

# GRC BULLETIN

APRIL - 2024, VOLUME: I

## Case Law

TDS under Section 194H of the Income Tax Act does not apply to business transactions if the assessee is not accountable for the payment of income

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## JUDICIAL INSIGHT

# TDS UNDER SECTION 194H OF THE INCOME TAX ACT DOES NOT APPLY TO BUSINESS TRANSACTIONS IF THE ASSESSEE IS NOT ACCOUNTABLE FOR THE PAYMENT OF INCOME

### Relevant Law:

- Income Tax Act, 1961 (specifically Section 194-H)
- Section 194-H of the Income Tax Act, 1961: This section mandates deduction of tax at source (TDS) on certain payments, including "commission or brokerage." However, the Act doesn't explicitly define "commission or brokerage."

### Facts:

- Bharti Cellular Limited (now Bharti Airtel Limited) and other cellular mobile service providers were involved in a dispute with the Income Tax Department (ITD) regarding Tax Deducted at Source (TDS) under Section 194-H of the Income Tax Act.
- Section 194-H mandates deduction of tax at source on "commission or brokerage."
- The ITD argued that the payments made by Bharti Cellular to its franchisees/distributors constituted "commission" and thus attracted TDS under Section 194-H.
- Bharti Cellular contended that the payments were not commissions but reimbursements for expenses incurred by the franchisees/distributors. Additionally, they argued that the franchisees/distributors were not their agents.

### Issue:

Whether payments made by Bharti Cellular to its franchisees/distributors attracted TDS under Section 194-H of the Income Tax Act.

### Supreme Court Verdict:

The Supreme Court ruled in favour of Bharti Cellular Limited and other cellular mobile service providers. The court held that:

- The payments made to franchisees/distributors did not qualify as "commission or brokerage" under Section 194-H.
- The nature of the relationship between Bharti Cellular and its franchisees/distributors was that of independent contractors, not principal and agent.

## Case Title

Bharti Cellular  
Limited Vs ACIT  
(2024)



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### **Applicability:**

This case clarifies the scope of Section 194-H of the Income Tax Act. It establishes that payments made to independent contractors, even if related to services rendered, may not necessarily attract TDS under this section.

### **Impact:**

This judgment provides guidance to companies engaging with independent contractors and clarifies the circumstances under which TDS deduction is required. It helps to avoid unnecessary tax burdens on businesses and independent contractors alike.



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