

## FC WEEKEND

### Legal eagles say verdict image booster for India

By Rajesh Abraham, Vikas Srivastav Jan 20 2012 , Mumbai

The landmark Supreme Court on Vodafone tax case will restore the confidence of foreign firms in investing in India and boost cross-border M&As as well as inbound and outbound investments, according to top lawyers. Coming at such uncertain times for global investment climate, it is a big booster for India's image as a place where the rule-of-law applies squarely on the government as well as citizens, whether private, foreign or corporate entities.

China has long suffered a disadvantage as investors consider it a lucrative market, nevertheless lacking legal transparency.

"What politicians and bureaucrats have failed to do in assuring certainty for investors, the Supreme Court has managed to achieve," Nishith Desai, founder and managing partner at international law and tax firm Nishith Desai Associates, told Financial Chronicle.

According to Desai, the judgement is a great victory for taxpayers worldwide. "It re-emphasises the long-standing principle that taxpayers are entitled to plan their economic affairs within the framework of law. The decision will provide tremendous certainty to investors and boost cross-border M&As, inbound and outbound investments."

Foreign direct investment (FDI) in India fell by 31 per cent in 2010-11, according to United Nations Conference on Trade and Development (UNCTAD). The Vodafone court case, which has been dragging for the past three years, and stalled reforms in retail sector, had impacted the foreign investor confidence. Continuous legal wrangles and controversies had put foreign firms keen on investing in India on the backfoot, said lawyers.

Vodafone's \$2.2 billion tax win will renew interest in India as a country where the integrity of the Indian tax legislation and jurisprudence has been upheld.

Said Aseem Chawla, partner, Amarchand Mangaldas, another leading tax advisory and corporate law firm: "Needless to suggest, the apex court's ruling will restore the foreign investor's dwindling assurance in the Indian tax administration system. Given the recent epidemic of tax controversies and litigations, for the investor and taxpayers at a large, it is indeed a day, which affirms belief in judicial system and checks the overreach of powers by Indian tax authorities."

According to him, it is heartening to see the court ruling in favour of the canon of certainty. "The integrity of the Indian tax legislation and jurisprudence has been upheld by the supreme court's decision. The apex court has also opined that the legislature is free to pursue India's source based taxation by making appropriate amendments in India's income tax law," he said.

Added Desai of Nishith Desai: "The judgment is a great victory for taxpayers worldwide. It re-emphasises the long standing principle that taxpayers are entitled to plan their economic affairs within the framework of law." Desai said the SC verdict was also a lesson to the tax department not to make unjustified high-pitched assessments, especially since the tax would have to be returned along with interest, thereby further increasing the fiscal deficit. "Such high pitched assessments create budgetary distortions, leading to wrong policy choices. It is hoped that the tax department accepts this landmark ruling and does not override it through retrospective legislation," he said.

Lalit Bhasin, head of Bhasin & Company, a Delhi-based legal firm, said the SC decision would put to rest lot of legal controversies involving transactions with Indian and overseas firms. "Today's judgment will set the pace for foreign direct investments in India especially for companies waiting on the fence to get more clarity on the Vodafone case," he reckoned. This judgment also brings clarity on territorial jurisdictions of the income-tax department to impose capital gains tax on any such dealings.

Manoj Kumar, partner, Hammurabi & Solomon, another Delhi-based legal firm, said following the Bombay High Court decision a year ago, there was lot of confusion and also over enthusiasm by the income-tax department. "It is ironical that I-T department had started fishing files where dealings were in India as well as abroad."

Sandeep Ladda, executive director, PwC India said the Vodafone verdict settled a prolonged litigation which had created a lot of uncertainty for multinationals having similar structures and/or who had entered into or were proposing to enter into similar transactions. This should provide much needed respite to other litigants in other cases where the "Vodafone controversy" had been initiated by the revenue authorities and is currently pending at various stages of litigation across the country. However, any conclusions in this regard in each individual case can only be reached based on the fine print analysis of the judgment. Further, the direct taxes code bill contains a proposal to tax similar transactions. Hence this ruling may have limited relevance post implementation of the DTC, he said.

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