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NEWSLETTER

PUNE BRANCH OF WIRC OF ICAI

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Interactive Meeting with Dr. Bhagwat Karad, Minister of State in the Ministry of Finance & CA. Nihar N. Jambusaria, Hon. President, ICAI with the CA Members

Inauguration

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Felicitation of Dr. Bhagwat Karad
Minister of State in the Ministry of Finance,
Member of Parliament, Rajya Sabha

Felicitation of CA. Nihar N. Jambusaria
Hon. President, ICAI

Dr. Bhagwat Karad
Minister of State in the Ministry of Finance,
Member of Parliament, Rajya Sabha

CA. Nihar N. Jambusaria
Hon. President, ICAI

CA Members

CA Members

Chairman's Communique

Dear Member,

CA. Sameer Ladda
Chairman
Pune Branch of WIRC of ICAI

"If you want to live a happy life, tie it to a goal, not to people or things."– Albert Einstein

In month of November, Most special event was Interactive Meet with Dr. Bhagwat Kisanrao Karad Saheb, Minister of State in the Ministry of Finance, Member of Parliament, Rajya Sabha & our beloved President of ICAI Hon. CA. Nihar N. Jambusariya.

Dr. Bhagwat Kisanrao Karad Saheb congratulate to CA fraternity for their effective & hard work, also they mention that the "***Nation required CA's for financial help & CA's are pillar of nation***"

Hon. President sir interact with the Past Chairmen, MCM, Past RCMs, CCMs of Pune branch of ICAI, and Pune WICASA.

Guidance from president sir was very very useful for the members. During his speech he informed the position of benevolent fund & its requirement. Immediately CA. Suresh Mehtaji announced Rs.51000/-. We appreciate CA. Suresh Mehtaji & also appeal other members to come forward for this noble cause.

Hon. President sir sought for blessing from Lord Ganesha during Darshan Of Shreemant Dagdusheth Halwai Ganpati Mandir.

We organised programmes on Financial & Tax Literacy Drive of ICAI with target audience for the benefit of other societies like officials, staff of Police Department, members of Economic Offence Wing and Crime Department of Police, various college students and Shareholders, Customers & Staff of Sahakari Bank Ltd. on the various topics like Mutual Fund – Literacy, Indian Capital Markets & Investment Options, Indian Capital Markets & Investment Options, Basics of Capital & Revenue Budgeting, Retirement Planning & Succession, Banking System in India & Loan Schemes of Government.

As month of December, we planning various programmes on Financial & Tax Literacy Drive, Tel programmes for benefit of commerce students.

Last but not the least WISHING YOU ALL A MERRY CHRISTMAS AND A HAPPY NEW YEAR.

CA Sameer Ladda,
Chairman,
Pune ICAI

Past Chairman's Communique

I'm going to present a brief account of my experience as one of the past Chairmen's' of the Pune branch of ICAI. I've held a couple of other posts, namely the secretary and then the Vice Chairman before holding the Chairmanship reins.

When my team and me were handed over the charge we were aware that there was a legacy to follow, some big shoes to fill and new milestones waiting to be etched out. We set out with an aggressive agenda and ticked off every single item that there was. It hasn't been an easy journey, but certainly a path breaking one.

CA. Sanjay Narayan Pawar
Past Chairman (2012-2013)
Pune Branch of WIRC of ICAI

I'm going to enumerate our achievements below: -

1. Under my Chairmanship, Pune Branch was awarded the Best Performance Award; both at National and Regional Level (scoring 97% and 92% respectively). This was a breakthrough because the said award had been eluding the Pune branch for more than two decades, and it certainly didn't come easy.

2. Successfully generated more than 63000 CPE hours during such a crunched time frame, at a lowest cost per hour.

3. Introduced and brought into practice the 'seven certifications' course for the members' benefit. In totality, we were able to conduct 153 such programs that year.

4. Came up with the novel idea to commence 'basic and advanced' level MS word and excel classes for the senior members of the fraternity. This helped in lending the seniors a hand so that they may catch up with the rapidly changing environments around them.

5. Senior members were then provided the facility to deposit cheques near to their offices to help them save a trip to the branch, which they would've otherwise made only to register themselves for CPE programmes.

   Of course, this seems surreal in today's times, but we are referring to a period before the advent of various convenient payment platforms. Technology has evolved since, but then, this was surely way ahead of its time.

6. Brought in 'Yoga' and stress management programmes, to help members cope with the growing pressures of the profession.

7. The Pune branch website underwent a much-needed revamp!

8. The nuts and bolts of the Pune branch, its non-member employees; were given their due recognition. An award/ incentive system was set up to recognise their professional achievements.

9. Installed Tax Corp Software at Branch & the CTR Tax Library Software at PCA's Library at Income Tax Office for the benefit of Members & Students.

10. Trailblazer attempt to begin coaching classes for CA Students (IPCC, CPC and Final) at the Branch was undertaken and implemented effectively. Without compromising on the faculty or resourcesl, the fee structure was slashed to a bare minimum to provide access to students coming from financially challenged backgrounds. The competition was tough, but we sustained it all. And as of today, the batches are running full.

11. Started a separate library for students as well as members at the old Pune branch office premises (Alppa Balwant Chowk).

12. Made a tie up with PCA and Income tax office for utilization of tax software.

13. Formed expert committees for a variety of purposes.

14. A colossal National Students conference was arranged, that marked the attendance to a never seen before range of 2500+ attendees.

15. RNRA certificate that went on to save high cost on postage and courier charges was introduced.

16. The number of training programmes for the three most popular courses increased twofold. Close to 1411 ITT students, 1379 GMCS students and 1586 Orientation Programme students have been beneficiaries during that time frame.

17. Reported a branch profit of over INR 10 million for the first time ever, all duly accounted and audited for.

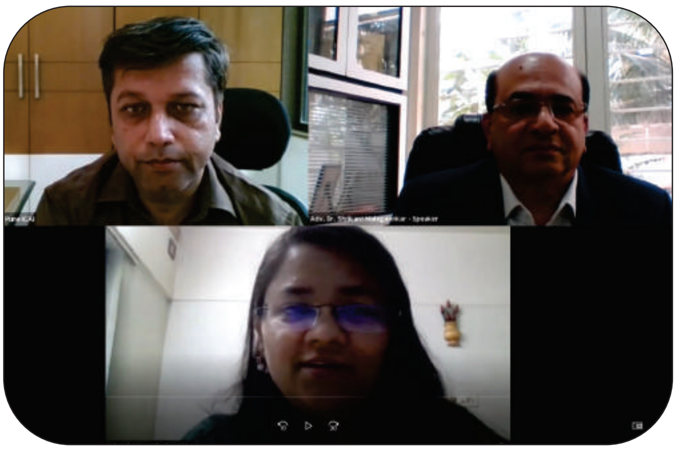
18. Branch automation software was installed, that went on to save more than 1500 man working days. The time saved could thus be utilized for other productive activities.

19. Started a trend to celebrate cultural activities to bring together the members of the fraternity. The list of such events is non exhaustive and cannot be enumerated here.

We delivered the best of what could be done given the circumstances. A wholistic approach was followed, wherein we brought the members (new and old), students, staff and faculties under one umbrella. The synchronization was in perfect tandem and the results were very much visible. A well-coordinated, planned mechanism was put into place, so that even future office bearers would be able to enjoy its fruits.

This success rests on the able shoulders of the staff of the Pune branch who moved mountains, and quite literally so. However, there shall always ever remain only one minor contrition to this great success story. During the said period, the branch administration could have received some more positive reinforcements from other members in office as well. Fast forward to the present day, and I genuinely hope the situation has improved. After all, we members stand united by one common thread and we owe our allegiance to our alma matter, the ICAI.

VCM on Misconducts in Employment under Labour Law - CAs Should Know



Adv. Dr. Shrikant Malegaonkar - Speaker

Arithmetic mean over weighted average mean

Contributed by :- CA. Suraj Agrawal
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DCIT vs Ankit Metal & Power Ltd; Income Tax Appellate Tribunal Kolkata

The assessee company was engaged in the business of manufacturing Ferro-alloys, Ingots, trading in TMT Bar and selling beneficiation coal. For AY 2013-14, being the year under appeal, the assessee company has filed its Return of Income on 30.11.2013 declaring a total loss of Rs. 13.70 crores. The assessee paid tax on book profit u/s 115JB at Rs.13.7 crores. The Assessee's case was selected for scrutiny through CASS and statutory notices were served upon the assessee to which the assessee responded with the requisite explanation/documents. Thereafter, the AO referred the domestic specific transaction with the related parties to TPO.

SDT transaction involving the purchase of raw materials for sister concern/ AE

TPO noted that the assessee had purchased several raw materials from its related parties. The assessee had benchmarked these purchases applying the Comparable Uncontrolled Price Method ('CUP' Method). The assessee had demonstrated in the Transfer Pricing Study Report (TPSR) that the rates at which the related parties sold these raw materials to the assessee were comparatively lower than the average rate at which the same related parties sold these raw materials to unrelated/independent customers. However, according to the TPO, the rates at which the assessee had purchased the raw materials ought to have been compared with the minimum/lowest rate at which the related parties sold the same raw material to unrelated/independent parties.

TPO observed that the assessee had purchased from its related parties at a price higher than the price at which the product was sold by them to the unrelated parties and that such difference was outside the ambit of +/- 3% range as per sec 92(2) of the Act. TPO accordingly proposed a TP adjustment. Aggrieved, the assessee preferred an appeal before CIT(A), wherein CIT(A) accepted the assessee's appeal and deleted the downward adjustment.

Aggrieved, The Revenue preferred an appeal before ITAT.

ITAT noted that the dispute was wrt to the determination of arm's length price of SDT involving the purchase of raw materials by the assessee from its sister concern/AE. ITAT further noted that the CUP method adopted by the assessee has not been disputed by the AO/TPO and that the only dispute was concerning the manner of application of CUP for the SDT.

Further noted that the assessee had benchmarked the SDT with the 'arithmetical mean rate' at which the related parties sold the same product to independent buyers and that the TPO had benchmarked it by taking the 'lowest/minimum rate' at which the related parties sold the same product to independent buyers, ignoring all other comparable uncontrolled transactions.

ITAT further found that benchmarking methodology followed by the TPO is prima facie perverse and against the extant provisions contained in the proviso to Section 92C(2) of the Act, which clearly stated that where more than one comparable prices are available, then the arithmetical mean shall be taken as the ALP. Accordingly, ITAT held that "CIT(A) had therefore rightly deleted the impugned transfer pricing adjustment".

ITAT also noted that CIT(A) had not supported this arbitrary/whimsical benchmarking analysis of the TPO, but at the same time, it is his case that, believed that instead of arithmetical mean rate, the weighted average mean of the product sold by the related parties to independent buyers should be taken as the comparable rate.

Further owing to the proviso to Sec 92C(2), ITAT opined that assessee had rightly pointed out that proviso to Section 92C(2) only speaks about 'arithmetical mean' and therefore the concept of 'weighted average mean' cannot be applied in the facts of the present case.

Further opined that when the computation of arithmetical mean has been expressly set out in the said provision, Tribunal is not permitted to ignore or overlook the said expression and read weighted average mean in its place.

ITAT further relied on the Mumbai Tribunal decision in the case of RBS Equities (India) Ltd wherein Tribunal had upheld Revenue's lea for use of arithmetical mean instead of weighted average mean.

Accordingly, ITAT held that "we do not find any force in the Ld. CIT, DR's contention for use of weighted average mean as against arithmetical mean computed by the assessee".

Financial & Tax Literacy Drive of the ICAI - For Officials & staff from Police Department

Shri. Amitabh Gupta, IPS
Commissioner of Police, Pune


CA. Bharat Phatak
Speaker


CA. Swapnil Ekande
Speaker

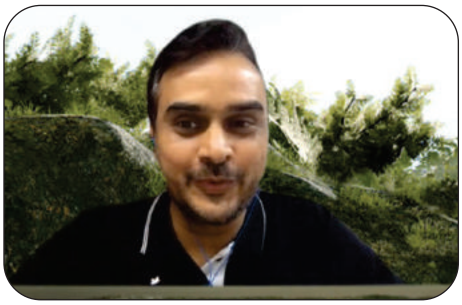

Police Officials & Staff

Financial & Tax Literacy Drive of the ICAI - For Various College Students

CA. Sujay Deshpande - Speaker


Students

Financial & Tax Literacy Drive of the ICAI - For MBA Students & Faculties of Sadhu Vaswani Institute of Management Studies for Girls


CA. Harshal Muttha - Speaker


CA. Jayesh Jain - Speaker

Financial & Tax Literacy Drive of the ICAI - For officials & staff of Economic Offence Wing & Cyber Crime, Pune

CA. Abhay Mate - Speaker


Officials & Staff of Economic Offence Wing &
Cyber Crime, Pune

5-Ws of Due Diligence

Contributed by :- CA. Pramod Jain
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Background:

Today, all industries across the economy are facing toughest time ever. Decreasing margins, ever-demanding customers and global competition is hallmark of the current scenario. To top it further, the wave of liberalization and globalization has exposed the industries and companies across the globe to a highly competitive scenario. As a result of these factors, what we see today can be summarized as follows:

1. Dismantling of the international borders and the world becoming a big village
2. Increasingly tougher competition from within and outside the country.
3. Customer is becoming the king. Companies have now sincerely started focusing on the customer.
4. Growing quality consciousness of the highest order and price competitiveness like never before.
5. Free flow of capital and technology across the globe.

