

आयकर अपीलिय 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. 953/JP/2016 & 977/JP/2015
निर्धारण वर्ष/Assessment Year : 2014-15 & 2013-14

Dy. Commissioner of Income-tax, (TDS), Jaipur / Asstt. Commissioner of Income-tax (TDS), Jaipur.	बनाम Vs.	M/s Idea Cellular Limited, Plot No. 1-2, Jai Jawan Colony, Tonk Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAACB 2100 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 293/JP/2014
निर्धारण वर्ष/Assessment Year : 2011-12.

M/s Idea Cellular Limited, (Formerly Known as Idea Telecommunication Ltd.) 1-2, Jai Jawan Colony, Tonk Road, Jaipur.	बनाम Vs.	Income-tax Officer (TDS)-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AAACB 2100 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से/ Revenue by: Shri Varinder Mehta (CIT)
निर्धारिती की ओर से/ Assessee by : Shri Arun Maheshwari & Ms. Ketki Mittal (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, JM.

These three appeals two by the Revenue i.e. in ITA No. 953/JP/2016 & 977/JP/2015
pertaining to the Assessment Year 2014-15 & 2013-14 and appeal of the assessee in
ITA No. 293/JP/2014 pertaining to the Assessment Year 2011-12 are directed

against the order of Ld. CIT (A)-3, Jaipur dated 19/08/2016, 23/10/2015 & 18/02/2014 respectively.

2. Since the identical grounds have been raised and similar issues are involved in all these appeals. All these appeals were taken up together and are being disposed of by way of consolidated order for the sake of convenience and brevity. First, we take up **Revenue's appeal in ITA No. 953/JP/2016 pertaining to the Assessment Year 2014-15.**

In this appeal, 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 Income Tax Act, 1961 as the relation between assessee and distributors 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 Income Tax Act, 1961 on commission to various distributors.”
3. Only effective ground in this appeal is against holding that the assessee is not liable to deduct the TDS u/s 194H of the Income Tax Act, 1961 in respect of the commission paid to its distributors.
4. At the outset, Ld. Counsel for the assessee submitted that this issue is squarely covered in favour of the assessee by the Judgment of the Hon'ble Jurisdictional High Court in assessee's own case in DB Income-tax Appeal Nos. 169/2015, 170/2015, 171/2015, 8/2016, 45/2016, 48/2016 & 49/2016. Ld. Counsel for the assessee drew our attention to Page No. 134 of the Judgment of the Hon'ble High Court, wherein the issue of deductibility of tax u/s 194H of the Act has been decided in favour of the assessee.
5. On the contrary, Ld. D/R supported the Assessment Order.

6. We have heard the rival contentions, perused the material available on record. The Ld. CIT(A) has decided this issue in para 4.3 of his order by observing as under:-

4.3 I have carefully considered the facts of the case with the submissions of the Appellant and also the order of AO. The issue involved in this ground is same as was in AY 2012-13 & 2013-14. The appeal of AY 2012-13 & 2013-14 has been decided by me vide order dated 24.09.2015 & 23.10.2015 allowing the ground of assessee by giving the following finding:-

" I find that the issue is concluded by the Jurisdictional Tribunal in Appellant's own case (ITA No. 356 to 359/JP/2012) vide order dated May 22, 2015 in the favour of the assessee for earlier years i.e. AY 2007-08 to 2010-11. The relevant paragraph is reproduced as below:

"..... i. Assessee has issued sale invoices of SIM cards to its distributors net of discount. Similarly relevant entries have been entered in the books net of discount.

ii. Discount or so called commission has not been separately paid to distributors, thus there is no payment of any income as emphasized by Hon 'ble Karnataka High Court in Tata Tele judgment(supra).

iii. What has been effected by way of these sale transactions is sale of service embedded or encrypted on SIM cards, as held by Hon'ble Karnataka High Court and treating same as 'Principal to Principal transaction'.

iv. The facts and circumstances of assesses case are on parity with our ITAT judgment in the case of Tata Tele Services, which we have to respectfully follow.

v. In view of the facts, circumstances, rival submission and material available on record assessee is not liable for deduction u/s 194H. Therefore we reverse the orders of lower authorities on these issues and delete the demand."

