Nokia files appeal with Indian Supreme Court after surprise decision in royalty tax case

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Finnish mobile phone company Nokia on 13 February 2014 told *Tax Analysts* that it has filed an appeal with the Indian Supreme Court contesting a lower court's sudden decision to change the terms of an agreement to unfreeze Nokia's immovable assets during an ongoing royalty tax dispute.

The Delhi High Court on 5 February amended its 12 December 2013, ruling directing India's Department of Revenue to release Nokia's assets, including its factory in Chennai, which the tax authorities froze in September 2013 in connection with an INR 20.8 billion (about $333.7 million) royalty dispute. (For prior coverage, see Indian court releases Nokia assets frozen in royalty tax dispute.) The high court's December ruling cleared the way for Nokia to transfer the assets to Microsoft as part of a $7.3 billion deal in which Microsoft agreed to purchase Nokia's handset business and license patents. The deal is set to close in the first quarter of 2014.

In exchange for the release of its assets, Nokia was ordered to meet several obligations, including depositing INR 22.5 billion (about $360 million) into an escrow account. The ruling also allowed the company to exhaust all possible legal options before paying any future tax claims.

However, shortly after the December decision, the Indian tax authorities asked the high court to clarify its ruling, demanding that Nokia pay future tax claims as they arise, before all legal options run out. The court sided with the tax authorities and told Nokia to either accept the amended ruling or appeal to the Supreme Court.

Nokia said it filed the appeal with the Supreme Court "because it believes the court's conditions are not aligned with international treaties and practices and would restrict Nokia's ability to contest tax authority actions locally and internationally," a company spokesman said. "Nokia cannot commit to these conditions and waive its legal right to defend itself after undergoing more than a year of aggressive and arbitrary actions by the Indian tax authorities."

The spokesman said Risto Siilasmaa, chair of Nokia's board of directors, is working to negotiate a compromise with Indian government officials before the company's deal with Microsoft closes in a matter of weeks. The spokesman noted that Nokia's appeal is intended only to enable the company to quickly transfer its assets to Microsoft in a way that is agreeable to both Nokia and the tax authorities, and does not aim to resolve the overall tax dispute, which dates back to March 2013.

At that time, India's Income Tax Department assessed Nokia India INR 20.8 billion for five fiscal years, starting with 2006-2007. According to the tax authorities, Nokia India's payments to its Finnish parent company for software used to manufacture devices at its Chennai plant constituted royalties, which are subject to a 10% tax deducted at source.

Nokia contested the assessment and even requested dispute resolution assistance from the Finnish competent authority through the mutual agreement procedure under the Finland-India income tax treaty. However, no resolution is in sight.