IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No.755 to 757/H/2012 (Assessment Years – 2007-08 to 2009-10)
ITA No. 153/H/2013 (Assessment Year – 2010-2011)

M/s. Tata Teleservices Limited, Hyderabad. PAN: AAACT2438A	vs.	Dy. Commissioner of Income Tax, Circle-15(2), Hyderabad.
(Appellant)		(Respondent)

For Assessee:	Shri Sanjay Chopra, Taxation Head of assessee-company
For Revenue :	Shri P. Chandra Sekhar, CIT-DR

Date of Hearing :	16.08.2017
Date of Pronouncement :	25.10.2017

ORDER

PER D. MANMOHAN, V.P:

In these four appeals assessee-company challenges orders passed by Ld. CIT(A) by stating that Ld. CIT(A) erred in holding that assessee is a defaulter u/s 201(1) of the Income Tax Act, 1961 and consequently, interest is payable u/s 201(1A) of the Act. We are concerned with Assessment Years 2007-08 to 2010-11 and both the parties submitted that facts in all these cases are identical. We therefore proceed to dispose of these appeals by a combined order for the sake of convenience.

2. For the purpose of stating facts, we refer to the orders passed by A.O. and Ld. CIT(A) for A.Y. 2007-08. Assessee is engaged in the business of providing cellular mobile telephone services to its customers in Andhra Pradesh through a network of distributors. In order to verify it's compliance towards TDS provisions, a survey was conducted at business premises of assessee on 22.10.2009 wherein, it was noticed that assessee-company was deducting tax at source, as per the provisions of section 194H of Income Tax Act, 1961 (the Act), in respect of post-paid mobile services but with regard to pre-paid mobile services it had defaulted in the form of non-deduction

of tax at source. In the second segment of service i.e., pre-paid mobile service, the method followed by assessee was to deliver starter kits and recharge coupons of fixed denominations to the consumers through distributors. According to A.O., State-wide distributors are appointed for identifying customers and distributing pre-paid products to consumers. Maximum Retail Price (MRP) is mentioned on every product but distributors are supplied with the starter kits, recharge coupons etc., for a lesser price than the MRP value with a liberty to distributor to sell it at any price to the subscribers not exceeding MRP value. For example, if MRP is Rs. 100/-, assessee-company may deliver the same at Rs. 80/- by collecting the amount as an advance from distributor. The distributor in turn may deliver these products to ultimate consumer at any price but not exceeding Rs. 100/- per unit. As per assessee's nomenclature it was a "discount" given to distributor and thus tax was not deducted at source.

3. A.O. referred to distributorship agreements to conclude that transaction between assessee and distributor is that of 'principal and agent'. In this regard he observed that essence of contract of agency is that an agent, after taking delivery of property, does not sell it as his own property but sells the same as property of principal and under his instructions and directions. He further stated that in this case, supply of SIM cards etc., is inextricably linked to a set of services, which are identified and sold under a brand name. Distributor of assessee does not sell them as his own property but that of the assessee-company. The item supplied continued to be the property of assessee for all times.

4. The case of assessee on the other hand was that distributor purchases SIM cards outside for a certain discount and it has liberty to sell at any price of it's choice which makes it a transaction between 'principal to principal'. Even if the sales were not made by distributors to the retailers, distributors are liable to pay assessee-company the price at which pre-paid cards have been purchased. Moreover, if due to negligence of distributor in storing pre-paid SIM cards / starter kits / recharge coupons / e-top-ups etc., it makes them unusable and the loss thereon should be borne by distributor which is unlike in the case of agent. A.O. observed that in case of electronic recharges, there is neither physical movement of stock nor possible damage or destruction and consequently replacement can take place. In fact, distributors are

merely conduits who facilitate the connection of service of assessee-company with the end user. Mere existence of price flexibility given to the distributor cannot be a determinative factor to decide the nature of transaction. A.O. also referred to the clause concerning brand exclusivity. The permissive right to use starter kits and recharge coupons to get access to telephone company is given only to the ultimate consumer, who activates the connection by using the secrete number provided in starter kits and recharge coupons and thus there is no case of purchase and sale in respect of pre-paid starter kits. The contractual or legal obligation in respect of providing service is in fact between assessee-company and the ultimate consumer. It was further stated that assessee's arguments for equating the service provided by assessee-company to the sale of a product / commodity is not acceptable particularly when assessee itself considers the amount payable to distributors as 'commission' in case of post-paid services though materially there is no difference between post-paid and pre-paid services since nature and facts are one and the same. He thus concluded that assessee is a defaulter u/s 201(1) of the Act and consequently liable to pay interest u/s 201(1A) of the Act.

