

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S. S. Viswanethra Ravi, Judicial Member]

**I.T.A. No. 1071/Kol/2016
Assessment Year: 2012-13**

A.C.I.T. Circle-3 (TDS) Kolkata.....Appellant
10B, Middleton Row
8th Floor
Kolkata - 700 071

Vodafone East Ltd..... Respondent
(Now known as Vodafone Mobile Service Ltd.)
11, Dr. U.N. Brahmachari Street
Kolkata - 700 017
[PAN : AABCB 2115 P]

**I.T.A. No. 1072/Kol/2016
Assessment Year: 2012-13**

A.C.I.T. Circle-3 (TDS) Kolkata.....Appellant
10B, Middleton Row
8th Floor
Kolkata - 700 071

Vodafone South Ltd..... Respondent
(Now known as Vodafone Mobile Service Ltd.)
11, Dr. U.N. Brahmachari Street
Kolkata - 700 017
[PAN : AABCB 5847 L]

Appearances by:

Shri Akash Mansinka, present on behalf of the assessee.

Shri Sallong Yaden, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : November 30th, 2017

Date of pronouncing the order : January 19th, 2018

O R D E R

Per J. Sudhakar Reddy :-

Both these appeals are filed by the revenue directed against the separate but identical orders of the Id. Commissioner of Income Tax (Appeals)-24, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), for the Assessment Year 2012-13, on the following grounds:-

“1. In the facts and circumstances of the case the ld. CIT(A)-24/Kolkata, has erred in giving relief on penalty u/s 271C whereas in the quantum appeal he himself held that tax was deductible at source u/s 194H on the issue of payment of commission to distributors.

2. The appellant craves leave to add, alter/modify the ground of appeal during the course of hearing.”

2. As the issues arising in both the appeals are identical, for the sake of convenience, they are heard together and disposed off by way of this common order.

3. The ld. Counsel for the assessee, Shri Aakash Mansinka, filed a copy of the order of this Bench of the Tribunal in ITA Nos. 136-137/Kol/2016 & in ITA Nos.232-233/Kol/2016, for the Assessment Year 2012-13, in the case of *Vodafone Mobile Service Ltd. (formerly known as Vodafone East/South Ltd. which now stands merged with Vodafone Mobile Services Ltd.) vs. ACIT, (TDS), Circle-59*, order dt. 26/10/2017, wherein the Tribunal held as follows:-

“However, we find that in case of prepaid connection the recharge coupons are sold to the distributors on outright sale basis at a discounted price. The amount of discount is not recorded in the books of accounts. Therefore we hold the transaction between the assessee and prepaid distributor for recharge coupons is nature of sale & purchase. Thus amount of discount cannot be equated with the commission as envisaged under section 194H of the Act.

Similarly we find that the ownership of the recharge coupons gets transferred to the distributor on the sale of recharge coupons.

*In this connection, we also rely in the case of *Bharti Airtel Limited Vs. CIT & ANR.* reported in 372 ITR 33 (Kar) (supra) where the Hon’ble Karnataka High Court has decided the issue in favour of assessee.*

Similarly Hon’ble Rajasthan High Court in the case of various parties where the assessee was also a party has decided the issue in favour of

assessee on the identical facts & circumstances in ITA No. 1/2014 & ITA No. 4/2014 vide order 11/07/2017 (supra).

The ld DR has not brought anything contrary to the arguments of ld AR. Therefore we have no alternate except to follow respectfully the ratio laid down by the Hon'ble Karnataka High Court and Rajasthan High Court in the case of Bharti Airtel Limited Vs. CIT (supra) and in the case of various assessee's where the assessee was also a party i.e.Vodafone Mobile Services Limited (supra). Hence, we have no hesitation in reversing the order of authorities below. Hence this ground of appeal of the assessee is allowed.

10. As we have already held that the provisions of TDS under section 194H of the Act are not attracted on the sale of recharge coupons for the prepaid talk time to the distributors and accordingly the assessee cannot be treated as assessee in default for non deduction of TDS u/s 201 of the Act. Thus, other grounds raised by the assessee become academic in nature and therefore do not require separate adjudication. Hence, these grounds become infructuous and accordingly being dismissed."

4. In view of the above decision, the order of the ld. CIT(A), cancelling penalty u/s 271C of the Act, on this issue is upheld.

5. In the result, both the appeals of the revenue are dismissed.

Kolkata, the 19th day of January, 2018.

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated :19.01.2018
{SC SPS}

Copy of the order forwarded to:

**1. A.C.I.T. Circle-3 (TDS) Kolkata
10B, Middleton Row
8th Floor
Kolkata – 700 071**

**2. Vodafone East Ltd. & Vodafone South Ltd.
(Now known as Vodafone Mobile Service Ltd.)
11, Dr. U.N. Brahmachari Street
Kolkata – 700 017**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches