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

INCOME TAX APPEAL NO. 1429 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.1955/PUN/2013.

3. This Appeal pertains to the Assessment Year is 2011-12.

4. The Appellant-Revenue has raised the following questions as a substantial questions of law :-

“(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 ?

(b) Whether on the facts and in the 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 noted the observations of the Assessing Officer that the discount allowed to the distributors by the Respondent – assessee company is on account of principal to principal relationship and not that of principal to agent. The Tribunal followed the decision of the Karnataka High Court in the case of Bharati Airtel Ltd. vs. DCIT [372 ITR 33] and held that the sale of SIM cards/recharge coupons at discounted rate to the distributors was not liable for deduction of TDS under Section 194H. The Tribunal noted that there was no decision of this Court on this issue on that date.

6. Learned counsel for the parties have tendered the copy of the order passed in Income Tax Appeal No. 702 of 2017 subsequently in the case of *Pr. Commissioner of Income Tax-8 vs. M/s. Reliance Communications Infrastructure Ltd.*, where same issue arose for the consideration of this Court. The Division Bench

of this Court while holding against the Appellant – Revenue observed thus :-

> *"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 under Section 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. In view of the finding of fact rendered by the Tribunal which we have noted above, the same principle would apply in the present case. Therefore, the questions of law as proposed do not give any rise to substantial question of law. The Appeal is disposed of.

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

Diksha Rane Digitally signed by Diksha Rane Date: 2020.01.18 14:07:41 +0530