5. Aggrieved assessee contended before Ld. CIT(A) that there is difference between pre-paid and post-post service. In case of pre-paid service the *modus operandi* is that assessee sells product to distributor and the retailers in turn buy these products from the distributors. Retailers in turn sell them to consumer and it could thus be seen that 'discount' given to distributor is shared with retailer which is not known to assessee at any point of time. Provisions of section 194H of the Act speaks of an amount payable by assessee wherefrom tax has to be deducted at source whereas in the instant case, an amount is received by the assessee from distributors. Assessee raises invoices for sale of products and the distributors pays VAT on sale of starter kits. Thus the arrangement between assessee and distributors is not that of 'principal and agent'. Once service products are sold, all rights, title and ownership vest with distributors, who bear the risk associated with any loss of such products and distributor in turn is responsible for taking insurance of service products purchased by them. The liability of distributor is not dependent upon sale of service products to end consumers and distributors would not be entitled to get any refund of price. In a nut shell, the case of assessee was that it was akin to a sale of product or commodity.

6. Ld. CIT(A) observed that equating the services provided by assessee-company to the sale of product or commodity is fallacious. In this regard he observed that assessee itself considers post-paid service for the purpose of commission. He also perused the agreement between assessee and distributors to observe that the distributor can be equated to a franchisee, who has been appointed to sell pre-paid starter kits and recharge coupons for and on behalf of assessee. He also noted that as per the service condition, distributor has no role except to play a role of middleman between assessee and ultimate consumers for which he gets 'commission'.

7. Ld. CIT(A) also observed that in case of electronic recharge, though the amounts are realized from consumers, there are no physical goods at all. The entire transaction is carried out by means of computer software employed by the assessee-company and the retailer merely keys-in the mobile number of the customer and the amount to be recharged from retailer's mobile phone, which is connected to the network. Not even a coupon or symbolic goods is there which is being sold in the e-recharge category. The property in the starter kits and recharge coupons does not pass from assessee-company to distributors for the reason that the mobile telephony services are always provided by assessee-company and it cannot be provided by distributors.

8. He also referred to the guidelines with regard to stock maintenance etc., to highlight that distributors are governed by a complex set of roles and written agreements at the time of purchase and sale of starter kits and recharge coupons and thus distributors cannot take any independent decision without prior approval with regard to sale of the cards. Thus, in essence, relationship between assessee and distributor is that of 'principal and agent'. He also observed that in case of electronic recharges, where e-top-up is made with the software available in the company, there is no liability fastened upon distributors and in fact there is neither physical movement of stocks nor possible damage or destruction and consequential replacement can take place. Mere price flexibility cannot alone be a determinative factor to decide as to whether assessee-company and distributors are acting on a 'principal to principal' basis.

9. Ld CIT (A) thereafter referred to decision of Hon'ble Kerala High Court as well as Delhi High Court to conclude that the relationship between assessee-company and it's distributors is that of a 'principal and agent' and cannot be treated as 'on principal to principal' basis. He accordingly confirmed the order of AO.

10. However, with regard to charge of interest u/s 201(1A) of the Act Ld CIT (A) observed that as per the decision of Hon'ble Supreme Court in the case of Hindustan Coca Cola Beverage P. Ltd (293 ITR 226) interest can be charged only up to such date on which tax was already paid by recipient and he accordingly directed AO to verify the same.