In an environment like this, economies of scale are of paramount importance. And in the changed global business scenario, it has become possible to consolidate businesses across the borders and continents.

As a matter of fact, it is on account of all this that companies like Reliance Industries, Bharat Forge, Infosys, Tata Motors and so many other Indian business houses have gone out and acquired companies in Europe, America, Australia, and other continents. Likewise so many multinationals have acquired Indian companies or have acquired controlling interests in Indian companies. And this process of Indian companies being acquired by the Multinationals and Indian companies either setting up shops outside India or acquiring foreign companies is growing in full swing and is expected to pick further momentum in the days to come.

Is acquiring companies in a foreign country or setting up shops outside India so simple. Likewise, are the foreign promoters / companies acquiring companies in India or setting up there shops on Indian soil, are absolutely comfortable and have no anxieties. The answer is very simple "No".

Depending on the size of the company / undertaking being acquired, the investment by the Purchasers will run into millions of Rupees or Dollars as the case may. At the same time due to peculiarities of circumstances , such transactions will always be froth with different kinds of risks .One of such risks is the risk of inadequate disclosure resulting into an uncalled for litigations, inconvenience and cost to the Purchaser.

Yet most companies irrespective of the sector are striving hard to create strategies for survival, sustenance and sustainable growth. It is in this background that corporate restructuring in the form of mergers and amalgamation (M&A) and other forms of consolidation and reconsolidation is becoming commonplace these days.

Besides the financial returns from such a transaction, the purchase consideration to be paid by the Purchaser is a very important consideration. While purchasing such an undertaking / company is purely a business decision, the consideration for such transaction has to commensurate with the value which the Purchaser gets from such transaction. Any distortion in the assets acquired on account of legal or financial deficiencies can vitiate the whole transaction to the disadvantage of the Purchaser. Therefore, the Purchaser has to be beware while finalizing the deal. Therefore, normally the following process shall be followed in completion of such transaction:

1. M OU listing the broad understanding is signed between the Purchaser and Seller.
2. **The Purchaser carries out Due Diligence of the undertaking /company being acquired. And this of course is a very critical and important part of the entire transaction.** It is quite possible that based on the outcome of the Due Diligence the purchaser may decide to exit from the deal. And of course it does happen many a times.
3. MOU, inter-alia would summarize the rights and obligations of both the parties.
4. The MOU would also speak of a closing and target date.

5. All the activities are to be completed by the target date to the satisfaction of the Purchaser and the seller whereupon the Purchaser pays the consideration and seller transfer legal possession of the assets in the question. For payment of consideration an Escrow account is used invariably which is not being discussed here as the context is different.

Now in this context, this article focuses on the critical aspects of due diligence in the following paragraphs:

1. What is due diligence:

So before we discuss why due diligence needs to be carried out and the related aspects, let's discuss as to what Due Diligence is:

Due Diligence is an exercise involving financial and legal scrutiny of various aspects of the assets / undertaking / company being acquired with a view to ensure the following:

- Assets / undertaking / company being acquired are free of every kind of deficiencies.
- The Purchaser is getting assets / undertaking / company of value which has been understood and agreed between him and the seller.

Types of Due Diligence:

Broadly speaking, due diligence can be classified in two categories as mentioned here below:

- Legal Due Diligence:
- Financial Due Diligence

2. Why Due Diligence is carried out:

It is but natural that when a party is making huge / substantial investment in another company or buying that other company, the Buyer would like to ensure that:

1. The undertaking which he is requiring is devoid of all encumbrances other than those specifically disclosed and he has explicitly agreed to take.
2. There are no hidden / undisclosed liabilities which he may have to honour as the new owner of the enterprises.
3. The Seller company has in respect of the assets / undertaking / company being sold, followed the generally acceptable accounting practices while drawing up the accounts of the company right from the beginning of the operations till the current date and there has not been any kind of irregularity therein which might result in any kind of liability to the Purchaser subsequent to the transfer of the assets / undertaking / company.
4. The company does not have any unrecorded liabilities.
5. All the loans, liabilities taken by the company have been disclosed in the books of accounts at their carrying amounts.
6. Any charge, mortgage created on the assets of the company have been properly disclosed.
7. The company has been complying with the legal and statutory requirements regularly and there are no liabilities pending on this account.
8. Scrutiny of the Contingent liabilities as disclosed in the books of accounts and their likely impact on the company.
9. Scrutiny of the pending litigations by and against the company and their likely impact on the financials of the Company.
10. Scrutiny of the guarantees which the company may have extended to others or the guarantees which others may have given for the benefit of the company.
11. Scrutiny of Intercompany transactions or transactions of the company with its subsidiary / holding company and its impact on the financials of the company after the deal is done.

