Central Board of Direct Taxes officials asked to lay off 'Vodafone-like cases' to reduce litigation

The Central Board of Direct Taxes (CBDT) has asked its officials to apply the principle behind a Bombay High Court ruling in favour of Vodafone in a transfer pricing case, thus moving quickly to bring to an end litigation embroiling other multinational corporations and firmly establishing its commitment to provide a nonadversarial tax regime.

As many as 26 tax disputes could come to an end as the tax demands were based on a logic similar to that applied in case of Vodafone and now rejected by the government. Directions in the form of a letter have been issued in cases where the circumstances are identical, a senior government official told ET.

"In view of the acceptance of the above judgement, it is directed that the ratio decidendi of the judgement must be adhered to by the field officers in all cases where this issue is involved," Central Board of Direct Taxes said in a clear direction to its field officials. The unambiguous signal, the government official hoped, will encourage foreign companies that were waiting for clarity before bringing more funds into their Indian subsidiaries to now loosen purse strings.

This is because in case of Vodafone, income-tax authorities had alleged that Vodafone Plc had subscribed to shares of Vodafone India at a rate lower than a normative value determined by the tax department.

Using transfer pricing norms, it then sought to tax the transaction — a chain of logic rejected by the Bombay High Court, which said capital receipts cannot be taxed. "But for this circular, legally it was still open for assessing officers in other states to take a different view on the subject as the Bombay High Court judgement does not have binding effect outside the jurisdiction of that court," said Sanjay Sanghvi, partner at law firm Khaitan & Co.

Essentially, the directions issued by the government will mean cases that are still being considered by the tax department and where final orders have not been passed could be resolved quickly. Appellate bodies and dispute resolution panels will surely take notice of the decision and are likely to side with assessees, tax experts said.

Moreover, no fresh cases raising similar demands will be initiated by assessing officers. "The communication from Central Board of Direct Taxes to field officers to abide by the principles of the high court order would help settle past disputes and reduce litigation.

Taxpayers would feel assured that the transfer pricing on contribution share application would not haunt them," said Vijay Iyer, national leader (transfer pricing), EY. The Union Cabinet on Wednesday decided not to appeal the Bombay High Court decision, delivered in October last year, setting aside the Rs 1,397-crore transfer pricing claim on Vodafone.

The Cabinet also decided that the government will accept orders of courts, income-tax appellate tribunals and dispute resolution panels in other cases as well, where similar transfer pricing cases have been decided in favour of the taxpayer.

But the I-T department has gone a step ahead and decided to take a proactive approach by clearly telling field units not to pursue similar cases. The decision could benefit Shell India, IBM, Nokia, Cairn India, Leighton India and many others that have faced similar tax demands.

The Cabinet decided not to appeal the Vodafone decision in the SC after the chief commissioner of income-tax (international taxation), chairperson CBDT and the attorneygeneral backed the Bombay High Court decision.

The tax demand on Vodafone and other MNCs had led to criticism of India's tax regime, coming close on the heels of the controversial retrospective amendment of the income-tax law, also in a case involving Vodafone. In the case considered by the Cabinet, Vodafone India had issued shares to its Mauritius parent Vodafone Tele-Services (India) Holdings Limited at a premium of Rs 8,509 for a total of Rs 246.39 crore.

The transfer pricing officer determined the arm's length price of the shares at Rs 53,775 and made an upward adjustment of Rs 1,309 crore to the income of Vodafone India. Bombay High Court struck down the demand noting that the transaction did not give rise to income that could be taxed.

(Economic Times)