

Synopsis of key arguments advanced by Mr Harish Salve and Mr Abhishek Manu Singhvi on the Vodafone matter on August 12, 2010

Mr Salve concluded his arguments on applicability of Section 195 of the Income-tax Act, 1961 ('the Act') and thereafter reviewed the order of the Department. Mr. Singhvi then presented his arguments on the constitutional validity of amendments to Sections 191 and 201 of the Act.

Applicability of Section 195 to Vodafone

With reference to the Supreme Court judgment in the case of Transmission Corporation of A P Ltd vs CIT (239 ITR 587), relied upon by the Department, Mr Salve argued that the facts of the case are different from the Vodafone case as the Department has no jurisdiction in the Vodafone case and thus Transmission Corporation cannot be relied upon.

Review of the Department order

Mr Salve took the Judges through the order of the Department and to each major point, he submitted that he has (already) covered them during the arguments and very briefly recapped his contentions.

He reiterated that the capital asset is the share of the Cayman Island Company, which is situated legally and physically outside India and accordingly, transfer of Cayman Island Company's share cannot be taxed in India.

He submitted that it is the duty of the Department to check tax evasion and not to know the commercial considerations / rationale behind every transaction. On the issue of call options, Mr Salve argued that the Foreign Investment Promotion Board ('FIPB') had heard the matter and decided the issue.

Justice DY Chandrachud questioned Mr. Salve on the finding of the Department to hold the Mauritius companies as 'fictitious' companies. Mr Salve replied that a fictitious Company is one which has been specifically created for the purpose of

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avoidance of tax. However, the current structure has evolved over a period of time and, it makes sense from a commercial point of view. He referred to Press Note 4 of 2009, which defines an investing company as a company holding only investments in another company directly or indirectly, other than for trading of such holdings / securities. Thus, he stated that FIPB recognizes investment companies and allows them to invest in India and it is only the Department that considers such companies as illegal and fictitious.

He ended his argument that the Court must decide on the jurisdictional point, the chargeability and on applicability of Section 195 of the Act.

Thereafter, Mr Singhvi informed the Judges that his approach would be to argue on the constitutional validity of amendments to Sections 191 and 201 of the Act by the Finance Act, 2008 and non-applicability of Sections 194 and 201 of the Act to Vodafone. Mr Singhvi submitted that his arguments are without prejudice to the arguments Mr Salve has advanced and only relevant if Mr Salve's arguments are rejected by the Court on the jurisdictional issue. Hence, the Judges preferred not to hear Mr Singhvi's arguments and decided that they will first hear arguments from the Department's Counsel, Additional Solicitor General, Mr Mohan Parasaran, post which they will hear the rebuttal of Mr Parasaran's arguments by Mr. Salve. If they decide in favour of Mr Salve's arguments, they need not hear Mr Singhvi, however, if they decide against, then Mr Singhvi can present his arguments.

The matter will continue to be heard on Monday (August 16, 2010), and Mr Parasaran will present his arguments. We will keep you posted on the developments.

For a synopsis of the arguments from Day 1 to Day 5, please click below.

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