

Discount paid by telecom co's on sale of recharge coupons subject to TDS u/s 194H

Summary – The Cochin ITAT in a recent case of Bharti Airtel Ltd., (the Assessee) held that discount paid to distributor by cellular operator for selling mobile recharge coupons constitutes commission payment liable for TDS.

The solitary issue involved in these appeals is whether the learned Commissioner of Income-tax (Appeals) was justified in holding that the relationship between the assessee-company and its distributor is that of "principal agency" relationship and consequently the discount paid to the distributors constitute "commission payment" exigible for deduction of tax at source under section 194H of the Income-tax Act, 1961.

The issue under consideration is whether the difference between the face value of prepaid cards and its selling price constitute "discount" or "commission".

Since the assessee did not deduct tax at source, the Assessing Officer raised a demand under section 201(1) of the Act and also levied interest under section 201(1A) of the Act.

The Commissioner (Appeals) noticed that an identical issue has been considered by the hon'ble jurisdictional High Court of Kerala in the case of *Vodafone Essar Cellular Ltd. v. Asstt. CIT* [\[2011\] 332 ITR 255/\[2010\] 194 Taxman 518](#) wherein it was held that the discount constitute "commission payment". Accordingly, the learned Commissioner of Income-tax (Appeals) upheld the order passed by the Assessing Officer. Aggrieved by this order, the assessee has filed these appeals before us.

The ITAT noticed that the hon'ble Calcutta High Court has also taken the view that the discount given to the distributors of "pre-paid cards" constitutes commission payment in the assessee's own case reported in *Bharti Cellular Ltd. v. Asstt. CIT* [\[2013\] 354 ITR 507 \(Cal\)](#). The learned Commissioner of Income-tax (Appeals) has noticed that the hon'ble High Court of Delhi has also taken identical view on this issue in the case of *CIT v. Idea Cellular Ltd.* [\[2010\] 325 ITR 148/189 Taxman 118 \(Delhi\)](#).

Since the learned Commissioner of Income-tax (Appeals) has followed the binding decision of the jurisdictional High Court in deciding the issue under consideration, we do not find any reason to interfere with his order.

In the result, the appeals filed by the assessee are dismissed.