



**THE INSTITUTE OF  
CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

**• HAPPY  
Diwali**

WISHING YOU ALL A VERY  
HAPPY DIWALI

**PUNE BRANCH  
OF WIRC OF ICAI**

**Issue No. 11  
November 2020**

**NEWSLETTER**

(Subscribers copy not for sale)

# Chairman's Communique



CA. Abhishek Dhamne  
Chairman  
Pune Branch of WIRC of ICAI

Dear Members,

As this frantic year is about to end the positivity and lights are coming back with the celebration of Diwali in this month. Thought we will be celebrating Diwali with social distancing and following all the norms, the enthusiasm and cheerfulness won't be less than any other year. With this I would like to wish you all a Happy and Safe Diwali.

Diwali is the biggest festival among all; it is the victory of Lord Ram over Ravana after slaying demon king Ravana, the King of Lanka, and completing his 14 years of exile. This means celebrating victory of the Good over the Evil and Light over Darkness.

Hence on this auspicious month the Pune branch on ICAI has decided to launch its website on the 27<sup>th</sup> of November, 2020 and the Pune branch is also all set to conduct the examination.

In the month of October, many virtual CPE meetings were held on the topics like Post Covid Investment, Recent Changes In Income Tax TCS, Code Of Ethics, GSTR 9 And 9c Reconciliation, Forms Of ITR & Recent Changes, On Standards Of Auditing and on SMPs-Risk Management. With this Indirect Tax Refreshers Course with Theme: Profession- Tomorrow and Beyond webinar were taken covering topics line recent AARs, GST on online services and E-Commerce and GST Audit and much more.

The new curriculum suggests that the students are eligible to appear for CA foundation exams from the passing 10th standard exam, hence the Pune branch of ICAI also held many Career Counseling Programs jointly with Pune WICASA explaining ICAI Curriculum in many schools and colleges all around Pune.

To motivate the students for their exam power talk on "Face the Fear Get the Success" was conducted. With this AASB Study Group meeting for developing Technical guide on audit of entities in real estate sector and interactive virtual meet was also conducted.

Last but not the least, wishing you all a happy and safe Diwali.

**Jai Hind!!!**

**Happy to Serve, Stay Safe and Healthy.**

**Abhishek Dhamne,**

**Chairman, Pune ICAI, November 1, 2020,**

**अश्विन 2,1942 (Saka)**



"Life is like a cotton ball doesn't make it heavier by dipping it in water of sorrows but make it lighter by blowing it in air of joy."

## PUNE BRANCH OF WIRC OF ICAI

List of recorded programmes held in the month of October 2020  
available on Pune ICAI YouTube Channel

SR. NO.	DATE	TOPIC	SPEAKER	LINK
1	1st October, 2020	VCM on "Investor Awareness"	Shri. Chandrashekhar Tilak	<a href="https://youtu.be/ZytOMoLYTBI">https://youtu.be/ZytOMoLYTBI</a>
2	9th October, 2020	VCM on "Recent Changes in Income Tax TCS Provisions on sale of Goods and Filing of ITR 7 A Practical Guide"	CA. Nitin Bhuta CA. Gautam Shah	<a href="https://youtu.be/dR7B5Z0u85c">https://youtu.be/dR7B5Z0u85c</a>
3	10th October, 2020	VCM on "Professional Opportunities for Chartered Accountants in Local Bodies"	CA Sumitabha Ray CA Deepak Batra	<a href="https://youtu.be/ce6v4kJoZoA">https://youtu.be/ce6v4kJoZoA</a>
4	22nd October, 2020	VCM on "Code of Ethics"	CA. Chandrashekhar Vaze	<a href="https://youtu.be/6sUwHU64yRY">https://youtu.be/6sUwHU64yRY</a>
5	23rd October, 2020	VCM on "GST 9 & 9 C Reconciliation"	CA. Jugal Doshi	<a href="https://youtu.be/m0AdBNYBzRA">https://youtu.be/m0AdBNYBzRA</a>
6	30th October, 2020	VCM on "Standards on Auditing"	CA. Disha Maheshwari	<a href="https://youtu.be/MNgQcldyfMI">https://youtu.be/MNgQcldyfMI</a>

