IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1551 OF 2013

COMMISSIONER OF INCOME TAX -3 ...Appellant
Versus
M/S. IDEA CELLULAR LTD. ...Respondent

Mr.A. R. Malhotra, for the Appellant.

Mr.J.D.Mistri, Senior Counsel with Mr.Madhur Agrawal i/b. Mr.Atul K.Jasani, for the Respondent.

CORAM : S.C. DHARMADHIKARI &
G.S.KULKARNI, JJ.

DATED : 11th APRIL, 2016

P.C.

1. This appeal of the Revenue challenges the order passed by the Income Tax Appellate Tribunal in Income Tax Appeal No.5635/Mum/2011.

2. The Assessment Year is 2003-04.

3. A substantial question of law, according to Mr.Malhotra, learned Counsel appearing for the Revenue, is formulated at page 6, but it arises in the background of certain telecommunication services

rendered by the Assessee-Company. The Assessee - Company filed a return of income. It declared total income at a certain sum. The Aseessing Officer found that the Assessee had added back a sum of Rs.18.07 crores on account of license fees paid to the Department of Telecommunication, Government of India against which a deduction of Rs.40.24 crores was claimed under Section 35ABB of the Income Tax Act,1961 (for short 'the I.T.Act'). The Assessing Officer made a disallowance of Rs.27,82,30,588/-. He determined the license fee paid by the Assessee on the basis of the amount fixed at the time of acquiring the licence. However, during the year ending 31st March,2000, the Department of Telecommunication introduced a new policy regarding licence fee. By virtue of this, the telecommunication service providers were required to pay a fixed percentage of revenues earned as the licence fee. The assessment was completed under Section 143(3) on 31st March,2006 on a total income of Rs.39,06,57,847/-. The matter was carried in appeal by the Assessee to the Commissioner - the First Appellate Authority who directed the Assessing Officer to rightly calculate the amount of disallowance.

4. Being aggrieved by this order, the matter was carried to the Tribunal by the Revenue.

5. The Tribunal found that the controversy of identical nature on facts and in law was before the Bench of the Tribunal at New Delhi and in the case of telecommunication service providers themselves.

6. The Tribunal has also noted in paragraph 5 that in the Assessee's own case for the Assessment Year 2001-02 the identical issue was raised and which was decided in favour of the Assessee. The Tribunal reproduced the finding of fact and held that since the matter was decided in favour of the service providers and against the Revenue in the case of very Assessee before it for the previous Assessment Year, there is no reason to deviate or differ from those views. It found that the controversy is entirely identical to the one dealt with earlier. In such circumstances, the Tribunal did not interfere with the order of the First Appellate Authority and dismissed the Revenue's Appeal on 20th November,2012.

7. In such circumstances, we are not in agreement with Mr.Malhotra that the question framed at page 6 is a substantial question of law. It being identical and covered by the Tribunal's own order in the case of identical service provider, we do not think that a different view

was possible. The Tribunal's view cannot be said to be perverse or vitiated by any error of law apparent on the face of the record. Further, we find and as pointed out by Mr.Mistri, learned Senior Counsel appearing for the Assessee that the High Court of Delhi at New Delhi in **Income Tax Appeal No.1336 of 2010** decided on 19th December,2013 in the case of "**Commissioner of Income Tax Vs. Bharti Hexacom Ltd.**" and "**Commissioner of Income Tax Vs. Bharti Cellular Ltd.**", has dismissed the Revenue's appeal.

8. The matter may be pending from the Delhi High Court's judgment in the Hon'ble Supreme Court. However, we do not think that we should only on this, take a different view and admit this appeal. Once the controversy is squarely covered in favour of the Assessee and against the Revenue on facts, then, we do not think any other view is possible.

9. The appeal is dismissed. No costs.

[G.S. KULKARNI, J.] **[S.C. DHARMADHIKARI,J.]**