11. Further aggrieved, assesseee is in appeal before us.

12. Sri S. Sanjay Chopra, Tax Head of assessee-company, appeared on behalf of assesssee whereas Sri P. Chandrasekhar, CIT-DR appeared on behalf of Revenue. On behalf of assessee it was stated that the facts of the case are not properly considered by tax authorities and they merely followed the precedents, overlooking the fact that in the instant case there was indeed a transfer of goods also. It was stated that assessee was incurring losses in post-paid business and therefore, it started pre-paid business wherein assessee-company collected amounts in advance and in return SIM cards, starter kits, recharge coupons etc., were sold out to distributors outright on 'principal to principal' basis which is evident from the fact that assessee paid Sales Tax on such transaction. He adverted our attention to pages 776, 778-A & E and 820 of the paper book to highlight that at the time of transfer of starter kits, recharge coupons etc., assessee paid VAT / Sales Tax and clearly specified that "cash discount" is given to distributors, who are free to sell at any price of their choice not above the MRP. Page 693 refers to quantitative details of principal items of goods traded. Item no. 16 at page 921 (of Idea Cellular pre-paid connection form) was placed before us to indicate that Idea pre-paid SIM card will always be sole and exclusive property of Idea Cellular Limited (ICL) upon termination / deactivation / temporary suspension of service. The case of Ld Representative is that in case of ICL etc., the distributor has limited role whereas in the instant case there is an outright sale of SIM cards etc. He also referred to pages 547 to 549 to submit that the distributor shall be liable to pay all taxes such as Sales Tax etc., and also submitted that invoices are raised by

distributors on retailers (pages 821 to 822) whereby it can be seen that distributor supplies starter kits, recharge coupons etc., at his own right and not as an agent of assessee-company. Ld Representative also referred to the decision of Apex Court in the case of Bharat Sanchar Nigam Ltd and Another vs. Union of India [2006] (282 ITR 273) (SC) to submit that in the aforecited decision, arising out of Sales Tax / Service Tax Act, certain issues were left unanswered and the matter was sent to the Sales Tax Department by observing that *goods do not include electromagnetic waves or radio frequencies and finally limited to the handsets supplied by the service provider and also stated that there may be a transfer of right to use goods and if there is composite contract of service and sale and the Sales Tax Authorities were directed to verify the sale agreements, provided there is a discernible sale.* With regard to Grounds no. 1 to 5 raised before us, Ld Representative submitted that contrary to the other cases, assessee-company has taken into account 'discount' as 'income' by treating it as a separate object of sale and hence provisions of section 194H are not applicable in the instant case.

13. On the other hand, Ld DR submitted that even as per assessee, the agreement for all these years is identical (page 545 and 546 of the paper book) and referred to para 5.4 of the distributorship agreement dated the 15th day of June, 2006 between Tata Tele Services Ltd (TTSL) and one of the distributors to highlight that assessee-company had complete control over the business and the distributor is only a service provider. In this regard he highlighted para 5.1 of the agreement wherein it was stated that distributor has to strictly comply with the standards and requirements as set out in the agreement. While providing service, distributor has to specifically disclose that TTSL is only providing service of air-time and the activation / recharge coupons are issued for that sole purpose. It was also mentioned in para 5.4 that SIM cards will always remain the property of Tata Tele Services Ltd and they will become invalid / cancelled consequent to their use in accordance with TTSL prescribed procedure and policies and customers will have to return the said cards to TTSL upon such cancellation. Ld DR also adverted our attention to page 549 of the paper book and in specific referred to para 7.1 to state that for performing the duties and obligations, distributor is entitled to a commission which is subject to deduction of tax at source under the Income Tax Act, 1961, though it might have shown as 'discount'

in some other agreements. Pages 541, 542, 563 and 564 define the nature and duties of distributor on a payment of commission and the role of distributor is only to distribute starter kits and recharge coupons in a defined geographical area under intimation to TTSL from time to time. Ld CIT-DR thus submitted that it was not a case of 'transfer of goods' and commission paid by assessee-company clearly attracts the provisions of section 194H of the Act since there is a 'principal to principal' relationship between assessee-company and distributors. Ld DR also adverted our attention to the separate order passed by Justice Dr. AR. Lakshmanan in the case of BSNL (supra) to submit that the Telegraph Act, 1885 maintains the integrity of subject matter of licence in which event transaction of service is a composite one not capable of being disintegrated. The licence is one for providing telecommunication service and not for supply of any goods or transfer of right to use any goods. On the other hand, it expressly prohibited the transfer or assignment since the integrity of licence cannot be broken into pieces. Ld DR read out the separate order passed by Justice Dr. AR. Lakshmanan to submit that even according to the said judgment there is no 'transfer of right to use' service.

14. With regard to the claim of assessee that assessee-company has only collected net amount, Ld. DR relied upon the decision of Hon'ble Kerala High Court in the case of Vodafone Essar Cellular Ltd vs. ACIT (332 ITR 255) (Kerala) to submit that even if the assessee received net amount, TDS has to be made, on a proper interpretation of Explanation to section 194H of the Act. Thereafter, Ld DR referred to page 16 onwards of the order of Ld. CIT(A) to submit that the component of sale of starter kits is miniscule in comparison to the transaction of service in the instant case and the assessee having complete control over the service component it cannot be said that distributor was acting in his capacity on 'principal to principal' basis with assessee-company. He thus relied upon the orders passed by tax authorities as well as case law relied upon by Ld. CIT(A) in the back drop of the facts highlighted hereinabove. Since Ld. CIT-DR extensively referred to the order of Ld. CIT(A) we extract the relevant portion of the order below from pages 16 to 18:-

> "*Regarding the contention that the prepaid mobile operations provided by it are different from the other service providers, the agreement deed with the distributors has been clearly brought out by the Assessing Officer in the assessment order and also in the remand report and from this the terms and conditions do not appear to be*

different from those other players in the similar business. The appellant has contended that it has been following the sale model in line with the guidelines laid down by the larger Bench of the Hon'ble Supreme Court in the case of BSNL & Others (2006) 3 SCC 1. But, it may be noted that whatever way the model has been drafted, the underlying principle and the nature of the transaction has to be looked into. The nature of the payment which the appellant claims as discount is nothing but commission paid for the services rendered by the distributors. This is evident from clause 7 of the agreement deed with M/s. I Santosh Kumar Agencies referred to in the assessment order whereas per clause 7.1 ***"in consideration of duly performing the duties and obligations as contemplated herein, the distributor shall be entitled to a commission as set forth in Schedule A attached herewith, which shall be subject to, applicable tax deduction at source under the Income Tax Act."***

One of the arguments of the appellant is that they have complied with the observation of Kerala High Court in Escotel Mobile Communications vs. Union of India (126 STC 475) in their agreements with their distributors. However, subsequently, the Escotel judgment was challenged by both BPL and BSNL before the Apex Court. In their judgment, the Hon'ble Supreme Court in BSNL vs. Union of India (supra) observed that the supply of SIM card and other accessories can be in more than one manner. The Court discussed the composite transaction and simple transaction and held that the exact nature of the transaction would depend on the intention of the parties. The intention of the parties regarding the transaction is evident from the clause 7 of the agreement as shown in the above paragraph which shows that for the services and the performance by the distributor commission would be paid which is subject to TDS under I.T. Act. Moreover, as per the appellant's contention, there are two separate transactions such as (i) sale of SIM card (ii) activation of SIM card and there have to be two distinctive independent transactions of sale and services, i.e., sale of SIM card and activation of SIM card, and in the agreements with distributors there is no such differentiation.

Even if it is held that there are two separate transactions, the dominant transaction is the services provided through prepaid cards. The appellant itself is treating the transactions of RCVs as services and quantifying the service tax liability. The component of 'sale of starter kits' is miniscule in comparison to RCV transactions which is apparent from the following table:

Year	*Turnover of starter kits material value (Rs)*	*VAT (Rs)*	*Turnover of service price (RCV) (Rs.)*	*Service Tax (Rs.)*	*Cash Discount (Rs.)*	*Total*
2007-08	*47140531*	*1885623*	*2874087260*	*349952464*	*122031254*	*3151034623*
2008-09	*61596190*	*2463848*	*2994864049*	*369780622*	*122751110*	*3305953596*
2009-10	*75099227*	*3004902*	*3241521586*	*395354628*	*248877281*	*3466103061*

Thus by the own version of the appellant, the transaction of RCVs are services and liable for TDS and in respect of transfer of SIM cards, even though the appellant is treating the same as sale transaction, these cards have no intrinsic value in absence of associated services. It is also noted that the ownership of property in the starter kits do not pass from the appellant company to the distributors which is evident from clause 5.4 of the agreement with the distributor which is as below.