### Interactive Meet



Shri. Ajit Pawar, Hon. Dy. Chief Minister of Maharashtra & Guardian Minister of Pune District



Dr. Rajesh Deshmukh  
IAS, District Collector and District Magistrate

### VCM on "Professional Opportunities for Chartered Accountants in Local Bodies"



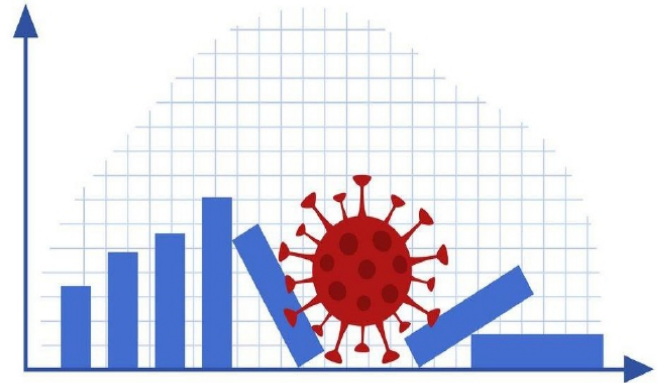
CA. Nihar N. Jambusaria, Hon. Vice President, ICAI

## Companies Fresh Start Scheme, 2020 Fresh start for defaulting companies

Contributed by :- CA Govind M Chandak  
Email Id :- [cagmchandak@gmail.com](mailto:cagmchandak@gmail.com)

### Introduction

- The economic impact of the 2020 coronavirus pandemic in India has been largely disruptive.
- The lockdown though necessary has led to a disastrous impact on the economy.
- The Government of India announced a variety of measures to tackle the situation, from food security and extra funds for healthcare and for the states, to sector related incentives and tax deadline extensions.



- The RBI too had announced various measures to curb the economic impact of the pandemic.
- The Ministry of Corporate Affairs (MCA) too, in an attempt to ease matters for the companies, introduced a new scheme known as the Companies Fresh Start Scheme, 2020 (CFSS).
- According to the provisions of the Companies Act, 2013, all companies are required to follow statutory compliances annually.



**MINISTRY OF  
CORPORATE AFFAIRS**

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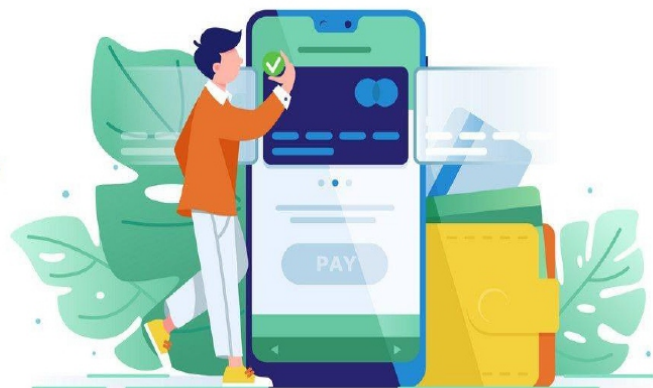
- These include the Annual Returns, Financial Statements and all the other necessary forms, documents and statements that are specified, within that particular time frame.
- Non – compliance of the same results in the imposition of penalties and fines.
- A company that fails to adhere to the compliances is called a defaulting company.
- The Companies Fresh Start Scheme, 2020 shall be applicable to such defaulting companies from 1st April, 2020 to 30th September, 2020.



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## What is the manner of payment under this Scheme?

- Defaulting companies shall pay only the normal fees as prescribed by the Companies Rules, 2014 for all filings with the MCA 21 registry.
- There will be no additional fees payable on the date of filing of belated documents.



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## What immunity is available under this Scheme?

Immunity will be available against prosecution and proceedings for imposing penalty only where

**The prosecution and proceedings arose due to the delay in filing of belated documents.**

**Any consequential proceeding including proceedings related to the interest of any person / director / KMP / shareholder are not covered under the Immunity under this Scheme**

- After Granting the Immunity, the designated authority shall withdraw the prosecutions pending, if any, pending before the Concerned Court and Proceedings of adjudication of penalties, other than those whose order is already passed.
- In respect of default against which immunity has been granted shall be deemed to have completed without any further action on part of the Designated Authority.

