

Resolution of International Tax Disputes – Indian Experience

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CHOICE OF REMEDIES

PROPOSED TRANSACTION

- Authority for Advance Rulings

Post decision forums

- Normal Appellate process involving CIT(A), ITAT, High Court, Supreme Court
- DRP – Dispute Resolution procedure
- Mutual Agreement procedure under tax treaties
- Settlement Commission ?
- Vodafone process

Vodafone Process

- 11-2-2007 Sale Purchase Agreement between Vodafone BV and HTIL (a Cayman Island Company)
- 19-9-2007 Show Cause for failure to withhold tax at source in India
- 3-12-2008 1st Bombay High Court Order against Vodafone
- 23-1-2009 Supreme Court of India dismisses Vodafone appeal
- 30-10-2009 2nd Show Cause Notice under Section 201 on jurisdiction to tax transaction in India
- 8-9-2010 Bombay High Court upholds Revenue position on jurisdiction
- 27-9-2010 Supreme Court refuses to stay Bombay High Court order – directs completion of TDS proceedings in 4 weeks

Avenues for International Tax Disputes

- Withholding obligations – sections 192 to 195A with penal consequences in 201, 201A, 221, 271C
- Treatment as a “Representative Assessee” under section 160(1)(i) read with 163
- Substantial liability as primary Assessee subject to assessment, re-assessment, revision, etc.

Jurisdiction under which Obligations arise

- Withholding obligations arising extra territorially
– Vodafone, Bombay High Court
- Representative Assessee obligation would follow
- Primary liability undoubtedly could be extra territorial

Normal Appellate Process

- Income Tax Appellate Tribunal has received critical acclaim in international fora and its decisions continuously examined internationally on regular basis
- International Special Tax Bench set up in Mumbai by ITAT
- Largest number of international tax decisions rendered by any judicial authority through out the world
- ITAT has rendered yeoman services despite infrastructure, database and legal library constraints
- Decisions received with mixed responses internationally

High Court / Supreme Court

- Far greater precedent value domestic and international
- Contributed several landmark international decisions – Azaadi Bachao, Morgan Stanley, Vodafone

Indian Revenue positions

- Good transparency in formation of DTC, lack of arbitration clause in tax treaties
- Largest country reservations on the International OECD Commentary
- Most points of the Commentary, which are in favour of the tax payer, are either reserved or contrary views are expressed
- Tremendous improvement in knowledge and skill