

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "A", NEW DELHI**

**BEFORE SHRI RAJ PAL YADAV, JUDICIAL MEMBER
&
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA Nos.- 980, 981 & 982/Del/2015
(Assessment Years: 2002-03, 2003-04 & 2004-05)**

Asstt. CIT, Circle- 78(1), New Delhi.	Vs.	M/s Vodafon Essar Mobile Services Ltd., C-45, Okhala Industrial Area, Phase II, New Delhi-110020.
PAN No: AAACS4457Q		
APPELLANT		RESPONDENT

Revenue by : Smt. Anchal Khandelwal, Sr. DR
Assessee by : Sh. Sparsh Bhargava, Adv. &
Ms. Ishita, Adv.

Date of Hearing : 21.08.2018.
Date of Pronouncement : 21/08/2018.

ORDER

PER: N.K. BILLAIYA, AM

These are three separate appeals by the Revenue preferred against three separate orders of the Ld. CIT(A)-IX, New Delhi, pertaining to different Assessment Years i.e. 2002-03, 2003-04 & 2004-05. All these appeals are heard

together and are being disposed off by way of common order for the sake of convenience and brevity.

2. The grievances of the Revenue are as under:-

In ITA No.-980/Del/2015

- "1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the demand raised u/s 194H, whereas the same issue has been decided in department's favour by him in appeal No. 141/14-15 vide order dated 19.12.2014 for F.Y. 2003-04 in assessee's own case.*
- 2. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing."*

In ITA No. 981/Del/2015

- 1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in directing the AO to calculate the interest u/s 201(1A) from the due date of payment of withholding tax to the date of payment of taxes by the deductees, whereas as per the proviso to section 201(1A) of the Income Tax Act, interest is chargeable from the date on which tax was deductible and not from due date of payment of TDS, as held by the Ld. CIT(A).*
- 2. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.*

In ITA No. 982/Del/2015

- 1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in directing the AO to calculate the interest u/s 201(1A) from the due date of payment of withholding tax to the date of payment of taxes by the deductees, whereas as per the proviso to section 201(1A) of the Income Tax Act, interest is chargeable from the date on which tax was deductible and not from due date of payment of TDS, as held by the Ld. CIT(A).*

2. *The appellant carves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.*"

3. By relevant findings of the Ld. CIT(A), which triggered these appeals read as under:-

" 4.2 *It has been informed that, the issue is pending before the Hon'ble High Court of Delhi under the writ petition filed by the appellant and also agreed by the AO in the TDS order. In view of this, the issue is not adjudicated upon at this stage. Once the order of the Hon'ble High Court of Delhi in respect of the writ petition filed by the appellant on this issue for the subject year is passed, the AO is directed to apply the same in the subject year.*

4. The Hon'ble High Court of Delhi in 385 ITR 436 has observed as under:-

"30. *As rightly pointed out by Mr. Syali while the Supreme Court had sent the matter back for further proceedings for AY 2002-03, as far as the orders under challenge in these writ petitions are concerned, they pertain to AYs 2003-2004, 2004-2005 and 2005-2006 in respect of which no orders have been passed by the Supreme Court. These notices, therefore, sought to initiate proceedings for declaring VEMSL to be an Assessee in default earlier than four years prior to 31st March, 2011.*

31. *The Court agrees that the notices issued to VEMSL for the aforementioned AYs are not covered by the order of the Supreme Court for AY 2002-2003. Accordingly, insofar as the notices for AYs 2003-2004, 2004-2005 and 2005-2006 are concerned, they are held to be unsustainable in law on the interpretation of Section 201(3) of the Act by the Court."*

5. In the light of the aforesaid stated observations by the Hon'ble High Court, we restore the impugned issue to the file of the AO. The AO is directed to decide the issue

as per the observations of the Hon'ble High Court vis-à-vis the findings of the Ld. CIT(A) mentioned as above.

6. In the result, appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in the open court on 21/8/2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 21.08.2018
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	21/8/2018
Date on which the typed draft is placed before the dictating Member	21/8/2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	21/8/2018
Date on which the fair order comes back to the Sr. PS/PS	23/8/2018
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

