

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'A': NEW DELHI)  
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA Nos:- 7838/Del/2017 and 7839/Del/2017)  
(Assessment Years: 2010-11 and 2011-12)**

M/s Bharti Hexacom Limited, Bharti Crescent 1, Nelson Mandela Road, Vasant Kunj Phase II, New Delhi.	Vs.	Deputy Commissioner of Income Tax, Circle2(1), New Delhi.
<b>PAN No:</b> AAACH1766P		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee By** : Shri Suchit Agarwal, CA  
**Revenue By** : Shri Satpal Gulati, CIT(DR)

**Per Anadee Nath Misshra, AM**

**(A)** The aforementioned appeals in the case of the Assessee are taken up together for the sake of convenience and brevity; and are hereby disposed off through this Consolidated Order. Grounds taken in these appeals of Assessee are as under:

**ITA No. 7838/Del/2017.**

*"1. That the learned Commissioner of Income tax (Appeals) ["CIT (Appeals)"] erred on facts and in law in not following the binding decision of jurisdictional Hon'ble Delhi High Court and Hon'ble Delhi Tribunal in Appellant own case and has erred in not applying the*

*principle laid down by jurisdictional Hon'ble Delhi High Court to' spectrum charges on revenue sharing basis paid to Department of Telecommunication.*

*1.1 That the learned CIT (Appeals) erred on facts and in law in not appreciating the facts that spectrum charges on revenue sharing basis paid to Department of Telecommunication was decided in favour by the Hon'ble Delhi Tribunal in Appellant own case for earlier assessment years.*

*2. That the learned CIT (Appeals) ex-red on facts and in law in confirming the disallowance under section 40(a)(ia) of the Income Tax Act, 1961 ["Act"] sum of Rs. 126.87.86,454/- representing free airtime given as discount/ trade margin to the distributors on maximum retail price of prepaid coupons.*

*2.1 That the learned CIT (Appeals) failed to appreciate that Hon'ble Rajasthan High Court and Hon'ble Guwahati Tribunal in Appellant own case for the relevant assessment year has held that the Appellant is not an assessee in default in view of the order passed under section 201(1) of the Act and hence no disallowance under section 40(a)(ia) is warranted.*

*2.2 That the learned CIT (Appeals) failed to follow jurisdictional Hon'ble Delhi Tribunal decision is Appellant own- case in ITA No 3394/Del/2012 & 2899/Del/2013 for Assessment Year 2008-09 and Assessment Year 2006-07 wherein Tribunal has held that where the provisions of section 194H are not attracted and therefore, there was no amount on which tax was deductible, consequently disallowance under section 40(a)(ia) is not warranted.*

*2.3 That the learned CIT (Appeals) erred on facts and in law in holding that discount trade margin given to the distributors on retail price of the prepaid products was in the nature of commission expense, on which tax was required to be deducted at source under section 194H of the Act.*

*2.4 That the learned CIT (Appeals) erred on facts and in law in holding that the business relationship between the Appellant and distributors of prepaid products was in the nature of agency as against actual relationship of principal to principal, which does not fall within the purview of section 194H of the Act. .*

*2.5 That the learned CIT (Appeals) erred on facts and in law in not appreciating that the Appellant sold, on principal to principal basis, prepaid card/coupons, which comprised of the 'right to use airtime', a marketable product capable of being transferred, and consequently, the provisions of section 194H of the Act were not applicable.*

*2.6 That the learned CIT (Appeals) erred on facts and in law in not appreciating that no 'income' per se accrued in favour of the distributor, requiring deduction of tax at source under section 194H of the Act.*

*2.7 That the learned CIT (Appeals) failed to appreciate that no tax could have possibly been deducted at source by the appellant under section 194H of the Act, as income accruing in the hands of the distributors was indeterminable.*

*2.8 That the learned CIT (Appeals) failed to appreciate that in the absence of any actual payment Or credit of any amount in the books of the appellant, the machinery provisions contained in section 40(a)(ia) of the Act failed and accordingly, the Appellant was not required to deduct tax at source."*

**ITA No. 7839/Del/2017.**

*"1. That the learned Commissioner of Income tax (Appeals) [“CIT (Appeals)”] erred on facts and in law in not following the binding decision of jurisdictional Hon’ble Delhi High Court and Hon’ble Delhi Tribunal in Appellant own case and has erred in not applying the principle laid down by jurisdictional Hon’ble Delhi High Court to ‘spectrum charges on revenue sharing basis paid to Department of Telecommunication.*

