

\$~11 to 15

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CO.APP. 63/2012 and CM Nos.12304-05/2012

CIT Appellant

Through : None.

versus

VODAFONE ESSAR MOBILE
SERVICE LTD

..... Respondent

Through : Mr. Rajiv Nayar, Sr. Adv.
with Ms. Niti Dixit, Mr.
Raunaq B. Mathur and Ms.
Samiksha Godiyal, Advs.

+ CO.APP. 67/2012 and CM No.13359/2012

CIT Appellant

Through : None.

versus

BHARTI INFRATEL LTD

..... Respondent

Through : Mr. Gopal Jain, Sr. Adv.
with Mr. Vaibhav
Choudhary, Mr. Chinmayee
Chandra and Mr. Vidur
Bhatia, Advs.

+ CO.APP. 55/2013 and CM No.12838/2013

COMMISSIONER OF INCOME
TAX: DELHI – VI

..... Appellant

Through : None.

versus

36

VODAFONE INFRASTRUCTURE
LIMITED & ORS.

... Respondents

Through : Mr. Rajiv Nayar, Sr. Adv.
with Mr. Milanka
Choudhary, Ms. Sarojanand
Jha and Mr. Yash
Srivastava, Advs. for R-4.

+ **CO.APP. 56/2013 and CM No.12839/2013**

COMMISSIONER OF INCOME
TAX: DELHI – I

..... Appellant

Through : None.

versus

BHARTI INFRATEL VENTURES
LIMITED & ORS.

... Respondents

Through : Mr. Gopal Jain, Sr. Adv.
with Mr. Vaibhav
Choudhary, Mr. Chinmayee
Chandra and Mr. Vidur
Bhatia, Advs.
Mr. Rajiv Nayar, Sr. Adv.
with Mr. Milanka
Choudhary, Ms. Sarojanand
Jha and Mr. Yash
Srivastava, Advs. for R-4.

+ **CO.APP. 3/2015 and CM Nos.2238-39/2015**

COMMISSIONER OF INCOME TAX-VI

..... Appellant

Through : None.

versus

VODAFONE DIGILINK LIMITED

..... Respondent

Through : Mr. Rajiv Nayar, Sr. Adv.
with Mr. Anirudh Das and
Mr. Manikrishnan, Advs.

37

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

14.09.2015

%

1. There is no appearance on behalf of the appellant despite the matter having been passed over once. There was no appearance on behalf of the appellant on the last two dates as well.
2. Separate claims for mergers and demergers were moved before the learned company judge by two sets of companies i.e. Vodafone and Bharti respectively under Sections 391 to 394 of the Companies Act which were approved by the learned company judge by the order dated 29th March, 2011. This order was being assailed by the department of Income Tax before the Supreme Court of India by way of SLP(C)No.29819/2012.
3. Learned Senior Counsel for the respondent has informed us that the scheme was approved by the Division Bench of the Gujarat High Court by its judgment dated 27th August, 2012 on the petition moved by the Gujarat Company. This order of the Division Bench was assailed by the appellant by way of Special Leave Petition

4. It appears that the appellant was pressing its challenge on the issue of the manner in which proceedings for recovery of any tax dues would be effected from the transferor or transferee companies upon the merger/demerger. The learned company judge rejected these objections in the petitions filed by the parties resulting in the filing of these appeals.

5. The appellant's challenge to similar orders with regard to Vodafone Essar Mobile Services Ltd. was rejected by the Supreme Court in the following terms :

"Heard learned counsel for the parties.

We are not inclined to entertain the special leave petitions. The special leave petitions are, accordingly, dismissed. We only state that the Income Tax Department is entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other person who is liable for payment of such tax due."

6. We are informed by Mr. Rajiv Nayar, learned Senior Counsel appearing for the Vodafone, Bharti and Indus Towers companies that this very issue is the primary ground of challenge in all these appeals and that the same would stand governed by the principle laid down by the Supreme Court in the aforesaid order of 15th April, 2015.

7. It would appear that as a result of the outcome of the challenge before the Supreme Court, the appellant is also not interested in prosecution of the present appeals.

These appeals and applications are therefore, dismissed. It needs no elaboration that the parties have to abide by the principle laid down by the Supreme Court in its order dated 15th April, 2015 so far as the statutory tax dues claimed by the Income Tax authorities against the parties are concerned. This principle would bind the parties in all these appeals.

39


GITA MITTAL, J


I.S. MEHTA, J

SEPTEMBER 14, 2015

aj