

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 225/Ind/2014 (AY: 2011-12)

M/s Vodafone Idea Ltd. (Formerly M/s Idea Cellular Ltd.), 139-140, Electronics Complex, Pardeshipura, Indore (Assessee/Appellant)	बनाम/ Vs.	DCIT (TDS), Indore (Revenue/Respondent)
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PAN: AAACB2100P / TAN: BPLI00953B

Assessee by	Shri Sumit Nema, Sr. Advocate with Shri Gagan Tiwari, Adv
Revenue by	Ms. Ila Parmar, CIT DR

Date of Hearing	23.04.2024
Date of Pronouncement	24.04.2024

आदेश / O R D E R

Per B.M. Biyani, AM:

This is an appeal filed by the assessee for the financial year 2010-11 relevant to assessment year 2011-12 against appeal order dated 28.11.2013 passed u/s 250 of the Income-tax Act, 1961 by CIT(A)-II, Indore ["CIT(A)"] which in turn arises out of order dated 31.01.2013 passed by DCIT (TDS), Indore u/s 201(1)/(1A) of the Income-tax Act, 1961.

2. The background facts leading to this appeal are such that the assessee-company is engaged in the business of providing telecom services

ITA No. 225/Ind/2014 - AY 2011-12
M/s Vodafone Idea Ltd. (Formerly M/s Idea Cellular Ltd.)

through pre-paid and post-paid connections. In order to provide such services, the assessee allowed certain amounts to distributors/dealers of pre-paid vouchers. Further, the assessee also took services from other telecom operator (OTOs) and paid 'roaming charges' to those OTOs. The AO passed order dated 31.01.2013 u/s 201(1)/(1A) treating the assessee as defaulter for non-deduction of tax at source (TDS) out of (i) amounts allowed to distributors/dealers of pre-paid vouchers and (ii) roaming charges paid to OTOs. The AO created demand of tax *plus* interest. Aggrieved, the assessee carried the matter in first appeal to CIT(A) but could not succeed. Now, the assessee has come in next appeal before us challenging the orders of lower authorities on following grounds :-

IDEA CELLULAR LIMITED

PREVIOUS YEAR: 2010-11

ASSESSMENT YEAR: 2011-12

**APPEAL BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
INDORE AGAINST THE ORDER PASSED BY THE HON'BLE COMMISSIONER
OF INCOME TAX (APPEALS)-II, INDORE ["the CIT(A)"] UNDER SECTION 250
OF THE INCOME-TAX ACT, 1961 ("the Act").**

ANNEXURE 'A'

GROUNDS OF APPEAL

GROUND NO. I:

1. On the facts and in circumstances of the case and in law, the Learned CIT(A) erred in treating the Appellant as "assessee in default" u/s. 201(1) r.w.s. 194H/194J of the Act without ascertaining and proving that whether the recipient had paid taxes on the alleged income received / receivable from the Appellant as required u/s. 191 of the Act.
2. The Appellant prays that the order passed by the Deputy Commissioner of Income Tax (TDS), Indore ("the TDS Officer") u/s. 201(1)/201(1A) of the Act be quashed / annulled or the TDS Officer be directed to examine whether the taxes have been paid by the recipient on their income.

WITHOUT PREJUDICE TO GROUND NO. I,

**GROUND NO. II: NON-DEDUCTION OF TAX AT SOURCE ("TDS") UNDER
SECTION 194H OF THE ACT ON DISCOUNT ALLOWED TO THE PRE-PAID
DISTRIBUTORS ("the Distributors"):**

1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the order passed by the TDS Officer under section 201(1)/201(1A) of the

Act by treating "discount" offered by the Appellant to the Distributors as "commission" and thereby treating the Appellant as an "assessee in default" under section 201(1) r. w. s. 194H of the Act.

2. The Appellant most humbly prays that the discount allowed to the Distributors be held as not liable to TDS under section 194H of the Act as the relationship between the Appellant and its Distributors is on Principal-to-Principal basis and, thus, the demand raised in the impugned order in respect of the alleged failure to deduct tax under section 194H of the Act be deleted.

WITHOUT PREJUDICE TO GROUND NO. I AND II:

GROUND NO. III:

1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the observations of the TDS Officer by treating the Appellant as an "assessee in default" under section 201(1) of the Act, without appreciating that it is a settled legal position that, if TDS machinery fails, the Appellant cannot be treated as an "assessee in default" under section 201(1) of the Act.
2. The Appellant thus prays that in the absence of any "payment or credit" to the Distributors, the Appellant should not be treated as an "assessee in default" under section 201 r.w.s. 194H of the Act.

GROUND NO. IV: NON DEDUCTION OF TDS UNDER SECTION 194J OF THE ACT ON PAYMENT OF ROAMING CHARGES TO THE OTHER TELECOM OPERATORS ("OTOS"):

1. On the facts and circumstances of the case and in law, the Learned CIT(A) erred in not adjudicating the plea of the Appellant that the payment made for the use of standard facility does not amount to 'fees for technical services' as defined in *Explanation 2* to section 9(i)(vii) of the Act.

2. The Appellant prays that the payment made for use of standard facility does not amounts to 'fees for technical services' and hence, the Appellant is not required to deduct tax on roaming charges paid to the OTOs under section 194J of the Act and consequently, it be held that the Appellant cannot be an "assessee in default" under section 201(1) r.w.s. 194J of the Act.