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## Can a person who has previously filed for appeal file an application for immunity under this Scheme?

- If a Defaulting company or any of its Officer has filed any appeal against any notice issued / complaint filed / order passed by any court or adjudicating authority under act, then the applicant company has to withdraw such appeal before filing an application for Immunity & shall file the Proof of Withdrawal along with the application for immunity.
- At the time of making the application for the scheme, the company must furnish a copy of such withdrawal along with the application as proof.



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## What measures are available for Cases where order was passed but appeal wasn't filed?

**Where the order has been passed by the court and the company has not filed an appeal against the same as on the commencement of the scheme:-**

**The company is allowed 120 days to file an appeal before the Regional Director**

**During this period of 120 days, for the non-compliance of the order passed by the court with regard to the delay in filing of any documents for the same shall be condoned and no further action shall be initiated against the company.**

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## How shall one apply for issue of Immunity under this Scheme?

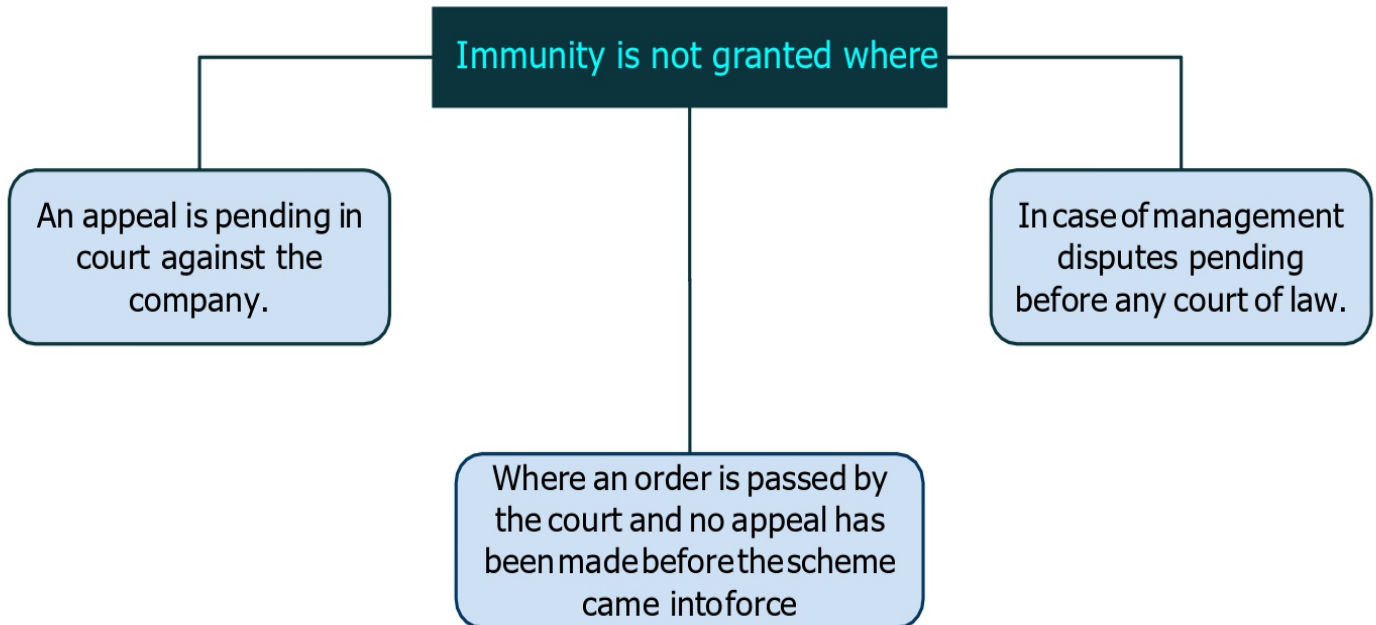
Application for seeking immunity regarding belated documents filed under the Scheme may be made in e-form CFSS-2020 without any fee.

Designated Authority shall issue an Immunity Certificate on the basis of declaration made in e-form CFSS-2020, in respect of the documents filed under the Scheme

Application should be made after closure of the Scheme and after the documents are taken on record or approved by the Designated Authority, but not later than 6 months from closure of the Scheme

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## In what situations will immunity not be granted under this Scheme?



