

PKMG LAW CHAMBERS

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MONTHLY LAW REPORT FOR JULY, 2019

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REGULATORY UPDATES (Notifications/Circulars)

Notification/Circular	Date	Subject
1. MINISTRY OF CORPORATE AFFAIRS Notification No. G.S.R. 411(E)	04 JUNE, 2019	<p>Companies (Incorporation) Sixth Amendment Rules, 2019</p> <p>In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014, namely:—</p> <p>1. Short title and Commencement.—</p> <p>(1) These rules may be called the Companies (Incorporation) Sixth Amendment Rules, 2019.</p> <p>(2) They shall come into force with effect from 15th August, 2019.</p> <p>2. In the Companies (Incorporation) Rules, 2014 (herein after referred to as the said rules), in rule 19,—</p> <p>(i) in sub-rule (1), for the words, letters and figures “Form No.INC.12”, the words, letters and figures “Form INC-32 (SPICe)” shall be substituted.</p> <p>(ii) in sub-rule (3),</p> <p>(a) in clause (a), for the words “the draft memorandum”, the words “the memorandum” shall be substituted;</p> <p>(b) in clause (b), for the words “the draft memorandum”, the words “the memorandum” shall be substituted;</p> <p>3. In the Annexure to the said rules,— (i)</p>

		<p>in Form no.INC-11, in the heading, after the words and figures “sub-section (2) of section 7”, the words and figures “and sub-section (1) of section 8” shall be inserted.</p>
<p>2. MINISTRY OF CORPORATE AFFAIRS Circular No. 07/2019</p>	<p>10, MAY, 2019</p>	<p><u>Filing DIR-3 KYC under the Companies Act. 2013</u></p> <p>The Ministry of Corporate Affairs has received representations from stakeholders expressing certain difficulties in filing e-form DIR-3 KYC in accordance with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014. Requests have also been made for extension of period for filing such form.</p> <p>2. The matter has been examined and it is hereby informed that it is being proposed that every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service, with pre-filled data based on the records in the registry, for ease of verification by the person concerned. However, in case a person wishes to update his mobile no. or e-mail address, he would be required to file e-form DIR-3 KYC, as this facility of updation is not being proposed in the web-based service. In case of updation in any other personal detail, e-form DIR-6 may be filed for updation of the same before completion of KYC through the web-based service. 3. The amendment in the relevant rules including the amendment related to extension of time</p>

		<p>(allowing for adequate time) for completion of KYC through e-form DIR-3 KYC or the web-based service, as the case may be, is being notified shortly. Stakeholders are advised to take note of the same and file according to the revised notification.</p> <p>4. This issues with approval of the competent authority.</p>
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Companies Act, 2013 Case Studies
By Advocate P.K Mittal, +91-9811044365

- NCLT held that where the procedure prior to strike off has been complied and is challenged or alleged, burden is heavy on ROC to prove the compliance. If the ROC fails to do so, the order of striking off of the name of company becomes illegal and irregular and the original status of the applicant company is to be resorted as if the name of the company has not been struck off from the ROC with resultant and consequential actions. **Nirbhay Buildcon (P) Ltd. vs Registrar of Companies, Jharkhand CP (Appeals) No. 37/KB/2018.**

- NCLAT set aside order of NCLT u/s 58A of Companies Act, 2013, wherein the company rejected the claim of applicant towards the matured amount of Fixed Deposit on the ground that the said amount has been transferred to IEPF and period of seven years has been elapsed. NCLAT held that where the company acknowledged the receipt of Fixed Deposit (FD) it has to send notice to appellant before transferring said amount to IEPF, it can not contend that FD was matured for payment but remained unclaimed, therefore

stand transferred to IEPF without even giving prior notice to the depositor. **Narendra Kumar Dhoot v. Premier Ltd. and Others.**

- Supreme Court set aside Rajasthan High Court order dismissing revenue's appeal on the ground that company stands dissolved as a result of order passed by ROC u/s 560(5) of Companies Act, 1956 hence the appeal shall not be considered on merit. SC held that provision u/s 560(5) and Income Tax Act shall be duly noticed which specifically deals with "Dissolution of Business". thus the appeal shall stand admitted and revenue department is allowed to recover its dues. **LSI-87-SC-2019**
- NCLT allowed the appeal of Income Tax Department regarding restoration of name of respondent company whose name was struck off by ROC so that the Income Tax Department can continue the pending assessment proceedings against the respondent company. **Department of Income Tax v. Stelvary Ispat Pvt. Ltd.**

