

Telecom Distributor need not pay TDS on Commission directly paid to Retailers by Telecom Service Provider: ITAT

Fact of the Case

1. In the present case the assessee is engaged in distribution of SIM cards and mobile recharge coupons of Uninor.
2. During assessment proceedings, upon perusal of financial statements, the AO disallowed the expenses claimed by the assessee by holding that the assessee debited commission of Rs.40.98 Lacs. The assessee explained that she was purchasing the SIM cards and recharge vouchers from Uninor and selling them to around 250 retailers.
3. Uninor was providing incentive to retailers to achieve sale target. However, Uninor would credit the account of the assessee with incentive and deduct TDS under section 194H. Upon actual payment to the retailers, the account of the assessee would be debited
4. Thus, the amount of incentive was merely routed through the ledger of the assessee. However, no incentive or commission was received from the company to be paid to the retailers. According to the assessee, the same was merely book entries for incentive paid by Uninor directly to the retailers.

Decision of the Case

1. The Tribunal bench comprising Judicial Member Mr. Vikas Avasthy and Accountant Member Mr. Manoj Kumar Agarwal held that the telecom service provider remunerates the assessee distributor and scores of retailers by way of commission and incentives.
2. Allowing the appeal of the assessee, the Tribunal held that “the assessee’s account is first credited by the amount of incentive payable to the retailers and thereafter, the account is debited upon actual payment by Uninor to the retailers. Uninor would credit the amount with gross amount and debit the account with actual amount paid to the dealer, balance being deduction of tax at source from the account of the assessee.
3. The amount is credited as well as debited to the Profit & Loss Account. However, the assessee had no control over such payment and reflected the transactions in a manner so as to match the same with the ledger of Uninor. The incentive was directly paid by Uninor to the retailers. Therefore, the disallowance as made by Ld. AO u/s 37(1) as well as alternatively u/s 40(a)(ia) do not meet our acceptance.”