

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'सी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष**  
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.43/Kol/2023  
Assessment year: 2013-14

**Md. Nabirul Islam.....Appellant**  
**Purapara, Raghunathpur,**  
**Jangipur, Murshidabad-742201.**  
**[PAN: ABKPI1550Q]**

vs.

**DCIT, Circle-42, Murshidabad.....Respondent**

**Appearances by:**

Shri Sonam Bajoria, FCA, appeared on behalf of the appellant.

Shri Sudip Kr. Bandyopadhyay, Addl. CIT- Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 27, 2023

Date of pronouncing the order : August 02, 2023

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 21.11.2022 of the National Faceless Appeal Centre (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The sole issue involved in this appeal is as to whether Tax at Source (TDS) was liable to be deducted u/s 194 of the Income Tax Act on the discount allowed to retailers by the assessee dealer/distributors on sale of prepaid sim cards/mobile recharge cards and whether the lower authorities were justified in making disallowance u/s 40(a)(ia) of the Act

on account of non-deduction of TDs on such discount given by the assessee to the retailers on sale of sim card/recharge coupons.

3. The issue is squarely covered by the recent decision of the Hon'ble Bombay High Court in the case of 'Commissioner of Income Tax (TDS), (Pune) v. Idea Cellular Ltd.' in IT APPEAL NO. 302 OF 2019 decided on 13.01.2020, whereby, the Hon'ble Bombay High Court has observed as under:

*"1. Heard learned counsel for the parties.*

*2. The Appellant-Revenue challenges the order dated 14 May, 2018 passed by the Income Tax Appellate Tribunal in Income-tax Appeal No. 808/PUN/2016.*

*3. This Appeal pertains to the Assessment Year is 2013-14.*

*4. The Appellant-Revenue has raised the following questions as a substantial questions of law :-*

*"(a) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal erred in holding the discount given by the assessee to its distributors on prepaid SIM Cards does not require deduction of tax under section 194H of the Income-tax Act ?*

*(b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal erred in setting aside the case to the Assessing Officer?"*

*5. The Tribunal noted the observations of the Assessing Officer that the discount allowed to the distributors by the Respondent - assessee-company is on account of principal-to-principal relationship and not that of principal to agent. The Tribunal followed the decision of the Karnataka High Court in the case of Bharti Airtel Ltd. v. Dy. CIT [2014] 52 taxmann.com 31/[2015] 228 Taxman 219 (Mag.)/372 ITR 33 and held that the sale of SIM cards/recharge coupons at discounted rate to the distributors was not commission and therefore not liable for deduction of the TDS under section 194H. The Tribunal noted that there was no decision of this Court on this issue on that date.*

*6. Learned counsel for the parties have tendered the copy of the order passed in subsequently in the case of Pr. CIT v. Reliance Communications Infrastructure Ltd., Income-tax Appeal No. 702 of 2017, where same issue arose for the consideration of this Court. The Division*

Bench of this Court while holding against the Appellant - Revenue observed thus :—

"3. Having heard the learned Counsel for the parties and having perused the documents on record, we do not find any error in the view of the Tribunal. The Tribunal, as noted, besides holding that the Commissioner's order setting aside the order passed under section 201 was not carried in appeal, had also independently examined the nature of the transaction and come to the conclusion that when the transaction was between two persons on principal-to-principal basis, deduction of tax at source as per section 194H of the Act, would not be made since the payment was not for commission or brokerage."

7. In view of the finding of fact rendered by the Tribunal which we have noted above, the same principle would apply in the present case. Therefore, the questions of law as proposed do not give any rise to substantial question of law. The Appeal is disposed of."

4. The case of the assessee is on better footing. In the above referred to the decision, Idea Cellular Company owned the sim cards which were further sold to the distributors. However, in the case in hand, the assessee is a distributors/dealer and has sold the sim card on discounted rate to the retailers and the relationship between the assessee and retailers was not of principle agent, rather, the same was principle to principle basis. In view of the above decision of the Bombay High Court in the case of owner company itself, this issue is decided in favour of the assessee. In view of this, the impugned order of the CIT(A) is set aside and the disallowance made by the lower authorities on this issue is ordered to be deleted.

5. In the result, the appeal of the assessee stands allowed.

**Kolkata, the 2<sup>nd</sup> August, 2023.**

Sd/-  
[डॉक्टर मनीष बोर्ड /Dr. Manish Borad]  
लेखा सदस्य /Accountant Member

Sd/-  
[संजय गर्ग /Sanjay Garg]  
न्यायिक सदस्य /Judicial Member

Dated: 02.08.2023.

RS

*Copy of the order forwarded to:*

- 1 Md. Nabirul Islam
2. DCIT, Circle-42, Murshidabad
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches