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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-3-2016(O&M)

Vodafone South Limited

. . . . Appellant

Vs.

The CIT (TDS), Chandigarh

. . . . Respondent

ITA-12-2016(O&M)

Vodafone South Limited

. . . . Appellant

Vs.

The CIT (TDS), Chandigarh

. . . . Respondent

ITA-13-2016(O&M)

Vodafone South Limited

. . . . Appellant

Vs.

The CIT (TDS), Chandigarh

. . . . Respondent

ITA-20-2016(O&M)

Vodafone South Limited

. . . . Appellant

Vs.

The CIT (TDS), Chandigarh

. . . . Respondent

ITA-21-2016(O&M)

Vodafone South Limited

. . . . Appellant

Vs.

The CIT (TDS), Chandigarh

. . . . Respondent

Date of Decision: 12.09.2024

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CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

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Present: Mr. Rohit Sud, Advocate and
Mr. Sachin Jolly, Advocate (***through video conferencing)***
For the appellant(s).

Mr. Yogesh Putney, Sr. Standing counsel with
Mr. Vaibhav Gupta, Standing Counsel
For the Income Tax Department.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. By way of this common order, the aforesaid appeals are being decided.

2. The assesse(s) are in appeal for the assessment year 2009-10, 2010-11, 2007-08, 2008-09, 2006-07, challenging the order passed by the CIT (A) under Section 263 of the Income Tax Act and the order passed by the Income Tax Appellate Tribunal, Chandigarh (for short, 'the ITAT') upholding the order of CIT(A).

3. Learned counsel for the appellant(s) have relied upon the judgment of Hon'ble Supreme Court, ***' Bharti Cellular Limited (Now Bharti Airtel Limited) Vs. Assistant Commissioner of Income Tax, Circle 57, Kolkata and another'*** passed in Civil Appeal No. 7257-2011, and submits that the orders passed by the Authorities setting aside the assessment order dated 24.03.2011(A-3) cannot be said to be erroneous, the appellants are not liable to deduct TDS under Section 194-H of the Income Tax Act as held by the Hon'ble Supreme Court and therefore, the view taken by the CIT(A) in its order dated 13.03.2013 and the ITAT is liable to be set aside.

The relevant extract of ***Bharti Cellular Limited (supra),*** reads as under:

> *"**42.** In view of the aforesaid discussion, we hold that the assessees 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 Rajashtan, Karnataka and Bombay are dismissed. There would be no orders as to cost. Pending Applications, if any, shall stand disposed of."*

4. In view of the above, we find that the view taken by the Tribunal holding that TDS was required to be deducted under Section 194-H of the Income Tax Act and on the said count setting aside the order of the AO, is not sustainable.

5. Accordingly, the appeals are allowed for the Assessment years as mentioned herein above and the orders passed by the ITAT as well as the CIT(A) are set aside and the orders passed by the AO are restored.

6. Pending miscellaneous application(s), if any, shall stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

September 12, 2024
Rashmi

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? ***Yes/No***