Similar view has been taken by the Hon'ble Jurisdictional Tribunal in the case of Tata Teleservices (ITA No. 309/JP/2012, 502, 503, 504 & 505/JP/2011, order dated March 13, 2015) and Bharti Hexacom (ITA No. 656/JP/2010 order dated June 12, 2015). My own judgment in assessee's case for AY 2011-12 & 2012-13 on same matter i.e. TDS on discount, appeal no. 776/JPR/ 13-14 & 438/JPR/14-15 order dated 24.09.2015 and 23.10.2015. Respectfully following the above orders of Hon'ble ITAT Jaipur & CIT(A)-3 Jaipur's. I find that no tax is deductible u/s. 194H of the Act on discount allowed to the Distributor."

Since the facts of this year are the same as in AY 2012-13 & 2013-14 ground no. 1 & 2 are allowed and decided in favour of the appellant.

Accordingly the ground no. 1 & 2 are allowed."

The Hon'ble Jurisdiction High Court in **D.B. Income Tax Appeal Nos. 169/2015, 170/2015, 171/2015, 8/2016, 45/2016, 48/2016 & 49/2016** has held as under:-

"Idea Cellular

58. *As the agreement is produced, issues are answered in favour of assessee in the departmental appeals.*

59. *Even the contention which has been raised by the counsel for the assessee that the final tax is paid by the Distributor and not by the agent, the revenue is not at loss in any form.*

60. *In view of above, all the issues in each appeal are answered in tabular form as follows:-*

Srl No.	Appeal No.	Ques. 1	Ques.2	Ques. 3	Ques. 4	Ques. 5
1.	205/2005	In favour of assessee and against the	In favour of assessee and against the	In favour of assessee and against the	--	--

		department	department	department		
2.	206/2005	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	--	--
3.	10/2007	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	--	--
4.	55/2007	In favour of assessee and against the department	In favour of assessee and against the department	--	--	--
5.	6/2008	In favour of assessee and against the department	In favour of assessee and against the department	--	--	--
6.	7/2008	In favour of assessee and against the department	In favour of assessee and against the department	--	--	--
7.	540/2009	In favour of assessee and against the department	In favour of assessee and against the department	--	--	--
8.	1/2014	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department
9.	2/2014	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department
10.	3/2014	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department

11.	4/2014	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department	In favour of assessee and against the department
12.	124/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
13.	125/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
14.	126/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
15.	131/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
16.	132/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
17.	168/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
18.	169/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
19.	170/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
20.	171/2015	Against the	Against the	--	--	--

		Department and in favour of assessee	Department and in favour of assessee			
21.	195/2015	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
22.	08/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
23.	45/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
24.	48/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
25.	49/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
26.	96/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
27.	97/16	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
28.	98/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
29.	99/2016	Against the Department	Against the Department	Against the Department	Against the Department	Against the Department

		and in favour of assessee	and in favour of assessee	and in favour of assessee	and in favour of assessee	and in favour of assessee
30.	100/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee
31.	101/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee
32.	102/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee
33.	103/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee
34.	104/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee
35.	105/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee
36.	106/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
37.	107/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
38.	108/2016	Against the Department and in	Against the Department and in	--	--	--

		favour of assessee	favour of assessee			
39.	94/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
40.	200/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--
41.	204/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--
42.	209/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--
43.	210/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--
44.	217/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee

61. In view of the above discussion, all the appeals of assessee are allowed and those of Department and dismissed."

6.1 In view of the Judgment of the Hon'ble Jurisdictional High Court in assessee's own case pertaining to the earlier years in the case of **Commissioner of Income Tax(TDS) Jaipur vs. M/s Bharti Hexacom Limited K-21, Malviya Marg, C-scheme, Jaipur in D.B. Income-tax Appeal Nos. 96/2016, 97/2016 &**

98/2016 we do not see any reason to interfere into the order of the Ld. CIT(A), same is hereby affirmed. Grounds raised in this appeal are dismissed.

