

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA NOS. 5615 & 5616/MUM/2018 : A.Ys : 2003-04 & 2004-05

DCIT (TDS) – 2(3),
Mumbai. (Appellant)

vs. M/s. Vodafone India Ltd.,
Peninsula Corporate Park,
Ganpatrao Kadam Marg,
Lower Parel, Mumbai 400 021.
PAN : AAACH5332B (Respondent)

**Appellant by : Shri. Rahul Raman, CIT-DR
Respondent by : Shri. Ketan Ved, AR**

Date of Hearing : 22/06/2020

Date of Pronouncement: 22/06/2020

ORDER

PER BENCH

These two appeals filed by the Revenue are directed against separate, but identical orders of the Id. CIT(A)-60, Mumbai, both dated 31.07.2018 and pertains to assessment years 2003-04 and 2004-05. Since, the facts are identical and the issues are common, for the sake of convenience, these appeals were heard together and are being disposed of by this consolidated order.

2. The Revenue has more or less raised common grounds of appeal for both the assessment years, therefore, for the sake of brevity, grounds of appeal filed for assessment year 2003-04 are reproduced as under :-

“1(a) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that interconnection usage charges (IUC) is not in the nature of Fees for Technical Services and hence not liable for TDS under section 194J of the I.T. Act, 1961 ?

(b) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified quashing/annulling the order passed by the AO u/s 201(1)/(1A) r.w.s. 250 by treating the same as time barred without appreciating the fact that as per Circular No. 5 of 2010 issued by CBDT, it was clarified that the AO can complete the TDS proceedings for F.Y beginning from A.Y 1.04.2007 and earlier years in which TDS proceedings are validly pending before tax authorities.

(c) Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in quashing/annulling the order passed by the AO without properly appreciating the factual and legal matrix brought out by the AO in the order u/s 201(1)/(1A) of the IT Act?”

3. The brief facts of the case are that the assessee is an Indian company engaged in the business of providing cellular services in the region of Mumbai and Kalyan Circle. A survey action under Section 133A of the Income Tax Act, 1961 (in short ‘the Act’) was conducted at the office premises of the assessee on 25.02.2004. Based on the survey proceedings, the ITO (TDS) issued show cause notices under Section 201(1) and 201(1A) of the Act, on various dates requesting the assessee to submit various details/information in relation to deduction of tax at source on payments made to various agencies/third party service providers. In response, assessee has submitted the necessary details along with legal submissions including applicability of Section 194J of the Act, in respect of interconnect usage charges. The Assessing Officer was not

convinced with the explanation furnished by the assessee and accordingly he has completed the proceedings initiated under Section 201(1) and 201(1A) of the Act, vide his order dated 24.03.2011. The assessee carried the matter in appeal before the CIT(A). The Id. CIT(A) vide his order dated 27.04.2012 rejected plea of assessee challenging the validity of order passed by the Assessing Officer on limitation, however, remanded the matter to the file of the Assessing Officer for verifying the applicability of provisions of Section 194J of the Act, in the light of the decision of Hon'ble Supreme Court in the case of *CIT vs Bharti Cellular Ltd., 193 taxman 97*. The assessee carried the matter in further appeal before the Tribunal. The ITAT Mumbai, vide its order dated 12.03.2018, has disposed of the appeal filed by the assessee and quashed the proceedings initiated by the Assessing Officer under Section 201(1)/(1A) of the Act, on the ground that the show cause notice issued for the first time on 02.12.2010 is clearly beyond the period of limitation. In the meantime, the Assessing Officer had passed order giving effect to the order of the Id. CIT(A) and the said order has been challenged by the assessee before Id. CIT(A). The Id. CIT(A), vide his order dated 31.07.2018, has allowed the appeal filed by the assessee on the ground that the original order passed under Section 201(1)/(1A) of the Act itself is invalid, then appeal effect order passed by the TDS officer for the said assessment year has no legs to stand on. Hence, the appeals preferred against the said appeal effect orders have also become infructuous. Aggrieved by the CIT(A) order, Revenue is in appeal before us.

4. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. At the time of hearing, both the counsels for the Revenue as well as the assessee, has fairly agreed that the appeals filed by the Revenue have become infructuous,

because the original orders passed by the TDS officer have been held to be time barred by the Tribunal and consequently the order giving effect passed by the TDS officer has no legs to stand on. We find that the Id. CIT(A) considered the fact that the original orders passed by the TDS officer under Section 201(1)/(1A) of the Act have been held to be invalid by the Tribunal vide its order dated 12.03.2018 and consequently the appeal effect order passed by the TDS officer has no legs to stand on. We, therefore, are of the considered opinion that the appeals filed by the Revenue against the order of Id. CIT(A) are infructuous and hence, the appeals filed by the Revenue for assessment years 2003-04 and 2004-05 are dismissed as infructuous.

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

Order pronounced in the open court on: 22nd June, 2020.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Date: 22nd June, 2020

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai