

India

Discount on Sale of Prepaid SIM Cards/Vouchers Not Commission/Brokerage, WHT Not Applicable, Indian Apex Court Says

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The Apex Court (SC) has ruled, in the case of *Bharti Cellular Ltd. v ACIT* (Civil Appeal No. 7257 OF 2011), that cellular mobile service providers are not obligated to deduct withholding tax (WHT) on discounts provided to franchisees on prepaid SIM cards and recharge coupon vouchers.

(a) Facts. The taxpayer, an Indian tax resident, was a cellular mobile service provider, *inter alia* selling prepaid kits and recharge vouchers to franchisees at discounted prices. Revenue argued that these discounts were akin to commission, making providers liable for deduction of WHT under section 194H of the Income Tax Act, 1961.

(b) Issue. The SC examined whether the discounts qualify as commission or brokerage income for the deduction of WHT.

(c) Decision. The SC examined the principal-agent and the principal-principal relationships, as well as the distinction between agents and independent contractors in depth and ruled in favour of the taxpayer with observations set out below.

- Franchise agreements are akin to independent contractor relationships. Franchisees operate as independent contractors, not agents, under the distribution agreements between the taxpayer and the franchisees.
- As per the terms of the distribution agreement, there was no principal-agent relationship as the distributors (i) purchased the SIM cards/vouchers at discounted price from the taxpayer, (ii) had the right to sell them to customers at any price without being accountable to the taxpayer and (iii) there was no fiduciary relationship between the taxpayer and the franchisees.
- The taxpayer was not required to deduct WHT under section 194H as (i) it had not paid any income to the franchisees and (ii) it is not privy to the contract between the franchisees and their customers.

The decision was pronounced by the SC on 28 February 2024 and is available [here](#) (as a PDF).