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## In what situation will this Scheme not be applicable?

**The Scheme would not apply to the following companies:**

Companies against which Final notice of "Strike off" Under Section 248 already initiated by Designated authority	Forms Regarding Increasing in Authorized Capital Form SH-7, Charge Related forms, CHG-1, CHG-4, CHG-8, & CHG-9.
Where the company has already filed the application for Strike off with Registrar of Companies	Vanishing companies
Companies which have amalgamated under the Scheme of arrangement or compromise under the act	Where a company has already filed the Application for obtaining Status of Dormant Company U/s 455 of the act



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## What Opportunities under this Scheme are available for inactive companies?

- The Scheme provides an opportunity to inactive companies to get a dormant status under section 455 with minimal compliance requirements or Strike off the name under Section 248 of the Act by making simple applications with the normal fees.
- The defaulting inactive companies may apply for the Scheme so as to file the due documents.



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Additionally, they may also do the following:-

**Submit an application for Dormant Status under Section 455 of the Companies Act, 2013 by way of filing of e-Form MSC-1 along with the prescribed fees.**

**Submit an application for striking off the name of the company from the Register of Companies.**

**Extension granted to file e-Form ACTIVE: An extended timeline between 1st April 2020 and 30th September 2020 is provided by MCA for the 'ACTIVE non-compliant' companies to come forward and file e-Form ACTIVE. The filing fee of Rs 10,000 will not apply.**

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## What Revisions are made to the LLP Settlement Scheme 2020?

The LLP Settlement Scheme 2020 is applicable between the 1st of April, 2020 and the 30th of September, 2020.	Applicable to the defaulting LLPs for the filing of belated documents that were due for filing till the 31st of August, 2020.
No prosecution by the Registrar for those defaulting LLP's who complete the filing of all the belated documents and dues by the 30th of September, 2020.	The scheme is not applicable to LLPs who have made the application for the striking off of the name of the LLP from the Registrar as per the LLP Rules, 2009.
No additional fees charged on the filing of the belated documents other than the normal application fees.	

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- Companies Fresh Start Scheme, 2020 is an excellent step to bring non-compliant companies under the legal fold.
- The scheme is a golden opportunity for the companies to make a fresh start and to clear their past defaults.
- This would lead to setting an example for E-governance in near future.



**Once the comparable company becomes the AE of the assessee  
in the year under consideration,  
then such company cannot be considered for the purpose of comparable**

**Contributed by :- CA. Suraj R. Agrawal  
Email Id :- [casurajra@gmail.com](mailto:casurajra@gmail.com)**

**Case Law Citation: -**

Lonsen Kiri Chemical Industries Ltd. Vs. Deputy Commissioner of Income Tax; ITA No. 1116/Ahd/2015; Asst. Year 2010-11; Aug 19, 2020

**Case Summary: -**

**Facts of the case:**

- The assessee is a joint venture of two companies namely Well Prospering Ltd a Chinese company and Kiri Dyes and Chemicals Ltd, an Indian company which was entered as on 4<sup>th</sup> February 2010. The Indian company, Kiri Dyes and Chemicals Ltd, belongs to Dyestar Group of companies. In other words, the Dyestar group of companies became associated enterprises with effect from 4<sup>th</sup> of February 2010 of the assessee company. The assessee is engaged in the business of manufacturing of various types of synthetic dyes.
- The assessee in the year under consideration has entered into certain international transactions, export of finished goods, with its AE namely Dyestar Group and Well Prospering Ltd. The assessee to determine the ALP of such transactions has used comparable uncontrolled price (CUP) method as the most appropriate method.
- **International transactions with Dyestar Group:**
  - The assessee, to determine the ALP for the export of the goods to Dyestar Group of companies after 4th February 2010, compared the average price charged post 4th February 2010 with the average price for the export of the goods prior to 4th February 2010 as uncontrolled transaction.
  - As per the assessee, the actual average price prior to 4th February 2010, with respect to its product namely Reactive Blue 250 comes at 177.10 per kg whereas the actual average price post 4th February 2010, with respect to its product namely Reactive Blue 250 comes at 169.19 per piece. Accordingly, the assessee claimed that it has charged the price from its AE after 4th February 2010 at the arm length price and therefore no adjustment is required to be made.
  - However, the TPO observed that price charged from its AE are varying significantly as evident from invoice wise details available on record. Therefore, TPO was of the view that each invoice should be compared separately. The TPO was also of the view that uncontrolled price of other non-AE should also be included for calculating the ALP of the comparables.
  - Accordingly, TPO worked out the revised ALP of the comparables i.e. average of price charged from Dyestar group pre 04th February 2010 and price charged from other non-AE. The TPO Compared the same with each invoice of exports made to different units of Dyestar group after 04th February 2010.
  - During the proceedings, the TPO found that in case of two invoices with respect to the product namely Reactive Blue 250, the assessee has not charged price at ALP as there was variance of more than 5%.
  - The assessee in response to such submitting that non-AE entities cannot be considered as comparable while working out the ALP as these entities are located in different geographical areas. Similarly, the assessee also contended that there is a significant difference in the quantity sold to AE (Dyestar Group of companies) and non- AE.
  - However, the TPO found that the assessee has not considered the geographical location for working out the ALP for the goods exported to the AE. As such the assessee itself has considered price of the export of the goods for its product namely reactive blue 250 to the Dyestar Group which is located in USA, Mexico and Brazil prior to the date of acquisition i.e. 4 February 2010. Accordingly, the AO held that the assessee cannot take different yardstick for its different products which is suitable to it for the purpose of comparability analysis.

- o The TPO for the 2nd objection raised by the assessee for the quantity of the goods sold i.e. 3000 kg to its non-AE, found that the assessee itself while taking the comparable has taken the quantity of 5000 kg sold prior to 4th of February 2010.
- o Accordingly, the TPO rejected the contention of the assessee by holding that if quantity 5000kg can be considered then there is no infirmity in considering quantity of 3000kg for the purpose of comparability analysis.

• **International transactions with Well Prospering Ltd.:**

- o The assessee while working out the ALP for the international transactions for the export of goods with its AE i.e. Well Prospering Limited China has considered only the average price of the transactions carried out it with its non-AEs entities which was compared with average price charged from its AE for export of goods. Accordingly, the assessee claimed that the price charged from its AE Well Prospering Limited are at arm length.
- o However, the TPO was of the view that the assessee should have also considered the transactions carried out by it with respect to the export of goods to Dyestar Group before 04th February 2010 while determining the ALP for its international transactions with the present AE. Thereafter, the average price of the comparable should have been compared with each invoice raised by the assessee to its associated enterprises. Accordingly, the TPO worked out revised ALP of the comparables after considering price charged from Dyestar Group before acquisition i.e. 4-2-2010 along with price charged from other non-AE.
- o The revised ALP was compared with the actual price charged by the assessee for each invoice raised to its AE. It was found that some of the invoice issued for the product namely 'Reactive Red 195' and 'Reactive Black 5' were varying significantly.
- o The assessee in response such submitting that the AE (Well prospering Ltd) is located in the China whereas the Dyestar Group is mainly based in Europe and USA where the market conditions are different from the Asia.
- o The assessee also submitted that the products supplied in the Asian market were inferior in comparison to the quality of the products sold to Dyestar Group.
- o The assessee further contended that the products sold to the AE was 273,000 KG whereas the goods sold to the non-AEs were only of 57,500 KGs. As such the difference in the quantity would certainly lead to difference in the price and therefore, it would not give a correct picture.
- o However, the TPO found that the Dyestar group of companies are not only located in Europe and USA but also, the assessee is supplying its finished products to Dyestar Group, located in Indonesia and Brazil. Even otherwise the developed countries USA and Europe are excluded for the purpose of comparables, then the average rate increases from 139.51 to 142.08 per kg.
- o Similarly the TPO also found that the assessee has supplied goods to Dyestar Group for 246112 Kgs whereas the quantity supplied to the non-AE is only 57,500 therefore if the quantity supplied to Dyestar group is included then it would lead to a more accurate comparable.

▪ Finally, the AO made an upward adjustment of 41,18,700/- on account of transfer pricing by adding to the total income of the assessee.

▪ Aggrieved assessee preferred an appeal to the learned CIT (A) who upheld the action of AO/TPO by observing as under:

- o The TPO has adopted CUP for comparing the International Transactions and determination of Arms' length price. It is noted that no new objection or line of analysis has been pointed out by the appellant during appellate proceedings. Further, the TPO has duly considered all the objections taken by the appellant at the stage before him. I am in complete agreement with his findings, and it is noted that the order of the TPO is well reasoned and detailed. The comparability analysis also has been properly done by him.
- o The method which has been adopted by the TPO is CUP and the comparison would be better, if the broader base of comparable uncontrolled transactions is taken. Therefore, the action of the AO was justified. It is noted that the appellant is charging different rate to the same company, prior to acquisition and post-acquisition, and therefore, this has led to the adjustment in Arms' length price.

- It has rightly been pointed out by the TPO that the appellant itself did not consider the geographical differences while making the comparison in the Transfer Pricing study report. Similarly, in respect of Reactive Blue 250, the appellant had also not considered and differentiated between the geographical market. Therefore, the appellant should not raise objection of this point of time now.
  - Regarding the objection taken by the appellant regarding difference in quantity, it has rightly been pointed out by TPO that there is not much difference between the quantity of 5000 Kg and 3000 Kg. The appellant had itself made the comparison of 20,000 Kg. and 5000 Kg.
- Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before ITAT.

#### **Assessee Representative:**

- The learned AR before us contended that the benefit of 5% variation should be calculated on the ALP of the comparables. But the TPO has wrongly applied the benefit of 5% variation with respect to the actual price charged by the assessee. Accordingly the learned AR worked out the ALP of the comparables at 168.85 after giving the benefit of 5% variation and compared the same with the actual average price charged by it from its AE i.e. 169.19 which is higher than the ALP of the comparables.
- The learned AR for the assessee also contended that the TPO has taken the average price of the comparables which was compared with the individual invoice raised by the assessee to the associated enterprises. As per the learned AR the TPO should have taken the same yardstick by taking the average price charged by the assessee after 4<sup>th</sup> February 2010 which comes out at 169.19 whereas the ALP of the comparable comes out at ?168.85 only.
- The learned AR, for the associated enterprises namely Well Prospering Ltd, contended that Dyestar group of companies being associated enterprise cannot be considered as comparables. The learned AR in support of his contention placed his reliance on the order of this tribunal in the case of Gemstone Glass Pvt Ltd.
- The learned AR also contended that the TPO has taken the average price of the comparables which was compared with the individual invoices raised by the assessee to the associated enterprises. As per the learned AR the TPO should have taken the same yard stick by taking the average price charged by the assessee instead of individual invoice.

#### **Departmental Representative:**

- The learned DR vehemently supported the order of the authorities

#### **Ruling:**

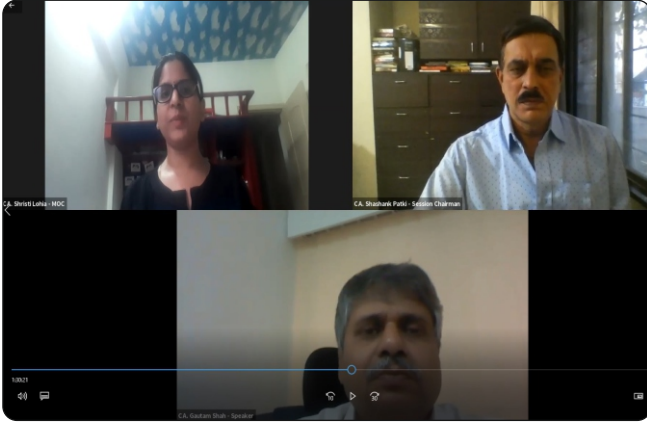
- The 1st issue arises for adjudication whether the TPO is right in comparing the average price of the comparables with the individual invoices raised by the assessee to the associated enterprises for determining the ALP.
- A plain reading of provisions of rule 10B(1) of Income Tax Rule reveals that the provision of rule 10B(1)(a)(i) authorized to identify the comparable uncontrolled transaction or a number of such transactions. In other words, the provisions of the rule permits to aggregate the comparable uncontrolled transactions for determining the ALP. However, the rule does not permit to aggregate the international transactions carried out by the assessee to work out the average price for the purpose of the comparison.
- In view of the above, we are not impressed with the argument of the learned counsel for the assessee that the TPO erred in comparing the ALP of the comparable companies with the individual invoices raised by the assessee to the associated enterprise. Accordingly, we reject the same.
- The 2<sup>nd</sup> issue arises for our consideration whether the benefit of 5% variation is to be calculated with reference to the ALP determined from the comparable uncontrolled transactions or at the price at which the assessee exported the goods.
- In this regard, we find pertinent to refer the relevant provisions as provided in the proviso to sub rule (7) of rule 10CA of the rules, it is revealed that 1st of all the difference is worked out between the ALP of the comparable uncontrolled transactions and the price charged by the assessee with respect to its international transaction. That difference has to be seen with reference to the actual price charged by the assessee to work out the percentage.

