suppression of fact so as to invoke Section 11AC of Central Excise Act and equal mandatory penalty cannot be imposed. CCE Vs. Honda Siel Power Products Ltd 2015 (325) ELT 551 All DB.

SERVICE TAX –BY SHRI PRADEEP K. MITTAL-9811044365

- The value of room rent is not required to be included in the gross value of Mandap Keeper Service and the appellant be given full opportunity to produce evidence to show the gross value is inclusive of room rent – no service tax is payable on room rent. The Tribunal order set aside and High Court remanded the matter back to Tribunal to consider CA

Certificate or any other evidence as may be produced by the assessee. Dukes Retreat Ltd Vs. CCE 2015 (40) STR 871 (Bom).

- The demand of service tax can be challenged by way of writ petition in case the demand is palpably illegal – service tax on repairs of road was not at all leviable at the relevant time at all notwithstanding this, demand was raised by the Revenue which could be quashed on a writ petition – held by the Division Bench of Jabalpur High Court. MP Audhyogic Kendra Vikas Nigam Vs. CCE 2015 (40) STR 875 (MP).
- If the tax or duty is undisputedly and admittedly not payable yet the assessee has paid to the Department. Upon discovery of mistake, the party is entitled to seek re-credit and is not obliged to file refund claim as has been held by the Department. CCE Vs. Tamilnadu Petro-products Ltd 2015(40) STR 878 (Madras).
- The Kerala High Court declined to stay the operation of Rule 5A of Service Tax Rules, 1994 (which entitled CAG to carry out the Audit of Private Companies who are not government companies) but, however, admitted the Writ Petition seeking to challenge the validity of Rule 5A of Service Tax Rules, 1994. Inditrade Derivatives & Commodities Ltd Vs. Union of India 2015 (40) STR 880 (kerala).
- The day on which the impugned judgment/order has been served is liable to be excluded for the purpose of calculation of time period prescribed for filing an appeal as provided under the General Clauses Act. The delay of two days in filing an appeal is liable to be condoned by the Appellate Authority or Tribunal. Rotomac Global (P) Ltd Vs. CCE 2015 (40) STR 882 (All DB).
- The department issued garnishee order even prior to the issuance of show cause notice and obviously without confirmation of demand raised in the SCN and more particularly the assessee paid some adhoc amounts during the period of investigation, the order is liable to be quashed and set aside and the assessee is directed to pay the admitted service tax with the time allowed. Gopala Builders Vs. DG 2015 (40) STR 888 Guj DB.

CIVIL LAW - BY SHRI PRAVEEN K. MITTAL -9810826436

- Where Courts in two places may have jurisdiction, an exclusive jurisdiction clause in favour of one of the two places ousts jurisdiction of other. Jute Investment Co. Ltd. Vs. IDBI Capital Market Services Ltd. & Ors. With Rameshwara Jute Mills Ltd. Vs. Universal Cables Ltd. & Ors. 224 (2015) Delhi Law Times 727.
- Suit for recovery under Order XXXVII CPC filed by Plaintiff has been instituted not only on basis of defendant's written confirmation of

amounts due and payable to plaintiff, which would constitute 'written contract' under Order 37 Rule 1, CPC, but also on basis of Negotiable Instruments Act. Unrebutted averments made in plaint have to be accepted as correct. Defendant acknowledged having received goods from Plaintiff and confirmed in writing that they owed sum of Rs. 1,47,11,118/- to Plaintiff. Hence suit decreed with Pendente lite and future interest payable @ 12% p.a. Sakata Inx (India) Ltd. Vs. Rector India Ltd. & Ors. 224 (2015 Delhi Law Times 722).

- The proceedings U/s 138 of the Negotiable Instruments Act cannot be stayed by invoking powers U/s 446 of the Companies Act, 1956 replaced by Section 27/280 of the Companies Act, 2013. Though the word 'legal proceedings' in section 446 are wide enough to take in criminal proceedings also, such criminal proceedings must be in relation to the assets of the company. Poly K Ayyampally Vs. A Pradeep Kumar (2015) 129 CLA 36 (Ker.)
- In civil suit, evidence cannot be led beyond pleadings. Additional Evidence can be led at the stage of final arguments but not in all cases. Party cannot be allowed to fill up the lacunae by leading additional evidence including by failing to cross-examine witness of other side, when case is at the stage of final arguments without giving any plausible reasons. Mukesh Gulati Vs. Suraj Prakash Chauhan & Ors. 225(2015) Delhi Law Times 7
- Where there was an allegation in the complaint of dishonor of cheque by the accused company to the effect that the named accused were involved in day-to-day business of the accused company, there was no reason for sparing them by the High Court. The impugned order passed by the High Court is liable to be set-aside. Tamil Nadu News Print & Papers Ltd. Vs. D. Karunakar. (2015) 129 CLA 315 (SC).
- Where High Court is convinced that offences are entirely personal in nature and do not affect public peace or tranquility and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. Incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with situation in absence of express provision of law to secure ends of justice such as, where process is abused or misused; where ends of justice cannot be secured; where process of law is used for unjust or unlawful object; to avoid causing of harassment to any person by using provision of Cr.P.C. or to avoid delay of legal process in delivery of justice. Inherent power is not to be exercised to circumvent express provisions of law. Manu Srivastava & Ors. Vs. State & Anr., 225 (2015) Delhi Law Times 27.
- Once application of principles of natural justice is made mandatory by statutory provision, denial of hearing would in itself result in prejudice

requiring no further proof of prejudice on account of non-observance of principles of natural justice. Life Insurance Corporation of India Vs. R.K.Mahajan, Nandini Sundriyal, Man Singh Khushwaha, P.K. Singh. 225 (2015) Delhi Law Times 484 (DB).

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

- Only a party to the arbitration agreement can challenge an arbitral award under section 34 and not by a person who is not a party to the arbitration agreement unless covered by Sections 40 and 41 of the Arbitration and Conciliation Act,1996. However, if a person is wrongly impleaded as a party to the arbitration proceedings and aggrieved by the arbitral award, he can invoke section 34. Mukesh Nanji Gala and Others Vs. Heritage Enterprises and Others (2015) 129 CLA (Snr.) 1 (Bom).
- Interest for pre-reference/ present or post- reference period including pendente lite period till passing of award can be granted contrary to terms of contract where there is provision of interest. Non payment of interest can under no circumstances be justified in today's world and will amount to immorality and violation of public policy. Union of India Vs. N.K. Garg & Co. 224 (2015) Delhi Law Times 668.

SEBI LAWS - BY SHRI PRADEEP K MITTAL -9811044365

- In the event of emergence of a new Company, consequent upon scheme of arrangement as provided U/s 391 of the Companies Act, 1956, fresh registration fee is required to be paid to the SEBI but, however, where the Registered Company merges with another Company then in that event no fresh fee is required to be paid. VSE Services Ltd. Vs. SEBI 2015 (129) CLA 307 (SC).

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