*1.1 That the learned CIT (Appeals) erred on facts and in law in not appreciating the facts that spectrum charges on revenue sharing basis paid to Department of Telecommunication was decided in favour by the Hon’ble Delhi Tribunal in Appellant own case for earlier assessment years.*

*2. That the learned CIT (Appeals) erred on facts and in law in confirming the disallowance under section 40(a)(ia) of the Income Tax Act, 1961 [“Act”] sum of Rs. 119,88,57,637/- representing free airtime given as discount/ trade margin to the distributors on maximum retail price of prepaid coupons.*

*2.1 That the learned CIT (Appeals) failed to appreciate that Hon’ble Rajasthan High Court and Hon’ble Guwahati Tribunal in Appellant own case for the relevant assessment year has held that the Appellant is not an assessee in default in view of the order passed under section 201(1) of the Act and hence no disallowance under section 40(a)(ia) is warranted.*

*2.2 That the learned CIT (Appeals) failed to follow jurisdictional Hon’ble Delhi Tribunal decision in Appellant own- case in ITA No 3394/Del/2012 & 2899/Del/2013 for Assessment Year 2008-09 and Assessment Year 2006-07 wherein Tribunal has held that where the provisions of section 194H are not attracted and therefore, there was no amount on which tax was deductible, consequently disallowance under section 40(a)(ia) is not warranted.*

*2.3 That the learned CIT (Appeals) erred on facts and in law in holding that discount trade margin given to the distributors on retail price of the prepaid products was in the nature of commission expense, on which tax was required to be deducted at source under section 194H of the Act.*

*2.4 That the learned CIT (Appeals) erred on facts and in law in holding that the business relationship between the Appellant and distributors of prepaid products was in the nature of agency as against actual relationship of principal to principal, which does not fall within the purview of section 194H of the Act. .*

*2.5 That the learned CIT (Appeals) erred on facts and in law in not appreciating that the Appellant sold, on principal to principal basis, prepaid card/coupons, which comprised of the ‘right to use airtime’, a marketable product capable of being transferred, and consequently, the provisions of section 194H of the Act were not applicable.*

*2.6 That the learned CIT (Appeals) erred on facts and in law in not appreciating that no ‘income’ per se accrued in favour of the distributor, requiring deduction of tax at source under section 194H of the Act.*

*2.7 That the learned CIT (Appeals) failed to appreciate that no tax could have possibly been deducted at source by the appellant under section 194H of the Act, as income accruing in the hands of the distributors was indeterminable.*

*2.8 That the learned CIT (Appeals) failed to appreciate that in the absence of any actual*

*payment Or credit of any amount in the books of the appellant, the machinery provisions contained in section 40(a)(ia) of the Act failed and accordingly, the Appellant was not required to deduct tax at source.”*

**(B)** At the outset, the learned Authorized Representative (“Ld. AR”, for short) for the Assessee informed us that the assessee has opted to settle the aforementioned appeals under Vivad Se Vishwas Scheme (“VSVS”, for short) and that the assessee has already filed the relevant forms. It was further informed by him, that the appellant had filed Form 1 and 2 as specified in VSVS. The Ld. Counsel for assessee also drew our attention to letter dated 24<sup>th</sup> December, 2020 filed in Income Tax Appellate Tribunal (“ITAT”, for short) giving intimation for the same.

**(B.1)** At the time of hearing before us, the Ld. AR for assessee as well as the learned Commissioner of Income Tax (Departmental Representative) (“Ld. CIT(DR)”, for short) submitted before us that these appeals may be treated as withdrawn and may be dismissed on account of the aforesaid VSVS; subject to settlement of the disputes in these appeals, under the aforesaid VSVS. After due consideration, and in view of the foregoing; and as both sides have agreed to this; we treat both these appeals as withdrawn on account of the aforesaid VSVS. Accordingly, both these appeals are dismissed, subject to settlement of the disputes in the appeals, under the aforesaid VSVS.

**(B.2) Before we part, we hereby clarify, by way of abundant caution, that if for some reason the disputes under these appeals before us are not settled under**

**the aforesaid VSVS, then the assessee will be at liberty to approach ITAT for restoration of any or both of these appeals, in accordance with law.**

**(B.3)** With these directions, the aforesaid appeals of the assessee are dismissed, being treated as withdrawn.

**(C)** In the result, these appeals are dismissed.

**These orders were already pronounced on 28<sup>th</sup> December, 2020 in Open Court, in the presence of Representatives of both sides; after conclusion of the hearings.**

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 28/12/20  
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	28.12.2020
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	