

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

ITA/118/2019

VODAFONE IDEA LIMITED
VS
COMMISSIONER OF INCOME TAX (TDS) KOLKATA

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI

And

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 24th June, 2024.

Appearance:

Mr. Sachit Jolly, Adv.

Mr. Aditya Rathore, Adv.

Mr. Indranil Banerjee, Adv.

... for the appellant.

Ms. Smita Das De, Adv.

... for the respondent.

1. Mr. Sachit Jolly, learned Counsel appears for the appellant through video conference and Smt. Smita Das De, learned standing Counsel appears for the respondent.
2. The matter relates to assessment years 2010-11 and 2011-12.
3. The appeal has been admitted by this Court by order dated 12.12.2018 on the following substantial questions of law:
 - a) Whether having regard to the relationship between the appellant and its distributors and course of dealings between them, the appellant was required

to comply with the provisions of section 194H of the Income Tax Act, 1961 relating to tax deduction at source with reference to the discount allowed to the distributors in respect of pre-paid sim cards and pre-paid vouchers/recharge coupons?

b) Whether the appellant can be deemed to be an assessee in default under section 201 for non-compliance with section 194H and any tax or interest can be demanded from it?

4. Both the learned Counsel for the parties jointly state that the controversy is covered by the judgment of Hon'ble Supreme Court dated 28.2.2024 in civil appeal no. 7257 of 2011 [Bharti Cellular Limited (Now Bharti Airtel Limited) Vs. Assistant Commissioner of Income Tax Circle-57, Kolkata and Anr.] and in view thereof, both the substantial questions of law deserve to be answered in favour of the assessee and against the revenue.

5. We find that in the case of Bharti Cellular Limited (Supra), Hon'ble Supreme Court concluded as under:

"In view of the aforesaid discussion, we hold that the assessee would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/franchisees from the third parties/customers, or while selling/transferring the pre-paid coupons or starter-kits to the distributors.

Section 194-H of the Act is not applicable to the facts and circumstances of this case. Accordingly, the appeals filed by the assessee-cellular mobile service providers, challenging the judgments of the High Courts of Delhi and Calcutta are allowed and these judgments are set aside. The appeals filed by the Revenue challenging the judgments of High Courts of Rajasthan, Karnataka and Bombay are dismissed. There would be no orders as to cost. Pending applications, if any, shall stand disposed of."

6. Following the aforesaid judgment in the case of Bharti Cellular Limited (Supra) and also as stated jointly by learned Counsel for the parties, the substantial questions of law are answered in favour of the assessee and against the revenue.
7. The appeal is Allowed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)