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आयकर अपीलीय अधिकरण, **''बी''** न्यायपीठ**,** चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
Before Shri Duvvuru RL Reddy, Judicial Member &
Shri S. Jayaraman, Accountant Member

आयकर अपील सं./**I.T.A. Nos.1348 & 1349/Chny/2018**
निर्धारण वर्ष/**Assessment Years:2008-09 & 2009-10**

The Assistant Commissioner of Income Tax, TDS Circle – 3, Chennai.	Vs.	M/s. Vodafone South Ltd., (Now known as Vodafone Mobile Services Ltd.), Tower-I, 9th Floor, TVH Beliciaa Towers, Block 94, NRC Nagar, Chennai 600 028. **[PAN: AABCB5847L]**

आयकर अपील सं./**I.T.A. Nos.1534 & 1535/Chny/2018**
निर्धारण वर्ष/**Assessment Years:2008-09 & 2009-10**

M/s. Vodafone Mobile Services Ltd., [Formerly known as Vodafone South Ltd.] Tower-I, 9th Floor, TVH Beliciaa Towers, Block 94, NRC Nagar, Chennai 600 028.	Vs.	Income Tax Officer (TDS), Ward I(6), Chennai.

(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)
अपीलार्थी की ओर से / Appellant by	:	Shri Salil Kapoor, Advocate, Ms. Soumya Singh, Advocate & Shri Ketan Ved, C.A.
प्रत्यर्थी की ओर से/Respondent by	:	Shri A. Sundararajan, Addl. CIT
सुनवाई की तारीख/ Date of hearing	:	02.03.2020
घोषणा की तारीख /Date of Pronouncement	:	18.05.2020

आदेश /O R D E R

PER DUVVURUL RL REDDY, JUDICIAL MEMBER:

These cross appeals filed by the Revenue as well as the assessee are directed against the common order of the ld. Commissioner of Income Tax

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(Appeals) 17, Chennai dated 02.02.2018 relevant to the assessment years 2008-09 and 2009-10. Since common ground has been raised by the same assessee, heard together and being disposed of by this common order for the sake of brevity.

2. First we take up the assessee's appeal for adjudication, wherein, the assessee has challenged the order of ld. CIT(A) in confirming the order of the Assessing Officer passed under section 201(1) /201(1A) of the Income Tax Act, 1961 ["Act" in short] on the ground that the order passed by the TDS Officer is bad in law and void-ab-initio", since such order has been passed beyond the limitation period specified under section 201(3) of the Act. As no TDS under section 194H of the Act was deducted on the discounts allowed on prepaid services as distributor margin, the Assessing Officer passed order under section 201(1)/201(1A) of the Act. Before the ld. CIT(A), it was a submission of the assessee that the assessee was covered by the provisions of section 201(3) of the Act and hence, the order under section 201(1) of the Act cannot be passed beyond the limitation period. Clause (i) to section 201(3) of the Act specifies that no order shall be made under sub-section (1) of section 203 of the Act deeming a period to be an assessee in default for failure to deduct the whole or any part of the tax from a resident in India, at any time after the expiry of two years from the end of the financial year in which the

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statement is filed in a case where the statement referred to in section 200 has been filed. Here, the assessee has not deducted TDS under section 194H of the Act and thus, the question of filing of quarterly statement as required under section 200 of the Act by the assessee do not arise and therefore, we held that the assessee is not covered by the provisions of section 201(3)(i) of the Act. Accordingly, the ld. CIT(A) has validly confirmed the order passed under section 201(1)/201(1A) of the Act. Thus, the ground raised by the assessee stands dismissed for both the assessment years.

3. The effective ground raised in the appeal of the Revenue is that the ld. CIT(A) has erred in holding that the sale of recharge vouchers and prepaid vouchers and prepaid cards to the sole distributors does not establish Principal-Agent relationship liable to TDS under section 194H of the Act and also held that no tax at source was deductible provided the assessee satisfied the conditions relating to treatment of discount in the books of accounts.

4. The assessee company is a mobile/cellular service provider. While completing the assessments for the assessment years 2008-09 and 2009-10, the Assessing Officer found that the assessee has not deducted the TDS on discounts allowed for prepaid SIM Cards/ Talktime as distributor margin. After considering the clarifications of the assessee, the Assessing Officer passed the orders under section 201(1)/ 201(1A) of the Act for the assessment years

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2008-09 and 2009-10 dated 21.03.2014 by determining TDS under section 194H of the Act. On appeal, by following the decision of the Tribunal in assessee's own case, the ld. CIT(A) held that the provisions of section 194H of the Act are not attracted in the case of the assessee and no tax at source was deductible provided that the assessee satisfies the conditions laid down by the ITAT relating to the treatment given by the assessee in their books of accounts.

5. Aggrieved, the Revenue is in appeal before the Tribunal for both the assessment years.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the order passed under section 201(1)/ 201(1A) of the Act for non-deduction of TDS under section 194H of the Act, by furnishing copies of the order of the Tribunal in assessee's own case for the assessment years 2011-12 & 2010-11 in I.T.A. Nos. 1414 & 1415/Mds/2014 dated 21.09.2017, the assessee has submitted before the ld. CIT(A) that the said order may be followed to decide the issue in favour of the assessee. By extracting the relevant portion of the order and following the same, the ld. CIT(A) held that the provisions of section 194H of the Act are not attracted in the case of the assessee and no tax at source was deductible provided the assessee satisfied the conditions relating to treatment

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of discount in the books of accounts. We have gone through the detailed order passed by the Tribunal, wherein, it was observed and held as under:

> *"3.6 With regard to the discount offered by the assessee to their distributors is a commission or not, in assessee's own group case for the assessment year 2007-08 and 2008-09 in I.T.A. Nos. 1415 & 1416/Mds/2009 dated 01.04.2011, the Coordinate Benches of the Tribunal has held that the assessee was liable to deduct tax at source on the amount of commission/discount allowed to the distributors under section 194H for both the years under consideration and since it has failed to do so, therefore, the Assessing Officer had correctly created demand under sections 201(1) and 201(1A) of the Act and the ld. CIT(A) was not justified at all to delete such demands.*
>
> *3.7 Similarly, by referring to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Idea Cellular Ltd. in 325 ITR 148 as well as various other decisions, in the case of Vodafone Essar Cellular Ltd. v. ACIT in 332 ITR 255, in the case of Vodafone Essar Cellular Ltd. v. ACIT in 332 ITR 255, the Hon'ble Kerala High Court has held that the distributors acted on behalf of the assessee for procuring and retaining customers and, therefore, the discount given was commission within the meaning of Explanation (1) on which tax was deductible under section 194H of the Act.*
>
> *3.8 Further, on similar facts and circumstances, in the case of Bharti Cellular Ltd. Vs. ACIT in 354 ITR 507, the Hon'ble Calcutta High Court has also decided the issue against the assessee by upholding the action of the Assessing Officer in treating the assessee to be an assessee in default.*
>
> *However, we find that the Hon'ble Karnataka High Court in the case of Bharti Airtel Ltd. Vs. DCIT in 372 ITR 33 has held that sale of SIM cards/recharge coupons at discounted rate to distributors is not commission and therefore not liable to TDS under section 194H of the Act. While holding so, the Hon'ble High Court has distinguished the decision of the Hon'ble Kerala High Court in the case of Vodafone Essar Cellular Ltd. (supra), the decision of Hon'ble Delhi High Court in the case of Idea Cellular Ltd.(supra) and the decision of Hon'ble Kolkata High Court in the case of Bharti Cellular Ltd. (supra). The relevant observation of the Hon'ble Karnataka High Court reads as under :*

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"56. In the Idea Cellular Ltd. case (supra), the Delhi High Court proceeded on the footing that the assessee is providing the mobile phone service. It is the ultimate owner of the service system. The service is meant for public at large. They had appointed distributors to make available the pre-paid products to the public and look after the documentation and other statutory requirements regarding the mobile phone connection and, therefore, the essence of service rendered by the distributor is not the sale of any product or goods and, therefore, it was held that all the distributors are always acting for and on behalf of the assessee company.

57. Similar is the view expressed by the Kerala High Court in the Vodafone Essar Cellular Ltd's case (Supra), where it was held that, the distributor is only rendering services to the assessee and the distributor commits the assessee to the subscribers to whom assessee is accountable under the service contract which is the subscriber connection arranged by the distributor for the assessee. In that context it was held that, discount is nothing but a margin given by the assessee to the distributor at the time of delivery of SIM Cards or Recharge Coupons against advance payment made by the distributor.

58. In both the aforesaid cases, the Court proceeded on the basis that service cannot be sold. It has to be rendered. But, they did not go into the question whether right to service can be sold.

59. The telephone service is nothing but service. SIM cards, have no intrinsic sale value: It is supplied to the customers. for providing mobile services to them. The SIM card is in the nature of a key to the consumer to have access to the telephone network established and operated by the assessee-company on its own behalf. Since the SIM Card is only a device to have access to the mobile phone network, there is no question of passing of any ownership or title of the goods from the assessee-company to the distributor or from the distributor to the ultimate consumer. Therefore, the SIM card, on its own but without service would hardly have any value. A customer, who wants to have its service initially, has to purchase a sim-card. When he pays for the sim-card, he gets the mobile service activated. Service can only be rendered and cannot be sold. However, right to service can be sold. What is sold by the service provider to the distributor is the right to service. Once the distributor pays for the service, and the service provider, delivers the Sim Card or Recharge Coupons, the distributor acquires a right to demand service. Once such a right is acquired the distributor may use it by himself. He may also sell the right to sub-distributors who in turn may sell into retailers. It is a well-settled proposition that if the property in the goods is transferred and gets vested in the distributor at the time of the delivery then he is thereafter liable for the

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same and would be dealing with them in his own right as a principal and not as an agent. The seller may have fixed the MRP and the price at which they sell the products to the distributors but the products are sold and ownership vests and is transferred to the distributors. However, whoever ultimately sells the said right to customers is not entitled to charge more than the MRP: The income of these middlemen would be the difference in the sale price and the MRP, which they have to share as per the agreement between them. The said income accrues to them only when they sell this right to service and not when they purchase this right to service. The assessee is not concerned with quantum and time of accrual of income to the distributors by reselling the prepaid cards to the sub-distributors/retailers. As at the time of sale of prepaid card by the assessee to the distributor, income has not accrued or arisen to the distributor, there is no. primary liability to tax on the Distributor. In the absence of primary liability on the distributor at such point of time, there is no liability on the assessee to deduct tax at source. The difference between the sale price to retailer and the price which the distributor pays to the assessee is his income from business. It cannot be categorized as commission. The sale is subject to conditions, and stipulations. This by itself does not show and establish principal and agent relationship.

60. The following illustration makes the point clear: On delivery of the prepaid card, the assessee raises invoices and updates the accounts. In the first instance, sale is accounted for Rs.100/-, which is the first account and Rs.80/- is the second account and the third account is Rs.20/-. It shows that the sales is for Rs.100/-, commission is given at Rs.20/- to the distributors and net value is Rs.80/-. The assessee's sale is accounted at the gross value of Rs.100/- and thereafter, the commission paid at Rs.20/- is accounted. Therefore, in those circumstances of the case, the essence of the contract of the assessee and distributor is that of service and therefore, Section 194H of the Act is attracted.

61. However, in the first instance, if the assessee accounted for only Rs.80/- and on payment of Rs.80/-, he hands over the prepaid card prescribing the MRP as Rs.100/-, then at the time of sale, the assessee is not making any payment. Consequently, the distributor is not earning any income. This discount of Rs.20/- if not reflected anywhere in the books of accounts, in such circumstances, Section 194H of the Act is not attracted.

62. In the appeals before us, the assessees sell prepaid cards/vouchers to the distributors. At the time of the assessee selling these pre-paid cards for a consideration to the distributor, the distributor does not earn any income. In fact, rather than earning income, distributors: incur expenditure for the purchase of prepaid cards. Only after the resale of those prepaid

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cards, distributors would derive income. At the time of the assessee selling these pre-paid cards, he is not in possession of any income belonging to the distributor. Therefore, the question of any income accruing or arising to the distributor at the point of time of sale of prepaid card by the assessee to the distributor does not arise. The condition precedent for attracting Section 194H of the Act is that there should be an income payable by the assessee to the distributor. In other words the income accrued or belonging to the distributor should be in the hands of the assessees. Then out of that income, the assessee has to deduct income tax thereon at the rate of 10% and then pay the remaining portion of the income to the distributor. In this context it is pertinent to mention that the assessee sells SIM cards to the distributor and allows a discount of Rs.20/-, that Rs.20/- does not represent the income at the hands of the distributor because the distributor in turn may sell the SIM cards to a sub distributor who in turn may sell the SIM cards to the retailer and it is the retailer who sells it to the customer. The profit earned by the distributor, sub-distributor and the retailer would be dependant on the agreement between them and all of them have to share Rs.20/- which is allowed as discount by the assessee to the distributor. There is no relationship between the assessee and the sub-distributor as well as the retailer. However, under the terms of the agreement, several obligations flow in so far as the services to be rendered by the assessee to the customer is concerned and, therefore, it cannot be said that there exists a relationship of principal and agent. In the facts of the case, we are satisfied that, it is a sale of right to service. The relationship between the assessee and the distributor is that of principal to principal and, therefore, when the assessee sells the SIM cards to the distributor, he is not paying any commission; by such sale no income accrues in the hands of the distributor and he is not under any obligation to pay any tax as no income is generated in his hands. The deduction of income tax at source being a vicarious responsibility, when there is no primary responsibility, the assessee has no obligation to deduct TDS. Once it is held that the right to service can be sold then the relationship between the assessee and the distributor would be that of principal and principal and not principal and agent. The terms of the agreement set out supra in unmistakable terms demonstrate that the relationship between the assessee and the distributor is not that of principal and agent but it is that of principal to principal.

