

Bharti Cellular Limited (Now Bharti Airtel Limited) v. Assistant Commissioner of Income Tax, Circle 57, Kolkata and Another

Civil Appeal No. 7257 of 2011 and connected proceedings (full list below)

[2024] 2 S.C.R. 1001 : 2024 INSC 148 | 2024-02-28

Whether cellular mobile service providers must deduct tax under section 194H on the margin earned by franchisees/distributors who obtain prepaid starter kits and recharge products at a discounted advance price and resell them to retailers or customers.

194H | 204(iii)

Two-judge bench | Sanjiv Khanna, J. | S.V.N. Bhatti, J.

Assessment years: See the source-scope notes; no year inferred.

Operative wording differs between source versions

The current official SCI file downloaded for this review bears a visible digital-signature date of 29 May 2025; its para 42 names Calcutta only for the assessee appeal(s) and includes Orissa among Revenue appeals. The collected SCR asset names Delhi and Calcutta for assessee appeals and does not include Orissa. Both retain the same substantive no-TDS conclusion and no-costs direction. A correcting order or Registry explanation establishing the revision history has not been located. The common merits outcome is established in both sources. Group-specific final-disposition claims remain unresolved pending correction-history verification; do not publish an unqualified Delhi/Orissa-specific outcome or an invented individual-appeal mapping.

01 FACTS OF THE CASE

The common judgment concerns appeals by cellular mobile telephone service providers and the Revenue arising from conflicting High Court decisions on section 194H. Its subject is the prepaid business model, not post-paid operations. Distributors/franchisees paid the providers an agreed discounted price in advance for starter kits, recharge vouchers and similar products, irrespective of whether they had resold them. They could sell below the printed price and determined their own trading margin. The Revenue treated the difference between the distributors' actual resale proceeds and their acquisition price as commission earned as agents. The assessee disputed both agency and any payment or credit of commission by them. The Court examined Bharti's agreement and the admitted financial model; it noted that the Vodafone/Idea agreements differed somewhat but did not reproduce them. Contractual controls covered branding, targets, premises, retailer appointments and customer documentation, while distributors bore their business, staffing, insurance and stock-loss responsibilities.

Source: [official court judgment current download / paragraphs 1 \(opening unnumbered paragraph\) / PDF pages 1, 2 / judgment](#); [official court judgment current download / paragraphs 18-21 / PDF pages 17, 18, 19 / judgment](#); [official court judgment current download / paragraphs 22-28 / PDF pages 26, 27, 28, 29, 30 / judgment](#)

02 DISCUSSION BY THE HON'BLE COURT

The Court read section 194H with Explanation (i), section 204(iii) and section 182 of the Contract Act. For the agency case advanced by the Revenue, the legal substance of the relationship was decisive, not a label such as franchisee, distributor or principal-to-principal. The relevant indicia included power to alter the principal's legal relationship with third parties, the character of the principal's control, fiduciary duties and an obligation to account for business conducted on the principal's account. A person working on its own account to maximise resale profit can remain an independent contractor despite contractual restrictions. The Court also recognised that one contract may contain different legal relationships.

On these facts, the distributors' contractual duties did not establish a fiduciary business conducted for the telecom providers. Retention of title to SIM cards and customer-document requirements reflected telecom licence obligations; they did not by themselves establish agency. The distributors earned their margin upon their own resale, and the providers neither paid nor credited that income. The actual margin was not necessarily the difference between the printed price and the distributor's discounted acquisition price. The providers were not privy to the resale transactions. The word 'indirectly' in Explanation (i) captures indirect satisfaction of a payer's obligation; it does not create a payment obligation where the main provision is inapplicable.

Singapore Airlines was distinguished because agency was undisputed there and its billing-and-settlement mechanism supplied information about supplementary commission payable in that agency relationship. The Revenue could not impose an additional requirement that these telecom providers periodically obtain distributors' resale data and change the statutory deduction timetable through a concession in court. The Court's general discussion of doubtful penalisation was not its basis for relieving these assesseees: footnote 29 expressly says that doctrine did not apply here, noting that they had previously deducted tax before discontinuing on legal advice. Footnote 3 also reserves the unargued question whether the main section could reach commission or brokerage in the absence of agency; footnote 4 disclaims any general exemption for indirect book credits.

