

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 952/JP/2016
निर्धारण वर्ष/Assessment Year : 2014-15.

Dy. Commissioner of Income-tax, (TDS), Jaipur.	बनाम Vs.	M/s Bharti Hexacom Limited K-21 Malviya Nagar, C-scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. JPRH 00222 F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by: Shri Varinder Mehta (CIT)
निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (CA)

सुनवाई की तारीख/ Date of Hearing : 05.10.2017.
घोषणा की तारीख/ Date of Pronouncement : 06/10/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, J.M.

This appeal by the Revenue is directed against the order of Ld. CIT (A)-III, Jaipur dated 19.08.2016 pertaining to Assessment Year 2014-15.

The Revenue has raised the following grounds of appeal:-

- "1. On the facts and in the circumstances of the case, whether the assessee is liable to deduct TDS u/s 194H of the I.T. Act, 1961 as the relation between assessee and distributor is that of principal to agent.
2. The Ld. CIT(A) has erred in law in deleting the demand u/s 201(1) for non deduction of TDS u/s 194H of the I.T. Act, 1961 on commission payment to various distributors."
2. Briefly, stated the facts are that the Assessing Officer finding that the assessee has not deducted tax u/s 194H of the Act in respect of commission paid to its distributors, passed order u/s 201(1)/201(1A) of the Act. Before the Assessing

Officer, it was contended that the issue has been decided by the Tribunal. However, the Assessing Officer without following the order of the Tribunal observed as under:-

"One of the other contentions of the assessee is that Ld. ITAT, Jaipur has also provided relief to the assessee in its decision dated 22.5.2015 (ITA no. 656/JP/2010) and has ruled that TDS is not applicable on discount allowed to prepaid distributors. The assessee has also contended that Ld CIT (A), Jaipur has also given relief to the assessee for AY's 2010-11 to 2013-14. In this regard, it is stated that these decisions of higher courts have not been accepted by the department and have been contested before Rajasthan High court and ITAT Jaipur respectively. Hence, this issue is currently sub-judice in nature."

Aggrieved by this, the Assessee preferred an appeal before Ld. CIT(A), who after considering the submissions, held that the assessee is not liable to deduct the tax u/s 194H of the Act.

3. Now, the Revenue is in further appeal before this Tribunal.

4. At the outset, Ld. Counsel for the assessee submitted that the issue has been decided by the Hon'ble Jurisdictional High Court in assessee's own case in DB Income-tax Appeal Nos. 96/2016, 97/2016 & 98/2016 in favour of the assessee. He drew our attention to Page No.132 of the Judgment of the Hon'ble Jurisdictional High Court.

5. On the contrary, Ld. Departmental Representatives supported the order of the authorities below.

6. We have heard the rival contentions, perused the material available on record. The Ld. CIT(A) has decided this issue in para 4.4 of the impugned order as under:-

"4.4 Respectfully following the above orders of Hon'ble ITAT, Jaipur, from A.Y. 2009-10 to 2013-14. I hold that no tax is required to be deducted u/s 194H in respect of difference between the price at which the prepaid card is sold to the distributor and the price at which the end customer buys and consequently the demand raised u/s 201(1) and interest u/s 201(1A) is deleted. In the result, all these grounds of appeal are allowed."

Further, the Hon'ble Jurisdictional High Court in assessee's own case in **DB Income Tax Appeal in the case of Commissioner of Income Tax (TDS) Jaipur vs. M/s Bharti Hexacom Limited K-21 Malviya Marg, C-Scheme, Jaipur** as under:-

"M/s Bharti Hexacom Ltd.

52. Regarding the other appeals of Cellular Companies the questions are required to be answered as discussed hereinabove. The relationship is not of agent. It is principal to principal basis. The payment is received by the company and the amount of commission is never paid to the agent or the Distributor. Therefore, no TDS is required to be deducted. We also accept the contention raised by Mr. Jhanwar that even otherwise in view of divergent judicial views, one in favour of the assessee is required to be adopted as per settled law. Taking into consideration the above conclusion, the first issue is required to be answered in favour of assessee."

Respectfully following the judgment of the Hon'ble Jurisdictional High Court (Supra). We do not see any reason to interfere into the order of Ld. CIT(A), same is hereby affirmed. Thus, ground raised in this appeal is dismissed.

7. In the Result, appeal of the Revenue in ITA No. 952/JP/2016 is dismissed.

Order pronounced in the open court on Friday, the 6th day of October 2017.

Sd/-

(भागचन्द,)

(BHAG CHAND)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 06/10/2017.

Pooja

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- DCIT (TDS), Jaipur.
2. The Respondent – Bharti Hexacom Ltd. ,Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 952/JP/2016)

Sd/-

(कुल भारत)

(KUL BHARAT)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

