

Tax Hotline

October 01, 2002

GOVERNMENT OF INDIA FILES SLP AGAINST DELHI HIGH COURT ORDER

After much speculation over when the Government of India (“GOI”) would appeal against the Delhi High Court (“Delhi HC”) order dated May 31, 2002; the GOI has finally gone ahead and filed the Special Leave Petition (“SLP”) before the Apex Court of India. The SLP has been filed jointly by the GOI and Central Board of Direct Taxes (“CBDT”), both being the respondents in the Delhi HC writ petitions.

The Delhi HC, in the aforementioned ruling had quashed Circular 789, dated April 13, 2000 which clarified that Certificate of Residence issued by Mauritius tax authorities would constitute sufficient proof of residence as well as beneficial ownership of a Mauritius entity. The Delhi HC ruled that the Circular was bad in law and also *obiter* stated that the Indian Income Tax Authorities (“IT Authorities”) could re-open assessments of Mauritius based Foreign Institutional Investors (“FIIs”) as may be open to them under the Indian Income Tax law.

If the SLP is admitted and the application for stay of the Delhi HC order is accepted, then the Delhi HC order would be put on stay and consequently IT Authorities would be prevented from re-opening any assessments until the final adjudication of the SLP by the Supreme Court of India. However, if the SLP is rejected, then the Delhi HC order would become final.

Source: *The Economic Times*, October 1, 2002

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