63. It was contended by the revenue that; in the event of the assessee deducting the amount and paying into the department, ultimately if the "dealer is not liable to tax it is always open to him to seek for refund of the tax and, therefore, it cannot be said that Section 194H is not attracted to the case on hand. As stated earlier, on a proper construction of Section 194H and keeping in mind the object with which Chapter XVII is introduced, the person paying should be in possession of an income which is chargeable to

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tax under the Act and which belongs to the payee. A statutory obligation is cast on the payer to deduct the tax at source and remit the same to the Department. If the payee is not in possession of the net income which is chargeable to tax, the question of payer deducting any tax does not arise. As held by the Apex Court in Bhavani Cotton Mills Limited's case, if a person is not liable for payment of tax at all, at any time, the collection of tax from him, with a possible contingency of refund at a later stage will not make the original levy valid.

64. In the case of Vodafone Essar Celluar Ltd., (supra) it is necessary to look into the accounts before granting any relief to them as set out above. They have accounted the entire price of the prepaid card at Rs.100/- in their books of accounts and showing the discount of Rs.20/- to the dealer. Only if they are showing Rs.80/- as the sale price and not reflecting in their accounts a credit of Rs.20/- to the distributor, then there is no liability to deduct tax under Section 194H of the Act. This exercise has to be done by the assessing authority before granting any relief. The same exercise can be done even in respect of other assessees also.

65. In the light of the aforesaid discussions, we are of the view that the order passed by the authorities holding that Section 194H of the Act is attracted to the facts of the case is unsustainable. Therefore, the substantial question of law is answered in favour of the assessee and against the Revenue. Hence, we pass the following order:

ORDER

1. *Appeals are allowed.*
2. *The impugned orders passed by the authorities are hereby set aside.*
3. *The matter is remitted back to the assessing authority only to find out how the books are maintained and how the sale price and the sale discount is treated and whether the sale discount is reflected in their books. If the accounts are not reflected as set out above, in para 60, Section 194H of the Act is not attracted.*

Ordered accordingly.

3.9 Moreover, while considering similar question of law on identical facts and circumstances in the case of Hindustan Coca Cola Beverages Pvt. Ltd. v. CIT in ITA No. 205 of 2005 and 44 others, which includes, Vodafone, Idea Cellular, Bharti Hexacom, Tata Teleservices, etc. dated 11.07.2017, the Hon'ble High Court of Judicature for Rajasthan Bench at Jairpur decided the issue in favour of assessee both in assessee's appeal as well as Revenue's appeal. The relevant observations of the Hon'ble High Court are as under:

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"44. Now, the first question which has come up for our consideration is, 'whether in the facts and circumstances of the case the learned Tribunal was right and justified in holding that assessee was liable to withhold tax at source under S. 194H of the Income Tax Act, 1961 amounting to Rs.19,74,842/- (including interest) in respect of sales to its distributors, which are on principal to principal basis and wherein property in the goods is transferred to the distributor'.

45. Taking into account the provisions of Section 182 of the Contract Act and the arrangement which has been entered into between the company and the distributor and taking into account the provisions of Section 194H, the Tribunal while considering the evidence on record, in our considered opinion, has misdirected itself in considering the case from an angle other than the angle which was required to be considered by the Tribunal under the Income Tax Act. The Tribunal has travelled beyond the provisions of Section 194H where the condition precedent is that the payment is to be made by the assessee and thereafter he is to make payment. In spite of our specific query to the counsel for the department, it was not pointed out that any amount was paid by the assessee company. It was only the arrangement by which the amount which was to be received was reduced and no amount was paid as commission.

46. In that view of the matter, if we look at the provisions of Section 194H and even if explanation is taken into consideration, there is no occasion of invoking provisions of Section 194H, since the amount is not paid by the assessee.

