

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

(Through Virtual Court)

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER**

आयकरअपीलसं. / ITA No. 198/RPR/2017

निर्धारणवर्ष / Assessment Year : 2008-09

Shri Amit Kumar Shivhare,
Prop. M/s. Amit Infotech,
Main Chowk, Baikunthpur,
P.O. Baikunthpur, Dist. Korea (C.G.)
PAN : BDZPS8815C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(3),
Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by
Revenue by

:Shri G.S. Agrawal, AR
:Shri G. N Singh, DR

सुनवाई की तारीख / Date of Hearing : 07.04.2022
घोषणा की तारीख / Date of Pronouncement : 09.05.2022

आदेश/ ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeal), Bilaspur dated 29.03.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s. 263(1) of the Income Tax Act, 1961 (for short 'the Act') dated 25.03.2014 for assessment year 2008-09. Before us the assessee has assailed the impugned order on the following solitary ground of appeal:

"1. That under the facts and law the Ld. CIT(A) erred in confirming the disallowance of Rs.4,87,299/- made by the Ld. Assessing Officer u/s.40(a)(ia) for non-deduction of tax at source on commission expenses by rejecting the explanation which is unjustified."

2. Controversy involved in the present appeal lies in a narrow compass, i.e., sustainability of the disallowance u/s. 40(a)(ia) of the Act of the recharge commission of Rs.4,87,299/- made by the

Assessing Officer, for the reason that the assessee had failed to deduct tax at source on the same. After disallowing the aforesaid amount, the Assessing Officer vide his order passed u/s 143(3) r.w.s. 263(1) of the Act, dated 25.03.2014 determined the income of the assessee at Rs.7,77,230/-.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals) but without any success.

4. The assessee being aggrieved with the order of the CIT(Appeal) has carried the matter before us.

5. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. Authorized Representative (for short 'AR') for the assessee to drive home his contentions. As is discernible from the assessment order, the Assessing Officer being of the view that the assessee who was obligated to deduct tax at source on the recharge commission of Rs.4,87,299/- had

failed to do so, thus, disallowed the same by triggering the provisions of Sec. 40(a)(ia) of the Act. On appeal the CIT(Appeals) rejected the manifold contentions that were advanced by the assessee and, finding no infirmity in the view taken by the Assessing Officer had upheld the aforesaid disallowance.

6. After giving a thoughtful consideration to the aforesaid issue in question before us, we find substantial force in the claim of the Ld. AR that the amount in question, i.e., the impugned recharge commission of Rs. 4,87,299/- was not liable for deduction of tax at source u/s.194H of the Act. On a perusal of the invoices which were issued by M/s. Idea Cellular Ltd. to the assessee, a distributor of Idea recharge coupons, we find that the assessee was in receipt of two facet discounts on the recharge coupons from M/s. Idea Cellular Ltd., viz. (i) discount to distributor @1.47% on the MRP; and (ii) discount to retailers @3% on the MRP. The aforesaid discounts were credited by the assessee company in the "discount received A/c". Out of the aforesaid discounts, the retailer discount that was received by the assessee from the

company, i.e, M/s Idea Cellular Ltd. was passed over by it to the retailers by debiting the same under the head "recharge commission expenses a/c". Although, the assessee's claim for deduction of recharge commission, at the first blush, as per its nomenclature appeared to be in the nature of a "commission expense" which would call for deduction of tax at source u/s. 194H of the Act, but as stated by the Ld. AR, and rightly so, the same was in sum and substance a discount which was received by the assessee from M/s. Idea Cellular Ltd. for passing over on a back to back basis to the retailers. In order to dispel any doubt as regards the aforesaid factual position, the assessee had placed on record an "affidavit" wherein he had categorically deposed that the discounts that were passed over to the retailers were wrongly shown by him in the 'profit and loss a/c' as "recharge commission". Backed by the aforesaid factual position, we are of the considered view, that as the assessee had merely facilitated the passing over the retailers discounts that were received by him from the company, i.e, M/s Idea Cellular Ltd. to the retailers, therefore, the same, though wrongly categorized by him under the head "recharge

commission" were not liable for deduction of tax at source u/s. 194H of the Act. Our aforesaid conviction is duly supported by the judgments of the Hon'ble High Court of Bombay in the case of CIT (TDS) Vs. Vodafone Cellular Ltd. (2021) 131 taxmann.com 191 (Bombay) and that of the Hon'ble High Court of Karnataka in the case of Bharati Airtel Ltd. Vs. DCIT (2014) 52 taxmann.com 31 (Karnataka). Also, a coordinate Bench of the Tribunal, i.e, ITAT, Chandigarh-B Bench in the case of Vodafone Idea Ltd. Vs. Assistant Commissioner of Income Tax (TDS), Chandigarh (2019) 179 ITD 207 (Chandigarh), had taken a similar view that tax withholding provisions under section 194H would not be applicable to discounts extended to pre-paid SIM distributors on transfer of pre-paid SIM cards/talk time.

7. In the backdrop of our aforesaid observations, we concur with the claim of the Ld. AR that now when the assessee was not obligated to deduct any tax at source qua the retailer discounts which were received by him from the company, i.e, M/s. Idea Cellular Ltd. for passing over on a back to back basis to the retailers, therefore, no

disallowance u/s. 40(a)(ia) of the Act was called for in his hands. We, thus, in terms of our aforesaid observations not being able to persuade ourselves to subscribe to the view taken by the lower authorities set-aside the order passed by the CIT(Appeal) and vacate the disallowance of Rs. 4,87,299/- made by the Assessing Officer u/s. 40(a)(ia) of the Act. Thus, **Ground of appeal No.1** raised by the assessee is allowed.

8. In the result, appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 09th day of May, 2022.

Sd/-
JAMLAPPA D BATTULL
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 09th May, 2022

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur (C.G)
4. The Pr. CIT, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	20.04.2022	Sr.PS/PS
2	Draft placed before author	20.04.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		