

Shiva Kant Jha
 Advocate
 Supreme Court of India,
 Former Chief Commissioner of Income-tax

J-351 Sarita Vihar
 Mathura Road
 New Delhi-76

e-mail: shivakantjha@gmail.com
 skjha1964@gmail.com
 Mob. 09811194697

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Dear Mr. Mukherjee,

With greatest regards, I am writing this letter, as a citizen of the Republic of India, wholly *pro bono publico*. Its context is: (a) the Notice that Vodafone is reported to have given to drag our Government to international arbitrations, and other possible litigations, and (b) the questions raised at different national and international fora as to the propriety and legality of the proposed retrospective changes spelt out in the Finance Bill now before our Parliament. I enclose herewith Two Chapters comprehensively dealing with these issues.

You may recall that on January 30, 2012 I had written to you a long letter enclosing a comprehensive Critique on the Vodafone Judgement, and I had suggested retrospective changes and validation as it was possible to do so even in the tax matters. I am glad, and I, as a humble citizen, appreciate that our Government has proposed such changes in the Finance Bill awaiting Parliament's approval. Bearing in mind my moral responsibility to support such proposed measures, I have drawn up the enclosed Two Chapters:

- (i) Chapter I examines the propriety of the Notice given by Vodafone, its validity under the Indo-Netherlands BIT, its position under our Constitution, and public international law; and it suggests certain measures for our Government to consider; and
- (ii) Chapter II presents a comprehensive NOTE, in the Vodafone context, justifying the Proposed Retrospective Amendments in the Income-tax Act, 1961, sought to be made through the provisions in the Finance Bill 2012. It is comprehensive enough to inform our representatives in Parliament that what has been proposed is sound and justified on all grounds. Besides, it examines issues in the light of our Constitution and jurisprudence so that, if need be, our Government is helped to take a sound position even before the Supreme Court. The possibilities of some further rounds of litigations cannot be ruled out. As this Chapter touches so many issues, and anticipates so many points of criticism it runs into 50 pages. I hope you will excuse me for such a longish Note on the points about which our officers and your law officers might be having better comprehension and abler insight.

As to my credentials to write these two enclosed Chapters, I need not say again as I have nothing to add to my D.O., dated January 30, 2012 addressed to your good self.¹

¹ "As I have studied the Judgment in *Vodafone Case* critically, as I have greater and deeper understanding greater and deeper understanding of international taxation than most others at the

In passing, I may mention that some idea is afloat for getting the tax demands settled at a figure agreeable to Vodafone and our Government. I have not touched this issue in the appended Chapters. But I suggest that if any such proposal ever comes up, that should be examined keeping in view the decision of the House of Lords in *National Federation of Self-Employed and Small Businesses Ltd*¹ [1981] 2 All ER 93 HL which is an income-tax case where the law has been examined in detail. The Court of Appeal had struck down the settlement done, but the House of Lords approved that because it was impossible for the Board of Inland Revenue to know who those rats and cats were who, as members of a trade union, earned income but never disclosed identities, and the Board had exhausted all possibilities to get at them. The settlement was approved as an act of management in a desperate situation.² The facts in Vodafone are different. We know who did what, how, when, and where in this Case.

The Hon'ble Delhi High Court had observed in the text of the Judgement in *Shiva Kant Jha & Anr v. Union of India*³ :

“ We would however like to make an observation that the Central Govt. will be well advised to consider the question raised by Shri Shiva Kant Jha who has done a noble job in bring into focus as to how the Govt. of India had been losing crores and crores of rupees by allowing opaque system to operate.”

But our Government, whose cause, in effect, I had espoused before the Court never thought it fit to seek my help at any point of time. Here again I offer my readiness to help the Government in taking legal position, and conducting litigations, whether within the domestic jurisdictions, or at the foreign fora. I may make it clear that I never charged any remuneration for helping, or pursuing, or conducting a public cause

Bar and our Government, as I have carried on litigations in this field before the Delhi High Court and the Supreme Court right from 2000, as I have received appreciation for my work in this field not only from eminent international jurists, but also from Delhi High Court⁵, and as I had been a member of the Council for Higher Legal Studies of the Universities at Calcutta, Patna, and Nagpur, as I have delivered lectures on international law at various fora including National Law University, as I have written articles (www.shivakantjha.org), and books {*Judicial Role in Globalised Economy*(2005, Wadhwa); and *On the Loom of Time*(2011, Taxmann)}, and as I have worked and witnessed for more than 3 decades in the Indian Revenue Service, I think I am competent to venture my comments, and feel I shall be failing in my duty to the nation if I do not put forth my ideas ... I believe in the words of Tagore... ‘যদি তোর

ডাক শুনে কেউ না আসে তবে একলা চলো রে।(Tor Daak Shune Keu Naa Aase Tobe

Eklaa Chalo Re). These words had guided my father* and uncle who had fought for this country's Independence; and have been most precious for me who too had borne the joyous brunt of our Struggle for Freedom.” [* He had been granted a *Tamrapatra* by Mrs. Indira Gandhi, the then Prime Minister of India, for the memorable contribution to India's Struggle for Freedom.]

² The settlement of tax claims on Vodafone on account of the acquisition of Mannesmann through a Luxembourg subsidiary has rightly exposed HMRC to serious criticism because that seems to violate the British constitutional principles.

³. (2002) 256 ITR 563 (Del.).

before the courts, and I will never charge that ever if my help is ever required in any capacity thought fit and proper. But I have my constraints as I am in Seventies. Yet...

I had ended my letter of January 30, 2012 with the immortal words of Tagore. I end this letter with a quote from the Holy Quran beautifully inscribed on the arc-shaped outer lobby of our Lok Sabha (reiterating the *Bhagavadgita* VI. 5):

‘इन्नलाहो ला यूगय यरो मा बिकौ मिनहत्ता युगय यरो वा बिन क्तसे हुम’

(“Almighty God will not change the condition of any people unless they bring about a change in themselves.”)

With the greatest regards and best wishes,

Jai Hind

Yours

(Shiva Kant Jha).

Shri Pranab Kumar Mukherjee
Hon’ble Finance Minister of India,
North Block,
New Delhi 110 001

P.S. As I am undergoing medical treatment in Mumbai, I send this letter by e-mail, and its hard copy would go by post. After sometime, I would put it on my personal website www.shivakantjha.org as it pertains to a public cause worthy to come within public domain.