Source: [official court judgment current download / paragraphs 3-9 / PDF pages 3, 4, 5, 6, 7, 8, 9, 10 / judgment](#); [official court judgment current download / paragraphs 11-17 / PDF pages 10, 11, 12, 13, 14, 15, 16, 17 / judgment](#); [official court judgment current download / paragraphs 28-34 / PDF pages 30, 31, 32, 33, 34, 35, 36, 37 / judgment](#); [official court judgment current download / paragraphs 35-41 / PDF pages 37, 38, 39, 40, 41, 42, 43 / judgment](#)

03 JUDICIAL DECISION

Section 194H did not apply to the prepaid distribution arrangements before the Court. The cellular providers were not obliged to deduct tax on the distributors' profit component in receipts from retailers/customers, or when selling/transferring prepaid coupons or starter kits to them. The assesseees succeeded on this common issue and the Revenue's appeals failed. The jurisdiction-specific operative wording varies between the currently served official SCI PDF and the collected SCR rendition; the outcome records that discrepancy rather than treating the two texts as identical.

Source: [official court judgment current download / paragraphs 29-31 / PDF pages 30, 31, 32 / judgment](#); [official court judgment current download / paragraphs 34, 37-42 / PDF pages 36, 37, 39, 40, 41, 42, 43, 44 / judgment](#)

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assesseees / cellular mobile telephone service providers

Assessee appeal(s) allowed; Revenue appeals dismissed; no order as to costs; pending applications disposed of

Common section 194H issue decided in favour of the assesseees; no merits remand or monetary quantification ordered

Confined to the prepaid arrangements and facts examined. No automatic exemption for every franchise, distributor, discount, post-paid arrangement, indirect payment or indirect book credit. The recipients' own liability to tax remains unaffected. The wider unargued question recorded in footnote 3 remains open.

Source: [official court judgment current download / paragraphs 42 / PDF pages 43, 44 / judgment](#); [reported collected source / paragraphs 42 / PDF pages 38 / judgment](#)

05 AKHB REVIEW POINT

For a legacy-year section 194H dispute, test each payment stream against the actual contract and business practice. Preserve advance-payment records, resale-pricing freedom, allocation of stock and credit risk, authority to bind the provider and any duty to account for customer receipts. A principal-to-principal clause or the word discount is not conclusive. Conversely, regulatory controls and retained title to SIM cards do not alone establish agency. Distinguish an independent resale margin from a separately payable marketing fee or genuine agency commission; the judgment does not decide every such payment. Check the governing statutory version and later treatment separately before relying on this decision. No correspondence to, or automatic carryover under, the Income-tax Act, 2025 is asserted.

Source: [official court judgment current download / paragraphs 8-9, 14, 17 / PDF pages 7, 8, 9, 10, 13, 16, 17 / judgment](#); [official court judgment current download / paragraphs 28-31 / PDF pages 30, 31, 32 / judgment](#); [official court judgment current download / paragraphs 34-35, 39-42 / PDF pages 36, 37, 38, 41, 42, 43, 44 / judgment](#)

APPEAL AND PROCEEDING NUMBERS

Civil Appeal No. 7257 of 2011 / Civil Appeal Nos. 2652-2653, 4949-4950 and 4947-4948 of 2015 / Civil Appeal No. 7455 of 2018 / Civil Appeal Nos. 111 and 2860 of 2021 / Civil Appeal No. 8902 of 2022 / Civil Appeal Nos. 7729, 7735, 7736, 7737, 7738, 7739, 7740, 7741, 7742, 7743, 7679, 7680, 7681, 7682, 7744, 7745, 7746, 7747, 7748, 7848, 7849, 7852, 7853, 7854, 7855, 7856, 7857 and 7859 of 2023 / Civil Appeal Nos. 3514, 3515, 3516 and 3517 of 2024

PROVISION-SPECIFIC SCOPE

1.

Act: Income-tax Act, 1961

Section: 194H, including Explanation (i)

Role: Operative TDS issue: whether the prepaid distribution margin was commission or brokerage and whether the provider was the person responsible for paying it

2.

Act: Income-tax Act, 1961

Section: 204(iii)

Role: Interpreted definition of person responsible for paying; paras 3-4 and 34

3.

Act: Income-tax Act, 1961

Section: 119

Role: Contextual statutory power for a permissible CBDT circular; para 38, not an independent claim for relief

4.

