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Vodafone challenges tax verdict in apex court

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Vodafone group has approached the Supreme Court challenging the Bombay high court judgement on September 8, which said that the income-tax department had the jurisdiction to collect taxes, if any, in the 2007 acquisition of Hutch Essar.

A Vodafone group spokesperson said the company “remains convinced that there is no tax to pay on the Hutchison transaction and we will continue to defend this position vigorously”.

The I-T department in May this year wrote a letter to Vodafone, assessing the company’s tax liability in the \$20 billion deal at Rs 12,297 crore, saying the firm was liable to deduct tax at source.

In the letter, the department offered the company the opportunity to be heard on the tax assessment, but the company instead challenged the letter in the high court.

Tax experts believe the decision will have a major impact on cross-border transactions, since this could set a precedent.

Nishith Desai of Nishith Desai Associates, a tax expert and special counsel for Vodafone, in a late evening conference call said the companies must be careful in structuring and documenting transactions and be prepared for legislation risks in future cross-border deals. “Since tax authorities have become highly aggressive, taxation documents should be simplified and should carefully reflect the incidence of taxation, which is not happening as of now,” said Desai.

He said proposed deals would have to clearly delineate what parts of takeover will be subjected to taxation and where.

He also said that companies should be prepared to face legislation risks in India because of the I-T department’s aggressive stance in pursuing cases where it believes tax has been avoided.

Desai cited statistics from a survey which states that almost 80-90 per cent of the cases that come up for the first level of hearing go in favour of the tax authorities. However, when the case comes up for hearing in the Supreme Court, the statistics changes in favour of taxpayers.

“Since the lower court has not dealt with the apportionment and left the issue to be decided by tax authorities, we believe, after proper apportionment happens, fixing the value of Indian and foreign assets, the tax levied would get diluted substantially,” said Desai. He does not expect Vodafone to cough up the original demand of Rs 12,297 crore.

Besides, he also suggested that there was a way of advance settlement of cases through the Authority for Advance Ruling, which will take about six months for the ruling from the day of application.

“The ruling is binding on both the parties and can be challenged through a special leave petition in the

Supreme Court,” Desai said. “Our experience with this form of settlement has been very good. The tribunal even takes up a case out of turn for early ruling if it’s an urgent one,” he said.

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