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Vodafone Triumphs – SC Holds Tax Authority Has No Jurisdiction Over Overseas Transaction

In a landmark judgment guaranteed to evoke sighs of relief from investors worldwide, the Supreme Court of India ("SC"), on January 20, 2012, set aside the Bombay High Court ("BHC") judgment that the Indian tax authorities were correct in assessing Vodafone for Indian tax liability in its $11 billion acquisition of Hutchison's 67% equity share in Cayman Islands in 2007. The Indian tax authorities had raised a tax demand of Rs. 110 billion (approximately US$ 2.185 billion) on Vodafone International Holding for the said acquisition.

While setting aside the BHC judgment, SC has also directed the Income Tax Department to refund the amount of Rs. 25 billion (approximately US$ 496.6 million) earlier deposited by Vodafone pursuant to an interim order of the SC in September, 2011, along with interest on the aforesaid amount at 4%.

The Income Tax Department had attempted to impose tax on Vodafone by mapping out the source of the acquisition contending that since the overseas deal had resulted in a change of ownership in India, consequential tax was payable in India. However, Chief Justice S.H. Kapadia, opined that "the government has no jurisdiction over Vodafone's purchase of mobile assets in India as the transaction took place in Cayman Islands between Hutchinson and Vodafone".

The said judgment of SC has come as a much needed breather for various other M&A deals which have been under the Income Tax Department's scrutiny on similar grounds, such as GE-Genpact, Mitsui Vedanta Group, Idea-AT&T, SABMiller-Foster, Sanofi Aventis-Shanta Biotech, etc.

Keeping the above in mind, the exact implications of the judgment will be clearer only upon its detailed study. Meanwhile, the Central Board of Direct Taxes has constituted a "core committee" of officials to study the SC's judgment.

We will circulate a detailed analysis of the judgment in the coming days.

Nippon Life Insurance Acquires 26% in Reliance Capital

Japan's Nippon Life Insurance (Nissay) has signed a Memorandum of Understanding (MoU) with Reliance Capital Asset Management (RCAM), India's second largest mutual fund, for buying 26% stake in RCAM. Nissay has agreed to invest an amount of approximately Rs. 1,450 Crore in RCAM, making it the largest investment in the mutual fund industry of India by a single foreign firm. Nissay is already a strategic partner of Reliance Life Insurance Co. Limited, after it acquired 26% stake in Reliance Life last year.

The deal, however, is yet to get the approval from the mutual fund regulator in India, the Securities Exchange Board of India (SEBI).