47. Taking into account the conclusion which has been arrived at by the Tribunal is misdirected in view of the arrangement which has been arrived at between the company and the Distributor. Assuming without admitting, if the contention which has been raised before the Tribunal is accepted, the same can be at the most expenses which are not allowable under the Income Tax Act, if at all claimed without proper basis but to conclude that they are covered under Section 194H and the income tax or the TDS is required to be deducted is not correct and accordingly disallowance on that basis is not correct. In our considered opinion, from which amount of tax is to be deducted is a doubtful proposition inasmuch as the Management Information System which has been sought to be relied upon for alleging that expenditure has been claimed could not have been relied upon by the Tribunal or the authorities under the Income Tax Act.

(i) The findings which are given by the Tribunal regarding Distributor being Agent in view of the discussion made hereinabove, the arrangement

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which has been made between the Company and the Distributor is on Principal to Principal basis and the responsibility is on the basis of agreement entered into between the parties.

(ii) Regarding MRP, the findings which are arrived at is a price which has been fixed by the assessee company and other expenses, namely; commission given to the retailer and everything is to be managed by the Distributor.

In that view of the matter, the restrictions which are put forward will not decide the relation-ship of Principal and Agent.

(iii) The Distributor has all rights to reduce his margin. He can increase the margin of retailer and will reduce the margin from 10% to anything between 1% to 10%. There is no restriction by the assessee to give commission amount to the retailer.

(iv) Regarding area of operation, it is the business policy of the assessee to give Distributor-ship for a particular area. Only on that basis, it will be erroneous to hold that it is on Principal to Principal basis. For deciding the relation-ship on Principal to Principal basis, the criteria will not be of area of operation but agreement entered into between the parties.

(v) Regarding the change in price it is always between the assessee or the company and the Distributor to decide who will absorb the loss.

In that view of the matter, the findings arrived at by the Tribunal is erroneous.

(vi) Regarding the return of goods after expiry date, it is always the understanding between the manufacturer and company that the product is not for preparation or consumed before expiry date, the consumed items cannot be allowed otherwise manufacturer will invite criminal liability. To avoid any criminal liability or any criminal act is done for taking back the goods, will not deter the relation-ship of Principal to Principal basis.

(vii) Regarding supervision, it is always for the manufacturer and the company to look into the matter that his Distributor or Sub-Distributor or Retailer will not induct in mal practice.

(viii) Regarding goods sold to the Distributor, it is always a matter of contract how further goods will be distributed. Restriction on sub-distributor will not change the transaction from Principal to Principal.

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(ix) Regarding expenses which are described by the Tribunal and one of the reason is that it is always for the assessee to allow any special allowance or expenses to promote the sale. In a competitive world to promote the sale, if the Distributor is not given any encouragement, the business will not grow.

In that view of the matter, in view of the observations of the Supreme Court, the Income Tax Officer cannot enter into the shoes of the assessee. (S.A. Builders Vs. Commissioner of Income Tax- (2007) 288 ITR 1 (SC).

(x) Regarding providing a vehicle it was very clear that by providing vehicle and getting list of expenses will not decide the relation-ship of Principal and Agent.

48. In our considered opinion, Section 194H pre-supposes the payment to be made to the third party namely, Distributor or the Agency and if on a close scrutiny of Section 182, Distributor is not an agent, therefore, in our considered opinion, the provisions of Section 194H have wrongly been invoked, and therefore, the first issue is answered in favour of assessee and against the Department.

49. The second issue which has been raised for our consideration, as discussed hereinabove, the Management Information System was not a part of their books of accounts nor could have been relied upon by the Income Tax Authorities. The basis on which the proceedings were initiated, in our considered opinion, the Statutory Audit Report is final conclusion over the authorities under the Income Tax Act, therefore, the second issue is required to be answered in favour of the assessee.

50. Regarding third issue whether 201A or 201(1A), in view of the decisions of different High Courts, the argument canvassed by counsel for the appellant pre-supposes deduction out of the payment. In our conclusion in issue No.1, the amount was not required to be deducted since they have not made any payment. In that view of the matter any proceedings under Section 201 or 201(1A) are misconceived. In that view of the matter, this issue is also answered in favour of assessee.

51. Contention regarding provisions of Section 271 of the Act, in view of our answer in favour of assessee, this issue is also required to be answered in favour of assessee. Even otherwise as rightly held by the Supreme Court in CIT Vs. Eli Lilly & Co. (India) P. Ltd.(supra), the penalty could not have been levied in all the appeals filed by assessee Coca Cola.

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52. Regarding the other appeals of Cellular Companies the questions are required to be answered as discussed hereinabove. The relationship is not of agent. It is principal to principal basis. The payment is received by the company and the amount of commission is never paid to the agent or the Distributor. Therefore, no TDS is required to be deducted. We also accept the contention raised by Mr. Jhanwar that even otherwise in view of divergent judicial views, one in favour of the assessee is required to be adopted as per settled law. Taking into consideration the above conclusion, the first issue is required to be answered in favour of assessee.

53. Regarding Section 194J of the Act, in view of the Kerala High Court decisions, the issue is answered in favour of assessee and third issue even as per the statutory definition, there is no service and Sections 201 and 194H would not apply in view of the agreement as referred hereinabove.

Tata Teleservices

54. In view of agreement the issue regarding 194H and 194J as held in other cases, both the issues are answered in favour of the assessee.

Vodafone

55. Issues regarding Sections 194H, 194J and 201 of the Act, they are answered in favour of assessee.

56. Additional questions are framed in the case of Department. There are 5 issues in favour of assessee (issue Nos. 1 and 2 are wrongly framed by the Court). However, in view of our above discussion, they are required to be answered in favour of the assessee.

57. In case of appeal preferred by the assessee, issue No.4 is required to be answered in favour of assessee that the CIT (A) has all jurisdiction to restore or set aside the judgment of AO since it is a statutory appeal, the appellate court has all powers to deal with the same. All other issues are answered in favour of the assessee.

Idea Cellular

58. As the agreement is produced, issues are answered in favour of assessee in the departmental appeals.

59. Even the contention which has been raised by the counsel for the assessee that the final tax is paid by the Distributor and not by the agent, the revenue is not at loss in any form.

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60. ……..

61. In view of the above discussion, all the appeals of assessees are allowed and those of Department are dismissed."

3.10 In view of the above decisions of the Hon'ble High of Judicature for Rajasthan Bench at Jaipur as well as Hon'ble Karnataka High Court, we are of the considered opinion that the sale of SIM cards/recharge coupons at discounted rate to distributors is not commission and therefore not liable to TDS under section 194H of the Act. However, we find that while deciding similar issue, the Hon'ble Kerala High Court has taken a different view, as the relevant observations are reproduced hereinabove, and decided the issue against the assessee. In the absence of any jurisdictional High Court decision brought to the notice of the Bench, we are of the considered opinion that other High Court's decisions are binding on the Tribunal to take a decision, but, since there exist two contradictory decisions other High Courts, we are of the opinion that the law laid down by the Hon'ble Supreme Court in the case of CIT v. Vegetable Products Ltd. 88 ITR 192, which says that if a statutory provision is capable of more than one view, then the view which favours the tax payer should be preferred, we decide the issue in favour of the assessee by following the decisions of the Hon'ble High of Judicature for Rajasthan Bench at Jaipur as well as Hon'ble Karnataka High Court. However, in the orders of authorities below, there was no elaborate discussion with regard to the sale discount offered by the assessee and maintained in the books of accounts of the assessee. Accordingly, as has been held by the Hon'ble Karnataka High Court, we also remit the matter back to the file of the Assessing Officer only to find out as to how the books are maintained and how the sale price and the sale discount is treated and whether the sale discount is reflected in the books of the assessee or not. If the accounts are not reflected as set out by the Hon'ble Karnataka High Court in its order at para 60 of the order, as reproduced hereinabove, the provisions of section 194H of the Act is not attracted. Therefore, in line of the above observations of the Hon'ble Karnataka High Court, we restore the matter to the file of the Assessing Officer for necessary verification. Hence, for limited purpose to verify the books, as observed hereinabove, the ground raised by the assessee is allowed for statistical purposes.

The ld. DR could not controvert the above findings of the Tribunal by filing any order of higher Court having modified or reversed. Thus, we are of the

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considered opinion that the ld. CIT(A) has rightly followed the decision of the Tribunal in assessee's own case. Thus, we find no infirmity in the order passed by the ld. CIT(A). Accordingly, the grounds raised by the Revenue are dismissed.

7. In the result, both the appeals filed by the assessee as well as the Revenue are dismissed.

Order pronounced on the 18th May, 2020 at Chennai.

Sd/-	Sd/-
(S JAYARAMAN)	(DUVVURUL RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 18.05.2020

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.