WITHOUT PREJUDICE TO GROUND NOS. I, II, III AND IV:

GROUND NO. V: TAX ON SAME INCOME CANNOT BE RECOVERED TWICE:

1. On the facts and circumstances of the case and in law, the Learned CIT(A) erred in confirming the order of the TDS Officer by treating the Appellant as "assessee in default" without appreciating the facts that the recipient/payee would have already paid taxes on their income and recovering the same again from the Appellant amounts to recovery of tax twice.
2. Further, on the facts and circumstances of the case and in law, the Learned CIT(A) erred in enhancing the TDS demand by withdrawing the part relief by the TDS officer.
3. He failed to appreciate and ought to have held that once declarations/ confirmations were produced before the TDS officer and accepted by him, the CIT(A) could not deny the same.
4. The Appellant thus humbly prays that the TDS Officer be directed to consider the confirmations received from the Distributors/OTOs filed by the Appellant with the TDS Officer and reduce the demand to the extent of taxes, if any, on their income not having been paid by the Distributors/OTOs.

GROUND NO. VI: LEVY OF INTEREST UNDER SECTION 201(1A) OF THE ACT:

1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming the order of the TDS Officer in holding the Appellant as "assessee in default" under section 201(1) of the Act and thereby levying the interest under section 201(1A) of the Act.

2. The Appellant prays that the interest levied under section 201(1A) of the Act be deleted or be appropriately reduced.

GROUND NO. VII: GENERAL:

The Appellant craves leave to add to/alter and/ or amend all or any of the foregoing grounds of appeal.

DATE: MARCH 20, 2014

PLACE: MUMBAI



For IDEA CELLULAR LIMITED

Himanshu Kapanis
Managing Director

SIGNATURE:

STATUS: COMPANY

ITA No. 225/Ind/2014 - AY 2011-12
M/s Vodafone Idea Ltd. (Formerly M/s Idea Cellular Ltd.)

3. We have heard learned Representatives of both sides and case-records perused.

4. **Ground Nos. II & III** relate to TDS out of the amounts allowed to distributors/dealers of pre-paid vouchers. Precisely, the revenue is treating the amounts allowed by the assessee as 'commission' requiring TDS u/s 194H. Ld. AR for assessee submitted that this issue has been recently settled by Hon'ble Supreme Court in ***Bharti Cellular Limited vs. ACIT, (2024) 160 taxmann.com 12 (S.C.)*** wherein the Hon'ble apex court has held that there is no 'commission' and section 194H is not applicable, the concluding para of order is reproduced below :-

"42. In view of the aforesaid discussion, we hold that the assessees would not be under a legal obligation to deduct tax at source on the income/profit component in the payments received by the distributors/franchisees from the third parties/customers, or while selling/transferring the pre-paid coupons or starter-kits to the distributors. Section 194H of the Act is not applicable to the facts and circumstances of this case. Accordingly, the appeals filed by the assessee-cellular mobile service providers, challenging the judgments of the High Courts of Delhi and Calcutta are allowed and these judgments are set aside. The appeals filed by the Revenue challenging the judgments of High Courts of Rajasthan, Karnataka and Bombay are dismissed. There would be no orders as to cost. Pending applications, if any, shall stand disposed of."

5. **Ground No. IV** relates to TDS out of roaming charges paid by assessee to OTOs. This issue has also been decided by this very Bench in a consolidated order for ***I.T.A. Nos. 415/Ind/2014 & 265/Ind/2018*** dated

ITA No. 225/Ind/2014 - AY 2011-12
M/s Vodafone Idea Ltd. (Formerly M/s Idea Cellular Ltd.)

23.04.2024 in favour of assessee. For the sake of brevity, we re-produce only concluding para of the order of ITAT:-

"15. We have considered rival submissions of both sides and perused the controversy involved in the light of provisions of law and the decisions cited before us. The precise controversy before us is whether or not the payment of roaming charges made by assessee to OTOs constituted 'FTS' or 'Royalty' so as to attract TDS u/s 194J? After a careful consideration, we find that it is vehemently held in various decisions, as narrated above, that such payment of roaming charges is neither in the nature of 'FTS' nor 'Royalty' and hence did not require TDS u/s 194J. Therefore, respectfully following the orders of different appellate forums, we are of the view that the assessee cannot be held as 'assessee-in-default' for non-deduction of tax at source out of payment of roaming charges. Accordingly, the grounds of assessee are allowed."

6. Thus, Ld. AR contended, the Ground No. II, III & IV raised by assessee must succeed in view of above cited authority. Ld. DR for Revenue though dutifully supported the orders of lower-authorities but, however, could not rebut or controvert the submissions of Ld. AR. Respectfully following the pre-existing available authority on the issues as noted in foregoing paras, we hold that the assessee was not liable to TDS. Accordingly, ground nos. II, III & IV are allowed.

7. Ld. AR for assessee submitted that once ground No. II, III & IV are allowed, remaining grounds would be rendered academic requiring no adjudication. Since we have allowed ground No. II, III & IV, we are not required to adjudicate all other grounds as prayed for by Ld. AR.

8. Resultantly, this appeal is allowed.

Order pronounced in open court on 24.04.2024.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक/ Dated :24.04.2024.

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore