

## **Shell hits back at I-T department in Rs 15000 crore share issue spat**

In the latest on the ongoing spat between multinational corporations and Indian revenue authorities, global petrochemical and energy giant Shell has hit back at the revenue authorities' attempts to tax an inter-group issue of shares in March 2009.

Shell has filed a writ petition at the Bombay High Court challenging the income tax department's draft assessment order that added Rs 15000 crore rupees to the company's taxable income, which would result in a potential tax liability of nearly 5,000 crore rupees, two source familiar with the development told ET NOW.

Shell has also filed an application at the dispute resolution panel or DRP in the same case. ET NOW was the first to report the development.

"In the case of a writ petition, there is a high degree of probability that the court may not address the company's plea on merits on the ground that alternate remedies at other forums are possible within the framework of the income tax act. Therefore, companies would want to ensure that they also take recourse to the existing remedies ie the DRP or Dispute Resolution Panel or the CIT (Commissioner of Income Tax), Appeals within the required time-frame. This safeguards the company from being left high and dry in case the court does not entertain their writ petition on merits", said N.C Hegde, partner, Deloitte Haskins & Sells.

In an email response to ET NOW, Shell confirmed that it has filed a writ petition in the Bombay High Court challenging the draft tax order. "Shell has always maintained that it will continue to evaluate all options for redress available to resolve this tax dispute" a Shell India spokesperson told ET NOW.

According to sources, British telecom giant Vodafone has also filed a writ petition at the Bombay High court and moved the DRP in a similar case where income tax authorities had issued a draft assessment order against Vodafone adding Rs 1300 crores to its taxable income, resulting in a tax liability of nearly Rs 460 crores. ET NOW is awaiting Vodafone's official response to an email query.

Shell is being advised by BMR Legal and law firm MP Savla and Co while law firm Dutt Menon Dunmorsett is advising Vodafone. Both the pleas are likely to come up before the Bombay High Court on 3rd May.

The Shell draft order was issued following a transfer pricing order which alleged under-pricing of Rs 15,000 crores by the company. The transfer pricing order related to the issue of 87 crore shares by Shell India to an overseas group entity, Shell Gas BV, in March 2009. The shares were issued at Rs 10/share, which was contested by the income tax authorities in Mumbai.

The income tax department challenged the valuation methodology of Shell India and pegged the value of the shares at Rs 180/share instead. In the case of Vodafone, the I-T department had alleged that the Indian arm of the world's largest telecom company by revenue under-

priced shares issued to a Mauritius-based group company by nearly Rs 1,300 crore. It challenged the valuation method adopted by Vodafone India Services Private Limited while issuing shares to Vodafone Teleservices Mauritius in FY09.

Similar orders have been issued by the income tax department against a few Essar Group firms, Bharti Telecom and HSBC Securities amongst other companies. "It is highly debatable whether such adjustments can be made under the current transfer pricing regulations. This stance of the income tax authorities can lead to a flurry of litigation and will significantly impact foreign fund inflows," said Punit Shah, co-head (tax), KPMG.

Following stiff opposition from companies over the sudden rise in transfer pricing orders, the Finance Ministry has sought the Attorney General's opinion on these cases which is pending.

The dispute resolution panel consists of three commissioner rank officers from the income tax department who hear disputes between companies and the tax department in transfer pricing cases cases and cases involving assessment of overseas companies. The panel can confirm, reduce or enhance the quantum proposed in the draft assessment order.

Transfer price refers to the actual price at which a transaction takes place between two related parties, usually belonging to the same group. India has a high incidence of disputes relating to transfer pricing because it is often difficult to arrive at a price that is agreeable to both the I-T Department and the companies involved.

*(Economic Times)*