7. In the result, appeal of the Revenue is dismissed.

ITA No. 293/JP/2014 & 977/JP/2015

8. Now, we take both **Assessee and Revenue's appeal in ITA No. 293/JP/2014 & 977/JP/2015** respectively pertaining to the Assessment years 2011-12 & 2013-14.

The grounds of both the appeals are reproduced as under:-

ITA No. 293/JP/2014(Assessee)

"GROUND NO. I:

1. On the facts and in circumstances of the case and in law, the Learned CIT(A) erred in treating the Appellant as "assessee in default" u/s. 201(1) r.w.s. 194H of the Act without ascertaining and proving that whether the recipient had paid taxes on the alleged income received / receivable from the Appellant as required u/s. 191 of the Act.
2. The Appellant prays that the order passed by the Income-tax Officer (TDS) - 2, Jaipur ("the TDS Officer") u/s. 201(1)/201(1A) of the Act be quashed / annulled or the TDS Officer be directed to examine whether the taxes have been paid by the recipient on their income.

WITHOUT PREJUDICE TO GROUND NO.I, GROUND NO. II: NON-DEDUCTION OF TAX AT SOURCE ("TDS") UNDER SECTION 194H OF THE ACT ON DISCOUNT ALLOWED TO THE PRE-PAID DISTRIBUTORS ("the Distributors"):

1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the order passed by the TDS Officer under section 201(1)/201(1A) of the Act by treating "discount" offered by the Appellant to the Distributors as "commission" and thereby treating the Appellant as an "assessee in default" under section 201(1) r. w. s. 194H of the Act.
2. The Appellant most humbly prays that the discount allowed to the Distributors be held as not liable to TDS under section 194H of the Act as the relationship between the Appellant and its Distributors is on Principal-

to-Principal basis and, thus, the demand raised in the impugned order in respect of the alleged failure to deduct tax under section 194H of the Act be deleted.

WITHOUT PREJUDICE TO GROUND NO.I AND II:
GROUND NO. III:

1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the observations of the TDS Officer by treating the Appellant as an "assessee in default" under section 201(1) of the Act, without appreciating that it is a settled legal position that, if TDS machinery fails, the Appellant cannot be treated as an "assessee in default" under section 201(1) of the Act.
2. The Appellant thus prays that in the absence of any "payment or credit" to the Distributors, the Appellant should not be treated as an "assessee in default" under section 201 r.w.s. 194H of the Act.

GROUND NO. IV: GENERAL:

The Appellant craves leave to add to/alter and/ or amend all or any of the foregoing grounds of appeal."

ITA No. 977/JP/2015(Revenue)

- "1) On the facts and circumstances of the case, whether the assessee is liable to deduct TDS u/s 194H of the Income Tax 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 Income Tax Act, 1961 on the commission payment to various distributors."
9. The facts involved in these two appeals are identical to ITA No. 953/JP/2016 pertaining to the AY 2014-15. The Respective Representatives of the parties have adopted the same argument as were addressed in ITA No. 953/JP/2016. We have decided the issue by observing as under:-

"6. We have heard the rival contentions, perused the material available on record. The Ld. CIT(A) has decided this issue in para 4.3 of his order by observing as under:-

4.3 I have carefully considered the facts of the case with the submissions of the Appellant and also the order of AO. The issue involved in this ground is same as was in AY 2012-13 & 2013-14. The appeal of AY 2012-13 & 2013-14 has been decided by me vide order dated 24.09.2015 & 23.10.2015 allowing the ground of assessee by giving the following finding:-

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ii. Discount or so called commission has not been separately paid to distributors, thus there is no payment of any income as emphasized by Hon 'ble Karnataka High Court in Tata Tele judgment(supra).

iii. What has been effected by way of these sale transactions is sale of service embedded or encrypted on SIM cards, as held by Hon'ble Karnataka High Court and treating same as 'Principal to Principal transaction'.

iv. The facts and circumstances of assesses case are on parity with our ITAT judgment in the case of Tata Tele Services, which we have to respectfully follow.

v. In view of the facts, circumstances, rival submission and material available on record assessee is not liable for deduction u/s 194H. Therefore we reverse the orders of lower authorities on these issues and delete the demand."

Similar view has been taken by the Hon'ble Jurisdictional Tribunal in the case of Tata Teleservices (ITA No. 309/JP/2012, 502, 503, 504 & 505/JP/2011, order dated March 13, 2015) and Bharti Hexacom (ITA No. 656/JP/2010 order dated June 12, 2015). My own judgment in assessee's case for AY 2011-12 & 2012-13 on same matter i.e. TDS on discount, appeal no. 776/JPR/ 13-14 & 438/JPR/14-15 order dated 24.09.2015 and 23.10.2015. Respectfully following the above orders of Hon'ble ITAT Jaipur & CIT(A)-3 Jaipur's. I find that no tax is deductible u/s. 194H of the Act on discount allowed to the Distributor."

Since the facts of this year are the same as in AY 2012-13 & 2013-14 ground no. 1 & 2 are allowed and decided in favour of the appellant.

Accordingly the ground no. 1 & 2 are allowed."

The Hon'ble Jurisdiction High Court in **D.B. Income Tax Appeal Nos. 169/2015, 170/2015, 171/2015, 8/2016, 45/2016, 48/2016 & 49/2016** has held as under:-

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58. As the agreement is produced, issues are answered in favour of assessee in the departmental appeals.

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60. In view of above, all the issues in each appeal are answered in tabular form as follows:-

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23.	45/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
24.	48/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
25.	49/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
26.	96/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	--	--	--
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32.	102/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assesse
33.	103/2016	Against the Department and in favour of assesse	Against the Department and in favour of assesse	Against the Department and in favour of assesse	Against the Department and in favour of assesse	Against the Department and in favour of assesse
34.	104/2016	Against the Department and in favour of assesse	Against the Department and in favour of assesse	Against the Department and in favour of assesse	Against the Department and in favour of assesse	Against the Department and in favour of assesse
35.	105/2016	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee	Against the Department and in favour of assessee
36.	106/2016	Against the Department and in favour of assesse	Against the Department and in favour of assesse	--	--	--
37.	107/2016	Against the Department and in favour of assessee	Against the Department and in favour of assesse	--	--	--
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61. In view of the above discussion, all the appeals of assessee are allowed and those of Department and dismissed."

*6.1 In view of the Judgment of the Hon'ble Jurisdictional High Court in assessee's own case pertaining to the earlier years in the case of **Commissioner of Income Tax(TDS) Jaipur vs. M/s Bharti Hexacom Limited K-21, Malviya Marg, C-scheme, Jaipur in D.B. Income-tax***

Appeal Nos. 96/2016, 97/2016 & 98/2016 we do not see any reason to interfere into the order of the Ld. CIT(A), same is hereby affirmed. Grounds raised in this appeal are dismissed.

9.1 For the same reasoning given in ITA No. 953/JP/2016, we find no reason to take a different view in these cases. We therefore, dismiss the Revenue's appeal in ITA No. 977/JP/2015 and allow the assessee's appeal in ITA No. 293/JP/2014.

10. In the Combined result, both Revenue's appeals are dismissed and assessee's appeal is allowed.

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

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य/Accountant Member
Jaipur

Dated:- 06/10/2017.

Pooja/

Sd/-

(कुल भारत)
(KUL BHARAT)

न्यायिक सदस्य/Judicial Member

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

1. The Appellant- DCIT (TDS), Jaipur.
2. The Respondent – M/s Idea Cellular Limited, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 953/JP/2016, 977/JP/2015 & 293/JP/2014)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar