

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 14762/2019

M/s. Vodafone Idea Limited, Through Its Authorised Signatory Mr. Vaibhav Gandhi (Vice President) S/o Shri Basant Kumar Amrit Lal Gandhi, Aged About 42 Years, Having Corporate Office At 10Th Floor, Birla Centurion, Centurion Mills Compound, Pandurang Budkkar Marg, Worli Mumbai - 400030. Circle/local Office Address 5Th Floor, Gaurav Tower, Malviya Nagar, Jaipur,raj.

-----Petitioner

Versus

1. The Deputy Commissioner Of Income Tax (Tds), Having Its Address At Room No. 312, New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur In The State Of Rajasthan.
2. The Commissioner Of Income Tax Jaipur (Tds), Having Its Address At New Central Revenue Building, Statue Circle, Bhagwan Das Road, C-Scheme, Jaipur In The State Of Rajasthan
3. Principal Director Of Income Tax (Systems), Central Processing Centre (Tds), Aaykar Bhawan, Sector-3, Vaishali, Ghaziabad, U.p. - 201010.
4. Central Board Of Direct Taxes, Through Secretary, Ministry Of Finance, North Block, New Delhi - 110001

-----Respondents

For Petitioner(s)	:	Mr. Salil Kapoor through VC with Ms. Soumya Singh
For Respondent(s)	:	Mr. Parth Vashistha on behalf of Mr. Shantanu Sharma

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

20/05/2026

1. Heard.
2. Both the counsels are *ad idem* that the issue raised in the present petition stands covered by the judgment passed by the Hon'ble Supreme Court in the case of **Bharti Cellular Limited**

(Now Bharti Airtel Limited) Vs. Assistant Commissioner of Income Tax, Circle 57, Kolkata and Another (Civil Appeal No.7257-2011), dated 28.02.2024 and in similar Income Tax Appeals filed by Vodafone South Limited (lead case ITA-3-2016), the order was passed by the Punjab and Haryana High Court on 12.09.2024 and then again, on 07.11.2024 directions were issued as under:

"1. By way of this common order, both the aforesaid appeals are being decided.

2. Appellant(s)/Revenue have filed the appeals against the order passed by the Income Tax Appellate Tribunal, Delhi (for short 'the ITAT'), whereby it was held that the discount offered by the assessee to the distributor for its prepaid services is not commission or brokerage as envisaged under Section 194 H of the Income Tax Act and it was submitted that Section 194 of the Income Tax Act shall be applicable. The appeals were with regard to the respondents Assessment year 2010-11 and 2011-12 respectively.

*3. Learned counsel for the appellant(s)/revenue submits that the issue is no more res integra, in view of the judgment passed by the Hon'ble Supreme Court '**Bharti Cellular Limited (Now Bharti Airtel Limited) Vs. Assistant Commissioner of Income Tax, Circle 57, Kolkata and another**' passed in Civil Appeal No. 7257-2011, dated 28.02.2024.*

*The relevant extract of **Bharti Cellular Limited (supra)**, reads as under:*

"42. In view of the aforesaid discussion, we hold that the assessee 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 194-H 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."

4. We uphold the order passed by the ITAT and as the order of the ITAT culminated into the order passed by the AO,

whereby the appeal was allowed, therefore, no further directions are required to be passed and both the appeals are hereby dismissed.

5. Pending miscellaneous application(s), if any, shall stand disposed of.

6. A photocopy of this order be placed on the file of other connected case.”

3. As per the provisions of law, we notice that an application seeking refund has already been moved and the respondents also in their reply admit that refund is required to be done. However, it is a case of the department that there are outstanding demand relating to their TAN number which requires to be adjusted. However, the petitioner opposes the same and submits that so far as the demand is concerned, the same is not admitted and if the department has any claims, they can pursue the same separately.

4. Leaving it open to the department to pursue their demands, if any, and also leaving it open to the petitioner to defend themselves relating to that demand in terms of order passed by Hon'ble Supreme Court in the case of **Bharti Cellular** (*supra*), we direct that the refund relating to the TDS shall be released forthwith.

5. Accordingly, the writ petition stands disposed of.

(ASHUTOSH KUMAR),J

(SANJEEV PRAKASH SHARMA),ACTING CJ

SANJAY KUMAWAT/RAJAT/94