- For example, the rate of the ALP of the comparable uncontrolled transaction works out at 104 whereas the price charged by the assessee stands 100 leading to a difference of 4 only. Now this difference of 4 has to be seen in connection with the actual price charged by the assessee. As such percentage works out at 4% in this example.
- It is also pertinent to note that even assuming for the sake of understanding, the contention of the assessee is correct then also the difference between the ALP and the price charged by the assessee exceeds 5% therefore there cannot be any benefit to the assessee on account of such variation.
- The ALP after 5% variation comes to Rs.168.85 whereas the price charged by the assessee stands at 167.81 and 165.59 for the invoices which are in dispute.
- At this juncture, it is also important to understand that the assessee has taken same entity (Dyester Group) as one of the comparable for the transactions carried out by it before becoming such comparable company it's AE. The question arises whether such company can be considered for the purpose of determining the ALP. To resolve the controversy we find important to refer the provisions of section 92A (2) of the Act, it is revealed that a company shall become the associate enterprise of another company if at any time during the relevant previous year such company meets the criteria specified under the provisions of section 92A of the Act.
- Admittedly, the Dyestar Group of companies became the AE of the assessee in the year under consideration i.e. 4th February 2010. Thus, to our understanding such company cannot be taken as comparable company for the purpose of determining the ALP under rule 10A of the Rules.
- Thus, what is left is the non-AE party transactions carried out by the assessee during the year under consideration for the purpose of determining the ALP which works out at Rs. 191.52 which is much more than the price charged by the assessee with the associated enterprise. However, it is not issue arising from the order of the authorities below and similarly neither the learned AR nor the learned DR brought to our notice at the time of hearing. Accordingly, we do not touch upon such issue as discussed above.
- In view of the above, and after considering the facts in totality, we do not find any infirmity in the order of the authorities for making such upward adjustment to the total income of the assessee.
- Once the comparable company becomes the AE of the assessee in the year under consideration, then such company cannot be considered for the purpose of comparable.
- The assessee in itself has taken Dyestar Group of companies as 1 of the comparable in its transfer pricing study which was also not disputed either by the TPO or learned CIT (A). Now the question arises, whether such issue can be raised by the assessee before us. In this regard we note that it is the duty of the income tax authorities to implement the provisions of Income Tax Act while framing the assessment. In other words, if the assessee has made a mistake in the interpretation of the provisions of the Act then it is the duty of the authorities to rectify such mistake. Accordingly, it is inferred that assuming the assessee has paid the taxes on the items of income which were not chargeable to tax under the misconception of the provision of the Act. The income tax authorities are duty-bound to correct such mistake and extend the necessary relief to the assessee. Thus, the income tax authorities cannot exercise their jurisdiction with respect to the matters which has not been authorized under the provisions of law despite the fact that the assessee has given his consent.
- Keeping the above principles in mind, we move to decide the issue on hand. Admittedly, the assessee in the transfer pricing study has taken Non-AE as comparable but the TPO has considered the only those transactions carried out with the AE (Dyester Group) prior to 4th February 2010 i.e. before it became the AE as comparable which is not permissible under the provisions of rule 10A(ab) r.w.s 92A(2).
- In view of the above, we hold that the assessee has mistakenly considered one of its AE (Dyester Group) as the comparable in its transfer pricing study report for the transaction carried out with the Dyester Group only as discussed above, but the income tax authorities were duty-bound to rectify such mistake as discussed in the preceding paragraph.
- Now coming on the merit of the case, if we exclude the Dystar Group as 1 of the comparable for determining the ALP, then the arm length price comes out at Rs. 115.5 and Rs. 122.66 for product namely 'Reactive Red 195' and 'Reactive Black 5' respectively whereas the price charged by the assessee from the AE ranges between Rs. 108.75 to 128.12 for product 'Reactive Red 195' and Rs. 110.06 to Rs. 115.22 for 'Reactive Black 5'. Accordingly, we direct the AO/TPO to compare the ALP with each invoice raised by the assessee and wherever he finds the difference exceeding 5% of the actual price, make necessary adjustments.
- Hence the ground of appeal of the assessee is partly allowed.