These and other similar issues are thoroughly examined during the process of Due diligence with expectation that it would facilitate achievement of the following objectives as stated above:

- Assets / undertaking / company being acquired are free of every kind of deficiencies.
- The Purchaser is getting assets / undertaking / company of value which has been understood and agreed between him and the seller.

The obvious target of due diligence exercise is the Company in respect of which the transaction is being undertaken. However, where the company in question is a holding company, then depending on the option of the Buyer , even the subsidiary companies of such a holding company may be target by for due diligence.

3. When Due Diligence is carried out:

Due Diligence is carried out when a supposedly big transaction involving transfer of asset / undertakings / business or company is occurring from one party to another. An illustrative but not exhaustive list of such circumstances is produced below for the quick reference of the readers:

a. Acquisition of an undertaking of another company on as is where is basis.
b. Acquisition of controlling stake in another company.
c. Entering into a joint venture arrangement with another party in respect of an Acquiring a company outside India.
d. Acquisition of controlling stake in company outside India.
e. Purchase of immovable and substantial capital assets.
f. Transfer / sale of an undertaking by one company to another.
g. Entry of a new Investor in the Company with major investment
h. Acquisition of substantial stake in a company without intention to take over management of the company.

Additionally, a Merchant Banker is expected to undertake Due Diligence before a company makes a public offer of its securities. Likewise, whenever a Syndicate Banker does a deal for his client , he is expected to undertake legal and financial due diligence of the company , which of course may not be as elaborate as in case of sale / transfer of the assets / undertaking or the company.

4. How it is carried out:

The modus operandi of Due Diligence would depend on (1) the type of transaction involved and (2) the Agency involved in carrying out Due Diligence (DD). However, broadly speaking it will involve following steps:

- The Client Company gives mandate to the Agency for undertaking the DD. Generally, the Agency which carries out the DD is either a firm of Chartered Accountants or Solicitors or both depending upon the size of the transaction.
- The Agency approaches the company concerned with a programme of DD and list of documents which it would like to scurtinise to begin with.
- A time schedule and venue is agreed for the purpose. The time schedule will depend on the target dates which the companies concerned have in mind. The venue of the Due diligence can be the office of the company concerned or the office of the Agency or any other place as may be agreed between the parties concerned.
- A document by whatever named called is signed between the Agency of the Buyer and Seller. This document would list out names of the people who would do the audit on behalf of the Buyer, time schedule and terms of reference.
- The Agency will go through the requested documents and will make necessary notes. However, they are generally not being allowed to take copies. Queries raised by the Agency of the Purchaser shall be answered by the company representative supported by the personnel from the Agency representing the seller company.
- Once the above process is completed, the Agency will prepare a Due Diligence Report and submit the same to the Purchaser Company.

5. Who can conduct Due Diligence.

As mentioned earlier, normally there are two Agencies involved in the exercise of Due Diligence. The Legal Due Diligence (LDD) is generally carried out by the Solicitors firm of the Buyer Company. As regards, the Financial Due Diligence (FDD), it is generally carried out by the Audit Firm of the Buyer Company.

Invariably, whether it is LDD or FDD the agencies which carry out the DD are large in size with international exposure. The criterion for any agency to conduct due diligence is not based on any statutory requirement or legislation but on the strength of competence level and the expertise possessed by the Agency concerned.

6. Conclusion:

Due Diligence is an important activity in the context of corporate restructuring and otherwise. It offers an excellent opportunity of professional growth. Company Secretaries by virtue their knowledge base and understanding of financial and legal matters are in a good position to conduct due diligence. However for this purpose, size of the firm is very important which has to be big. Invariably, the client companies have a greater confidence in the big firms and very rightly so. Due Diligence has to be conducted in a time bound fashion and the Agency offering the due diligence service should be able to handle on related issues without over dependence on the outside agencies.

We Care Alumni Programme for Senior Member CA. Chintaman Kshirsagar (Mem No. 12321)

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