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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-8533-2018(O&M)

The Commissioner of Income Tax (TDS)-2, Chandigarh

. . . . Appellant

Vs.

M/s Idea Cellular Ltd.

. . . . Respondent

ITA-8534-2018(O&M)

The Commissioner of Income Tax (TDS)-2, Chandigarh

. . . . Appellant

Vs.

M/s Idea Cellular Ltd.

. . . . Respondent

Date of Decision: 07.11.2024

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

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Present: Mr. Amanpreet (A.P.) Singh, Senior Standing Counsel,
for the appellant(s)/Income Tax Department.

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

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SANJEEV PRAKASH SHARMA, J.(Oral)

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

2. Appellant(s)/Revenue have filed the appeals against the order passed by the Income Tax Appellate Tribunal, Delhi (for short 'the ITAT'), whereby it was held that the discount offered by the assessee to the distributor for its prepaid services is not commission or brokerage as envisaged under Section 194 H of the Income Tax Act and it was submitted that Section 194 of the Income Tax Act shall be applicable. The appeals were with regard to the respondents Assessment year 2010-11 and 2011-12 respectively.

3. Learned counsel for the appellant(s)/revenue submits that the issue is no more *res integra,* in view of the judgment passed by the 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, dated 28.02.2024.

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. We uphold the order passed by the ITAT and as the order of the ITAT culminated into the order passed by the AO, whereby the appeal was allowed, therefore, no further directions are required to be passed and both the appeals are hereby dismissed.

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

6. A photocopy of this order be placed on the file of other connected case.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

November 07, 2024
Lavisha

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