*"Patience and silence are two powerful energies. Patience makes you mentally strong, silence makes you emotionally strong"*

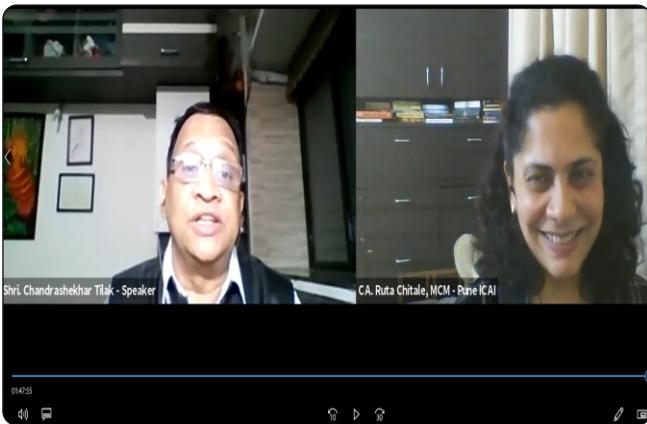
**VCM on "Recent Changes in Income Tax TCS Provisions on sale of Goods and Filing of ITR 7 A Practical Guide"**



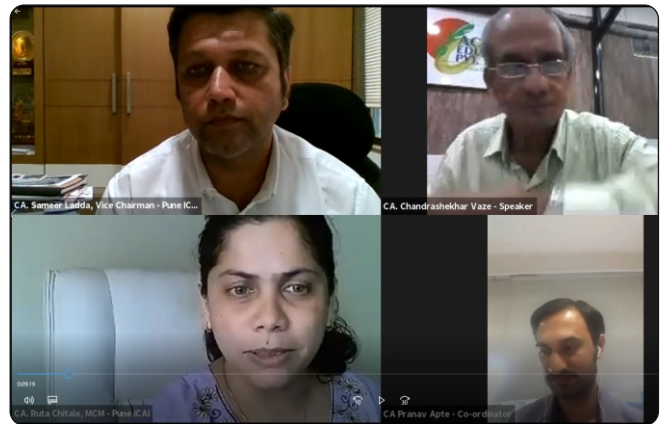
**CA. Gautam Shah, Speaker**  
**VCM on "Investor Awareness"**



**CA. Nitin Bhuta, Speaker**  
**VCM on "Code of Ethics"**

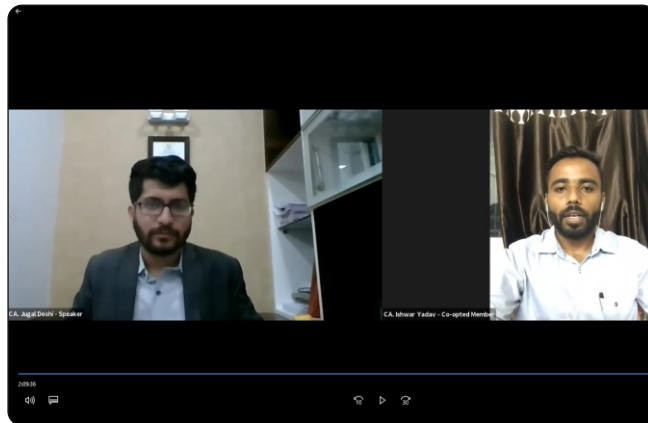


**Shri. Chandrashekar Tilak, Speaker**



**CA. Chandrashekar Vaze, Speaker**

**VCM on "GST R 9 & 9 C Reconciliation"**



**CA. Jugal Doshi, Speaker**

**CSR Activity**



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## **Pune Branch of WIRC of ICAI**

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