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

INCOME TAX APPEAL NO. 1146 OF 2017

The Commissioner of Income Tax(TDS) Pune .. Appellant
v/s.
M/s.Vodafone Cellular Ltd. .. Respondent

WITH
INCOME TAX APPEAL NO. 1149 OF 2017

The Commissioner of Income Tax(TDS) Pune .. Appellant

v/s.

M/s.Vodafone Cellular Ltd. .. Respondent

WITH
INCOME TAX APPEAL NO. 281 OF 2018

The Commissioner of Income Tax(TDS) Pune .. Appellant

v/s.

Vodafone Cellular Ltd. .. Respondent

WITH

INCOME TAX APPEAL NO. 1279 OF 2018

The 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 the above four 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 details of each of the appeals we may note that the appeals have been preferred projecting the following questions as substantial questions of law :

> "(a) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in holding the discounts given by the assessee to its distributors on prepaid SIM cards does not require deduction of tax u/s. 194H of the Act and subsequent penalty u/s.271C is not applicable ?

(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in setting aside the case to the AO."

4. At the outset, we may mention that the appeals filed by the revenue on quantum i.e. ITXA No. 1152 of 2017, ITXA No. 1274 of 2017, ITXA No. 1995 of 2017, ITXA No. 571 of 2018 and ITXA No. 1266 of 2018 have been dismissed by us today confirming the finding of the Tribunal regarding non-applicability of Section 194H to discounts given by the assessee to the distributors of prepaid SIM cards.

5. The present bunch of appeals pertains to orders of penalty imposed by the Assessing Officer on the respondent which has been interfered with by the Tribunal.

6. Mr. Sham Walve, learned standing counsel revenue fairly submits that this issue has been gone into by this Court in Income Tax Appeal No. 1384 of 2017, Commissioner of Income-Tax (TDS),

Pune v/s. M/s. Idea Cellular Ltd., decided on 13th January, 2020. The said judgment deals with identical questions. In that case this Court held that the assessee cannot be considered as an assessee in default and, therefore, not liable for penalty.

7. Consequently and following the decision of this Court in M/s. Idea Cellular Ltd., we also hold that no substantial question of law arises out of the order passed by the Tribunal.

8. Thus appeals are devoid of merit and are accordingly dismissed.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN,J.)**