**Insolvency and Bankruptcy Code, 2016 Judgments
By Advocate P.K. Mittal, +91-9811044365**

- NCLAT held that though the board of directors of Corporate Debtors is suspended (for a limited period of maximum 180

days or extended by 90 days i.e. 270 days), but they continue to remain as Directors and members of Board of Directors for all purposes in the records of ROC under Companies Act, 2013. Thus a Corporate Debtor can prefer an appeal under section 61 of Code through the Board of Director, which, though, stands suspended after admission of application for initiation of CIRP. **Steel Konnect (India) Private Limited v. M/s Hero Fincorp Limited MANU/NL/0081/217.**

- NCLT dismissed petition filed by applicant against the order of Resolution Professional for rejection of his resolution Plan by members of Committee of Creditors of Corporate Debtor, though revoked but still remained unpaid. It has been held that the resolution plan of applicant has rightly rejected by RP u/s 30(2) of the Code. **Kunwer Sachdeva v. Rajiv Chakraborty Reolution Professional IB-540(PB)/2017.**

- NCLAT held that Corporate Insolvency Resolution Process Does not amounts to recovery proceedings or a money claim Therefore the question of set off after determining the claim or counter claim cannot be decided by NCLT. **Binani Industries Ltd v. Bank of Borada and Anr.**

- NCLAT held that where NCLAT admitted petition u/s 9 if IBC and passed order declaring moratorium and freezing of account etc. and thereafter the parties have reached settlement prior to constitution of the Committee of Creditors, all such orders are liable to be set aside and declared illegal. The application preferred by respondent u/s 9 of IBC shall stand dismissed as withdrawn. **Sunil Ghorawat v. Arvind Envisol Ltd. & Anr.**

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

**CBDT Circular Of Clarification Regarding Definition Of “Fund Manager”
U/s 9A(4)(b)**

The CBDT has issued Circular No. 8 dated 10.05.2019 by which it has provided clarification regarding definition of “Fund Manager” under Section 9A(4)(b) of the Income-tax Act, 1961.

**CBDT Directs Dedication Of Fortnight To Clear Pendency Of Appeal
Effect & Rectification**

The CBDT has issued a directive dated 13th May, 2019 stipulating the dedication of a fortnight for clearing pendency of Appeal Effect and Rectification and for redressing public grievance

ITAT Benches To Not Sit In Summer Vacation

Pursuant to a resolution by the Standing Committee, the Assistant Registrar of the ITAT has issued an order dated 15th May 2019 stipulating the “Bench non-sitting days” in the ITAT. Different dates have been specified for different Benches.

Delhi Zone	17th to 21st June & 24th to 28th June , 2019
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CBDT postpones reporting on GAAR and GST in tax audit report

The CBDT vide CIRCULAR NO. 9/2019 [F.NO. 370142/9/2018-TPL], DATED 14-5-2019 has decided that the reporting under clause 30C(GAAR) and clause 44(GST) of the Tax Audit Report shall be kept in abeyance till 31st March, 2020.

INCREASE IN FILLING OF ITR

SECTION 139 OF THE INCOME-TAX ACT, 1961 - RETURN OF INCOME - GENERAL - E-FILING OF INCOME TAX RETURNS REGISTERS AN INCREASE OF NINETEEN PER CENT IN ASSESSMENT YEAR 2018-19

CBDT PRESS RELEASE, DATED 6-5-2019

CBDT specifies authority to whom information to be provided

SECTION 138 OF THE INCOME-TAX ACT, 1961 - DISCLOSURE OF INFORMATION RESPECTING ASSESSEES TO SPECIFIED OFFICER, AUTHORITY OR BODY PERFORMING FUNCTIONS UNDER ANY OTHER LAW - NOTIFIED AUTHORITY UNDER SECTION 138(1)(a)

ORDER [F.NO.225/105/2019/ITA.II], DATED 30-4-2019

In exercise of powers conferred under section 138(1)(a) of the Income tax Act, 1961 ('Act'), for purposes of sub-clause (i) of section 138(1)(a) of the Act, the Central Board of Direct taxes ('CBDT') hereby directs that **Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), New Delhi** shall be the **specified Income-tax Authority** for furnishing information respecting assesseees to the **Nodal Officer, Goods and Services Tax Network ('GSTN')**.

CBDT : Condone audit report filing delay for trusts for AY 2016-17 & 2017-18, subject to conditions

CBDT vide Circular no. 10/2019, dated 22-05-2019 condones delay in filing of audit report in Form 10B in case of trusts/ associations for AY 2016-17 and 2017-18, provided the audit report for the previous year has been obtained before filing of return of income, and has been furnished subsequent to the filing of return, but before the due date specified u/s.139; In all other cases involving delay in filing report for years prior to AY 2018-19, CBDT authorizes CITs to admit application for condonation of delay and satisfy himself about fact that the assessee was prevented by reasonable cause from filing such application in stipulated time. All such applications are to be disposed off by 30/09/2019.