Act: Income-tax Act, 1961

Section: 194D

Role: Insurance-commission exclusion appearing in the quotation of section 194H; not decided

5.

Act: Indian Contract Act, 1872

Section: 182

Role: Definition and legal indicia of agency used to determine the relationship

6.

Act: Indian Telegraph Act, 1885

Section: 4

Role: Telecom licence and regulatory context; not a tax holding

SOURCE & VERIFICATION

[Hon'ble Supreme Court source PDF \(official court judgment current download\)](#)

Identified source rendition: 44 PDF pages; SHA-256
ed819001aab77993534c71d159ead642b45b94f648696dc00df7578eff41ab86. Original bytes preserved.
Preferred official-domain text for merits and primary pinpoints, with para-42 variance expressly
disclosed. The signature/re-creation date is not represented as the decision date or proof of a particular
correction order.

Open cited source rendition

Group-specific disposition warning: operative para-42 jurisdiction wording differs between two verified
renditions. Current official PDF p. 44 says Calcutta; Rajasthan/Karnataka/Bombay/Orissa. Collected SCR
PDF p. 38 says Delhi/Calcutta; Rajasthan/Karnataka/Bombay. A correction order has not been verified.

Full judicial text was read, including footnotes. The editorial headnote statement about doubtful
penalisation is qualified by judicial footnote 29, which expressly excludes its application on these facts.

Footnote 3 leaves open the unargued reach of the main section absent agency; footnote 4 prevents
reading the decision as an exemption for indirect credits.

Paragraph 18 expressly limits the dispute to prepaid operations. The reference to post-paid
documentation in para 29 does not enlarge the holding to post-paid operations.

Paragraph 21 footnote 23 records somewhat different Vodafone/Idea agreements. No assumption that all
telecom agreements are word-for-word identical is made.

Paragraphs 31 and 36 distinguish actual resale profit from a printed-price discount. The note does not
describe every printed-price discount as the subject of an assessed commission payment.

Paragraph 1 is unnumbered in both renditions. References to para 1 mean the opening judicial
paragraph, not editorial material.

Bench is verified from the judgment signature names and SCR title page; later case-status listing panels
are not used to substitute a different coram.

No assessment year, individual connected-appeal origin, quantified refund or later-treatment status is
invented.

Both citations are printed on SCR PDF p. 1. The currently served official SCI PDF is a different, 44-page
rendition whose para 42 differs from the 38-page SCR source; the difference is expressly retained below.

No assessment year for the lead appeal or connected batch is specified in the common judicial text. No
year has been inferred from the litigation dates, other cases or headnotes.

The common-judgment list is verified on official PDF p. 1 and SCR PDF p. 7. Paragraph 42 groups
dispositions by appellant category and originating High Court; it does not match each connected appeal
number to its High Court or party. No such individual mapping has been inferred.

Only the accurately established common prepaid-distribution section 194H merits outcome is cleared by
this review. Jurisdiction/connected-appeal-specific disposition claims remain unresolved because the two
verified source renditions differ. Display the source-variance warning alongside the note.

Sections 163 and 285 and references to the Foreign Exchange Management Act appear only inside the
quoted section 204 footnote. They are not independent issues or holdings and are not promoted to
operative tax-section tags.

STATUTORY SCOPE

Income-tax Act, 1961 provisions as reproduced and analysed in this judgment; no comprehensive current statutory-version audit

The judgment's quoted rates, thresholds, provisos and legislative language are historical source material and are not presented as current compliance guidance. No Income-tax Act, 2025 mapping has been attempted.

LATER TREATMENT

Source checked 2026-10-04. Subsequent appeals, review proceedings, stays, reversals and later judicial treatment have not been comprehensively checked. This note is not a citator status certificate.

IDENTIFIED SOURCE LINKS

[official court judgment current download - PDF pages: 44](#)

Preferred official-domain text for merits and primary pinpoints, with para-42 variance expressly disclosed. The signature/re-creation date is not represented as the decision date or proof of a particular correction order.

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[reported collected source - PDF p. 1 / SCR p. 1001 - PDF pages: 38](#)

Collected eSCR mirror. Judicial text occupies PDF pp. 8-38 / SCR pp. 1008-1038; para 42 differs from current SCI file. Editorial headnotes and result box are excluded as authority.

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