

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1152 OF 2017

Commissioner of Income Tax(TDS) Pune .. Appellant
v/s.

M/s.Vodafone Cellular Ltd. .. Respondent

**WITH
INCOME TAX APPEAL NO. 1274 OF 2017**

Commissioner of Income Tax(TDS) Pune .. Appellant
v/s.

Vodafone Cellular Ltd. .. Respondent

**WITH
INCOME TAX APPEAL NO. 1995 OF 2017**

Commissioner of Income Tax(TDS) Pune .. Appellant
v/s.

M/s.Vodafone Cellular Ltd. .. Respondent

**WITH
INCOME TAX APPEAL NO. 571 OF 2018**

Commissioner of Income Tax(TDS) Pune .. Appellant
v/s.

Vodafone Cellular Ltd. .. Respondent

**WITH
INCOME TAX APPEAL NO. 1266 OF 2018**

Commissioner of Income Tax(TDS) Pune .. Appellant
v/s.

Vodafone Cellular Ltd. .. Respondent

Mr. Sham Walve a/w. Mr.Pritesh Chatterjee for Appellant.
Ms. Mrunal J. Parekh i/b. DMD Advocates for Respondent.

**CORAM: UJJAL BHUYAN, &
MILIND N. JADHAV, JJ.**

DATE : JANUARY 27, 2020.

P. C.:-

- . This order will dispose of all the above five appeals.
2. Heard Mr. Sham Walve, learned standing counsel revenue for the appellant and Ms.Mrunal J. Parekh, learned counsel for the respondent-assessee.
3. Without entering into the factual details, it is seen that in all these appeals, revenue has proposed the following two questions as substantial questions of law :
 - “a) Whether on the facts and in the circumstances of the case and in law, Hon’ble ITAT was justified in holding that TDS provisions under section 194H of the Income Tax Act, 1961 are not attracted on discounts given by the assessee to the distributors of prepaid SIM cards ?

b) Whether on the facts and in the circumstances of the case and in law, Hon'ble ITAT erred in setting aside the case of the AO ?”

4. From the above what is discernible is that issue raised in these bunch of appeals is whether provisions of Section 194H of the Income Tax Act, 1961 (briefly “the Act” hereinafter) will be applicable in case of discounts given by the assessee to the distributors on account of prepaid SIM cards.

5. Section 194H of the Act deals with commission or brokerage. It says that any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission(not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five

percent.

6. In *Pr. Commissioner of Income Tax-8, Mumbai v/s. M/s.Reliance Communications Infrastructure Ltd.* - Income Tax Appeal No. 702 of 2017 decided on 22.07.2019, this Court held that when transaction is between two persons on principal to principal basis, deduction of tax at source as per Section 194H of the Act would not be made since the payment was not for commission or for brokerage. It was held as under :

“3. Having heard the learned Counsel for the parties and having perused the documents on record, we do not find any error in the view of the Tribunal. The Tribunal, as noted, besides holding that the Commissioner’s order setting aside the order passed u/s 201 was not carried in appeal, had also independently examined the nature of the transaction and come to the conclusion that when the transaction was between two persons on principal to principal basis, deduction of tax at source as per section 194H of the Act, would not be made since the payment was not for commission or brokerage.”

7. The above view has been followed by this Court in Income Tax Appeal No. 1129 of 2017- *Commissioner of Income Tax (TDS) Pune V/s. M/s.IDEA Cellular Ltd.*, decided on 13.01.2020. This Court followed the earlier decision in *M/s. Reliance Communications Infrastructure Ltd. (supra)* and held that no substantial question of law arose from such finding of the Tribunal.

8. Adverting to the facts of the present case, Tribunal held as under :

“36. In view of our discussion in the preceding paragraphs we hold that the sale of SIM cards / recharge coupons at discounted rate to distributors is not commission and therefore not liable to TDS u/s. 194H of the I.T.Act. However, we have restored the issue to the file of the Assessing Officer for necessary verification in the light of the decision of Hon’ble Karnataka High Court (supra). Therefore, the grounds for the other years on the issue of liability u/s. 194H are allowed for statistical purposes. We hold and direct accordingly. “

9. In view of the above and following the earlier decision of this Court in *M/s.Reliance Communications Infrastructure Ltd. (supra)*,

we are of the view that the Tribunal was justified in holding that the provisions of Section 194H of the Act was not applicable on discounts given by the assessee to the distributors of prepaid SIM cards.

10. Thus upon thorough consideration of the matter, we do not find any error or infirmity in the view taken by the Tribunal. No substantial question of law arises therefrom.

11. Consequently the appeals are dismissed. However there shall be no order as to costs.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)