"While providing services pursuant to these presents, directly or indirectly (dealers / retailers), the distributor shall specifically disclose that (a) TTSL in only providing services of air-time and the activation / recharge cards are issued for that sole purpose, (b) ***the said cards will always remain the property of TTSL,*** *(c) the said card/s will become invalid and be cancelled consequent to their use in*

accordance with TTSL prescribed procedures and policies and (d) the consumer will have to return the said card/s to TTSL upon such cancellation."

It may be noted that the 'starter kits' are not tradable goods in the ordinary meaning of expression of 'goods and sale' and they are all instruments of service provided by the appellant itself and the service can only be rendered and cannot be sold and in absence of services, these SIM cards have no value."

15. Joining the issue, Ld Representative of assessee-company submitted that assessee has treated it as an outright sale all through and in fact at page 820 of the paper book it was referred to as a "cash discount" and hence it is not correct to hold that assessee intended to pay a sum to distributor in the form of 'commission'. It was also submitted that even as per clause-5 of the distribution agreement, distributor is liable to pay taxes such as Sales Tax, Service Tax etc., and he is free to sell to the retailers. The fact that the distributor shall indemnify and keep indemnified TTSL against any claim or demand from the dealers / retailers appointed by distributor or from general public on account of violation / non-performance of obligation on the part of distributor indicate that distributor is acting in his independent capacity on a 'principal to principal' basis and such clauses should not be read out as an agreement on a 'principal to agent' basis. He referred to paras 5.2, 5.3 and 5.8 of the agreement to highlight that upon sale of products, assessee-company is completely immune from any losses etc., which is an indication to show that there is an outright sale and assessee-company merely paid cash discount in which event section 194H of the Act cannot be invoked.

16. We have carefully considered the rival submissions and perused record. We have also gone through the agreements entered into by assessee-company with it's distributors as well as decisions referred to by both the parties.

17. Assessee's Representative filed voluminous paper books, which contain tax audit report, agreements with distributors, case law and other relevant material to support it's stand that distributor is not acting as an 'agent of assessee' but he has entered into agreement in his independent right to exclusively deal with TTSL products. Pages 540 to 648 are the relevant agreements between assessee-company and distributor for the FYs 2006-07, 2007-08 and 2008-2009. The language used in the agreements is more or less same. Ld DR had taken us through the common set of agreements for the FY 2006-07. The first agreement is placed at page 540 of the

paper book. The expression "service" was defined as one or more telecom services provided by TTSL and it also includes provision of all telecommunication services and other Telecommunications, and distribution of prepaid card, smart cards and all other services within the purview of the said licence in relation to the telecom service as may be included / specified by TTSL from time to time. The expression "commission" was defined as an amount payable to distributor by TTSL for "marketing the services" as set forth in Schedule-A herein. Para 2.2 of it's agreement states that TTSL reserves it's right to appoint one or more distributors / agents to market the service of TTSL or TTSL can market products directly by itself in the service area for which the distributor is appointed. Para 2.4 speaks of the limitation of distributor to bind TTSL in any respect whatsoever. Clause 4 speaks of duties and obligation of TTSL in providing marketing information and periodic service features. The appointment is valid for the premises as set forth in the agreement with a condition that TTSL may, at any time, at its absolute discretion amend or make any changes to the agreement as it may become necessary due to any change in law, rules and regulations. Para 5.1 speaks of the obligation of distributor to comply with the standards and requirements as set forth in the agreement. Clause 5.2 speaks of the appointment of dealers / retailers within a defined territorial area with a rider that any act or omission by dealer / retailer, which results in violation of the agreement would be responsibility of distributor. Para 5.4 states that TTSL is providing services of air-time, and activation / recharge cards are issued for it's own purpose. It was also stated therein that the cards will always remain the property of TTSL and the same will become invalid and be cancelled consequent to their use in accordance with TTSL prescribed procedures and policies and the customer will have to return the said cards to TTSL upon such cancellation.

