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

INCOME TAX APPEAL NO. 1353 OF 2017

The Commissioner of Income-tax
(TDS), Pune ..Appellant
vs.
M/s. Idea Cellular Ltd. ..Respondent

…........

Mr. Sham Walve for appellant.
Mr. Jehangir Mistri, Senior Counsel a/w. Mr. Atul Jasani for respondent.

…........

CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 13 JANUARY 2020

P.C.:-

Heard learned counsel for the parties.

2. The Appellant - Revenue challenges the order dated 4 January 2017 passed by the Income Tax Appellate Tribunal in Income Tax Appeal No. 1867 to 1870/PUN/2014.

3. This Appeal pertains to the Assessment Year 2010-11.

4. The following question of law has framed as substantial question of law by the Appellant – Revenue :-

> *"(a) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal erred in holding the discount given by the assessee to its distributors on prepaid SIM Cards does not require deduction of tax under Section 194H of the Income Tax Act and subsequently erred in holding penalty under Section 271C is not applicable ?*
>
> *(b) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal erred in setting aside the case to the Assessing Officer ?"*

5. The Tribunal in the impugned order refers to its decision in the quantum Appeal of the Respondent – Assessee holding that discount offered by the Respondent – Assessee to the distributors is not in the nature of commission within the meaning of Section 194H of the Income Tax Act and therefore, the Respondent – Assessee cannot be considered as an assessee in default and accordingly, not liable for penalty. It is on the basis of this finding that the question of law is framed.

6. Today we have disposed of the quantum Appeal wherein quantum Appeals filed by the Appellant – Revenue have been dismissed confirming the finding of the Tribunal regarding liability of the Respondent – Assessee holding in favour of the

Respondent – Assessee. In these circumstances, the questions of law as proposed do not give rise to any substantial question of law. The Appeal is accordingly disposed of.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Diksha Rane Digitally signed by Diksha Rane Date: 2020.01.15 17:18:27 +0530