Proposes new audit report form for Trust/Institution requiring extensive details, seeks comments

May 21,2019

CBDT proposes amendment to Rule 17B which prescribes form for audit report of trust/institution in terms of Sec. 12A(1)(b), requests comments from stakeholders and general public on or before June 5, 2019; Proposes 8 pager new Form 10B (as against existing 3 pager form) stating that, "As the Rule and form were notified long ago, there is need to rationalize them to align with requirements of the present times"; Further, the annexure to the proposed form 10B seeks ...

CBDT : Amends Form 15H allowing deductor to consider Sec. 87A benefit
May 23,2019

CBDT amends Form 15H to provide that the form shall be accepted in case of assessee whose tax liability is Nil after considering rebate available u/s 87A; Clarifies that Form 15H can be accepted even though assessee's income subject to Form 15H is higher than the income for which declaration can be accepted as per Note 10 to Form 15H.

CBDT ORDER UNDER SECTION 119 OF THE INCOME-TAX ACT, 1961 Dated 24.05.2019

With a view to redress genuine hardship faced by the deductors due to the severe disruption of normal life and breakdown of communication systems caused by cyclone "Fani" hitting the state of Odisha on 3rd of May, 2019,

the Central Board of Direct Taxes, in exercise of its powers under section 119 of the Income Tax Act, 1961 , hereby-

- (i) 2019 from 7th of May, 2019 to the 20th of May, 20'19,
- (ii) Extends the due date of filing of Quarterly Statement of TDS for the last quarter of financial year 2018-19 from 31st of May, 2019 to the 30th of June, 2019, and
- (iii) Extends the due date for issue of TDS certificates in Form 16 and 16A from 15th of June, 2019 to 15th of July, 2019 in respect of deductors of the state of Odisha.

India entered into agreements with Marshall Island for exchange of information relating to tax matters dated 21.05.2019 vide notification Notification No. 40/2019/F.No. 503/1/2018-FT & TR– IV

Case laws

[Mangathai Ammal vs. Rajeswari \(Supreme Court\)](#)

Benami Transactions: While considering whether a particular transaction is benami, the intention of the person who contributed the purchase money is determinative. The intention has to be decided on the basis of surrounding circumstances; relationship of parties; motives governing their action in bringing about the transaction and subsequent conduct. The payment of part sale

consideration & stamp duty cannot be the sole criteria to hold the sale/transaction as benami

[Pooja Ajmani vs. ITO \(ITAT Delhi\)](#)

S. 10(38) Bogus Capital Gains From Penny Stocks: U/s 101 of Evidence Act, 1972, the onus is on the assessee to prove that the LTCG is genuine. The assessee cannot, on failure to establish a prima facie case, take advantage of the weakness in the AO's case. The jump in the share price of a company of unknown credentials cannot be an accident or windfall but is possible because of manipulations in a pre-planned manner by interested broker and entry operators. The LTCG transactions are a sham

[Kapil Kumar Agarwal vs. DCIT \(ITAT Delhi\)](#)

Section 54F is a beneficial provision and should be liberally interpreted. An assessee who has purchased a house property is entitled to exemption u/s 54F despite the fact that construction activities of the new house has started before the date of sale of the original asset (Bharti Mishra 265 CTR 374 (Del) & Kuldeep Singh 270 CTR 561 (Del) followed)

[CIT vs. Gujarat Cypromet Ltd \(Supreme Court\)](#)

S. 43B: The conversion of outstanding interest into loan does not amount to "actual payment" of the interest in order to qualify for deduction in view of the retrospective insertion of Explanation 3C to s. 43B (Eicher Motors 315 ITR 312 (MP) & Pennar Profiles (T&AP) approved)

[India Today Online Pvt. Ltd vs. ITO \(ITAT Delhi\)](#)

S. 56(2)(viib)/ Rule 11UA: Law on how to determine the "FMV" (Fair Market Value) of shares issued by a closely held company explained. The fact that the company is loss-making does not mean that shares cannot be allotted at premium. The DCF method is a recognised method though it is not an exact science & can never be done with arithmetic precision. The fact that future projections of various factors made by applying hindsight view cannot be matched with actual performance does not mean that the DCF method is not correct

BY: PRADEEP K. MITTAL

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