18. Clauses 5.5 and 5.6 refer to the obligation on the part of distributor. Clause 5.7 refers to the power of TTSL to revise the scope of services to be rendered by distributor from time to time based on operational requirements. Clause 6 refers to minimum sales targets fixed by the company on distributor; if the distributor is not adequately meeting the sales targets, the TTSL may, at its option vary the agreement, so as to exclude, reduce, modify, suspend the periodic sales, allocations and / or assignments. TTSL has the power to review the service performance on monthly basis and can call for explanation of distributor if the sales targets are not achieved. TTSL

is entitled to examine stock of merchandise to satisfy itself as to the quality of merchandise as per the business requirements. Clause 7 refers to the consideration / commission payable by assessee to distributor for the duty performed by distributor. Clause 7.1 reads as under:-

> *"7.1. In consideration of duly performing the duties and obligations as contemplated herein, the Distributor shall be entitled to a commission as set forth in Schedule – A attached herewith, which shall be subject to, applicable Tax Deduction at Source under the Income Tax Act."*

19. Clause 10 refers to the fact that the merchandise for storage and sale will be provided by TTSL though all expenses are to be incurred in the storage, cartage, transportation by distributor. Clause 13 refers to termination of agreement which also shows that TTSL has complete authority to terminate distributorship agreement subject to certain conditions and thereafter distributor shall stop marketing and promoting the service of TTSL and immediately return to TTSL all information, data and materials pertaining to the service; Distributor has to immediately discontinue the operation of distributorship. Distributor has to immediately handover to TTSL all stocks of handsets / equipment, coupons, vouchers and any and all other TTSL property which are in possession of distributor. Page 563 refers to the scope of work for distributor ie., to distribute starter kits and recharge coupons in a defined geographical area, which shall be intimated by TTSL from time to time.

20. Next year's agreement also contains more or less similar conditions. Clause 14 (h) of the agreement (pages 579 of paper book) reads as under:-

> *"h. immediately handover to TTSL all stocks of handsets / equipment, coupons, vouchers and any and all other TTSL property and all copies (in whatever form) of all details, data and information including accounts, addresses and names of all the Customers / Subscribers which are then in the possession of the Distributor."*

21. The third agreement is dated on 04.07.2008 (page 588 onwards). Parties admitted that barring few changes, the conditions are more or less identical. Case of the assessee is that there was a contract of sale of goods such as starter kits, recharge coupons etc., and hence there exists a relationship of 'principal to principal' between assessee and it's distributors.

22. On a careful perusal of the clauses it shows that the contract was for rendering services and commission is paid by assessee to it's distributors for rendering of such

services in which event the relationship between assessee and it's distributors is that of 'principal and agent' and the provisions of section 194H would automatically come into play. Ld. CIT(A) in this regard observed that assessee-company itself accepted the post-paid activity as a 'service' on which tax is to be deductible at source and the service being same, even in respect to post-paid SIM cards / e-coupons supplied, it is difficult to appreciate as to why the amount paid by assessee for the services obtained from distributors should not be treated as 'commission' paid. Assessee is a service provider and it cannot be equated to a manufacturer or trader of any goods. Mobile telephony is a service and hence it cannot be equated to sale or ordinary physical goods / commodities. In fact, in case of electronic recharge cards, though the amounts were realised from the consumers, there are no physical goods at all. The entire transaction is carried out by means of computer software employed by assessee-company and retailer merely keys-in the mobile number of the consumer and the amount to be charged, from retailer's mobile phone, to connect to the network. Ld. CIT(A) observed that in such case, there is not even a coupon or symbolic goods which can be said to have been sold in the e-recharge category.

23. The clauses in agreement also indicate that assessee-company has complete control over starter kits, recharge coupons etc., and distributors are only entitled to sell them within a geographical area and the overall right is vested in assessee-company to terminate contracts and to supervise distributors with regard to performance results etc. Under these circumstances, it cannot be said that there is transfer of goods. In fact, assessee is not accounting for profits at the time of transfer of starter kits and only when the air-time is connected by assessee, to ultimate consumers, the same is accounted for; This indicates that distributor is merely acting as a conduit in providing service by assessee to ultimate consumer and thus mere price flexibility given to distributor is not a determinative factor to decide whether assessee-company and distributors are acting as 'principal to principal'. On the contrary, agreements unambiguously indicate that there is a 'principal to agent' relationship between assessee-company and it's distributors.

24. This issue was considered by Hon'ble Andhra Pradesh High Court in the case of M/s. Vodafone Essar South Ltd (ITTA No.291 of 2013). It may be noted, from the

arguments advanced by assessee-company before A.O., that assessee-company relied upon the decision, in the case of Idea Cellular Ltd, of the ITAT, Delhi Bench, which was followed by the ITAT Hyderabad Bench (317 ITR 176) (AT). However, the decision of ITAT Delhi Bench was reversed by Hon'ble Delhi High Court in CIT vs. Idea Cellular Limited [2010] (325 ITR 148) (Del.) and based upon the said decision, the ITAT "A" Bench, Hyderabad upheld the action of Assessing Officer (ITA Nos. 1083 to 1088/Hyd/2011, dated 23.05.2014) which in turn was confirmed by Hon'ble Jurisdictional High Court (supra).

25. An identical issue has been considered by us thread bear in the case of M/s. Vodafone Mobile Services Limited vs. DCIT (ITA Nos. 1189/H/2014 and batch, dated 29.09.2017) wherein the Bench had taken a view that there cannot be any sale of service and since it is a composite contract of rendering service, apart from supply of SIM cards etc., the relationship between assessee-company and it's distributors is that of 'principal and agent' and thus the issue stands squarely covered by the judgment of jurisdictional High Court in the case of M/s. Vodafone Essar South Ltd (supra) wherein it was held that provisions of section 194H of the Act are applicable in respect of amounts paid to agents in connection with sale of SIM cards and other services. Mere fact that assessee is only a recipient and had not paid any amount to distributor would not make a difference.

26. In the order dated 29.09.2017, in the case of Vodafone Mobile Services Limited (supra), the Bench also observed that the ratio of judgment of Hon'ble Andhra Pradesh High Court (ITTA No.291 of 2013, dated 17.07.2013) is binding upon it as against the view taken by Hon'ble Karnataka High Court in the case of Vodafone Essar South Ltd (372 ITR 33) and also noticed that the observations of later Bench of Hon'ble High Court of Telangana & Andhra Pradesh (in Writ Petition Nos. 2456 and batch) cannot be read as binding ratio so as to come to a conclusion that earlier view taken by same High Court is doubted by later Bench.

27. By respectfully following the decision cited (supra), in the facts and circumstances of the case, we are of the firm view that provisions of section 194H are applicable to the case on hand and thus we uphold the order passed by Assessing Officer and dismiss the appeals of assessee-company.

28. In the result, all the four appeals of assessee-company are dismissed. Pronounced accordingly in the open court on 25th October, 2017.

Sd/- Sd/-

(S. RIFAUR RAHMAN) **(D. MANMOHAN)**
ACCOUNTANT MEMBER **VICE PRESIDENT**

Hyderabad, Dated: 25th October, 2017

OKK, Sr.PS

Copy to

1.	Tata Teleservices Limited, Gyanpeeth, Hardware Park, Plot No.1 to 5, (Survey No.1/1), Imarath Kancha, Raviryal Village, Maheswaram Mandal, Ranga Reddy District, Hyderabad-500005.
2.	Dy. CIT, Circle 15(2), Hyderabad.
3.	CIT (A)-II, Hydeabad.
4.	CIT (TDS), Hyderabad.
5.	D.R. ITAT "B" Bench, Hyderabad.
6.	Guard File