

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1-2	119/PUN/2019 120/PUN/2019	Bank of India (Peth Vadgaon Branch), R.S. No.128, Plot No.7, Yadav Colony, Peth Vadgaon, Tal. Hatkanangale, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2009-10 2010-11
3-4	121/PUN/2019 122/PUN/2019	Bank of India (Islampur Branch), Natyagruha Building, Near Tahasildar Office, Tal. Walva, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2009-10 2010-11
5-6	123/PUN/2019 124/PUN/2019	Bank of India (Shahupuri Branch), 683 E, 2nd Lane, Shahupuri, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2009-10 2010-11
7-8	125/PUN/2019 126/PUN/2019	Bank of India (Jaysingpur Branch), Radhabai Raod, Post Box No.60, Jaysingpur, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2009-10 2010-11
9-10	127/PUN/2019 128/PUN/2019	Bank of India (Miraj Branch), Shivaji Road Branch Indian MED Association Building Hospital Road Miraj, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2009-10 2010-11
11	129/PUN/2019	Bank of India (Kharsundi Branch), Sourabh, Opp. S.T. Stand, At & Post Kharsundi, Tal. Atpadi, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
12	131/PUN/2019	Bank of India (Chuye Branch), At & Post Chuye, Via Ispurli, Tal. Karveer, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11

13	132/PUN/2019	Bank of India (Kolhapur Main Branch), Jaydhaval Bldg., Laxmipuri, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
14	133/PUN/2019	Bank of India (Kawathe Mahankal Branch), Mr. Bhausahab B. Patil Bldg., At & Post Kawathe Mahankal, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
15	134/PUN/2019	Bank of India (Kasba Bawada Branch), Krishna Saraswati Sadan, 547/3, Main Road, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
16	135/PUN/2019	Bank of India (Amrutnagar Branch), Shri Warana Sahakari Dudh Prakriya Sangh Ltd. Bldg., A & P Warananagar, Tal. Panhala, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
17	136/PUN/2019	Bank of India (Ichalkaranji Branch), "Gokul Bhuvan", Nr. Kalpana Theatre, Hava Mahal, Bungalow Road, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
18	138/PUN/2019	Bank of India (Atpadi Branch), Jaydhaval Building, Laxmipuri, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
19	139/PUN/2019	Bank of India (Rukadi Branch), "Sankalpa", Sir Pirajirao Road, At & Post Murgud, Taluka Kagal, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11

20	140/PUN/2019	Bank of India (Porle Tarf Thane Branch), At & Post Porle Tarf Thane, Tal. Panhala, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
21	142/PUN/2019	Bank of India (Vishrambag Branch), Deval Complex, Opp. Police Head Quarter, Sangli Miraj Road, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
22	143/PUN/2019	Bank of India (Kurundwad Branch), Jaydhaval Building, Laxmipuri, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
23	144/PUN/2019	Bank of India (Shahuwadi Branch), "Ashirwad", At & Post Sahu Wadi, Tal. Shahu Wadi, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
24	145/PUN/2019	Bank of India (Vite Branch), Vite, Sutar Complex, 570/571, Mayani Road, At Vite, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11
25	146/PUN/2019	Bank of India (Sangli Branch), Jaydhaval Building, Laxmipuri, Kolhapur PAN: AAACB0472C	ITO, TDS, Kolhapur	2010-11

Assessee by	Shri Nikhil Pathak Shri Mayuresh Doshi
Revenue by	Shri A. K. Modi Shri Rajesh Gawali
Date of hearing	15.07.2019
Date of pronouncement	25.07.2019

आदेश / ORDER

PER BENCH :

There are 25 appeals under consideration filed by the different branches of Bank of India for the assessment years 2009-10 and 2010-11 respectively.

2. The 1st list of Sl. No.1 to 14 appeals are the appeals where the assessee filed quarterly statements of TDS for all the 4 quarters as per the provisions of section 200 of the Act. Rest of 11 appeals (i.e. Sl. No.15 to 25) are those appeals where the assessee failed to furnish the statement of TDS in respect of certain quarter(s). Otherwise, the facts, issues, written submissions and arguments of counsels are similar in all the above 25 appeals and, therefore, we proceed to consolidate all these appeals and dispose of by this composite order.

3. We shall take up the appeal in ITA No.119/PUN/2019 for the assessment year 2009-10 as the lead case for adjudication.

ITA No.119/PUN/2019

4. In this appeal, the assessee raised the following grounds :-

*“1] The learned CIT(A) erred in holding that the order passed u/s 201(1) / 201(1A) is valid in law without appreciating the same was **barred by limitation.***

*2] The learned CIT(A) failed to appreciate that as per the relevant provisions of section 201, the learned A.O. ought to have passed the order u/s 201(1) / 201(1A) before 31.03.2014 and since the said order is passed on 29.03.2016, the same is **clearly barred by limitation.***

3] Without prejudice, the assessee submits that the learned CIT(A) erred in confirming the order of the A.O. in treating the assessee in default u/s 201 without appreciating that on the facts of the case, there was no

reason to treat the assessee in default and the demand raised should have been deleted.

4] Assessee submits that wherever the payee have shown relevant income in its return of income and have also paid taxes thereon and as such the assessee cannot be treated as assessee in default in view of proviso to sec. 201(1).

5] The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”

5. The assessee filed **additional grounds** and the same reads as under :-

*“1] The order passed u/s 201 and 201(1A) is bad in law since the learned A.O. has erred in passing one order for the F.Y. 2008-09 as against **separate orders for each quarter of the concerned year.***

*2] The learned CIT(A) failed to appreciate that as per the relevant provisions of section 201, the learned A.O. ought to have passed the order u/s 201(1) / 201(1A) within a period of two years from the end of the financial year in which the statement u/s. 200 was filed by the assessee and since the said order after the said period, the **same is clearly barred by limitation.**”*

6. The above grounds/additional grounds raise various legal issues relating to (i) limitation of time for passing the order u/s 201(1) & 201(1A) of the Act; and, (ii) if the order so passed needs to be financial year specific or the quarter – statement of TDS specific. On merits also, the assessee raised the grounds.

7. Before taking up the issues for adjudication, first, we shall narrate the background facts of this case. The assessee is a Nationalized Bank and is engaged in the business of banking activities. During the assessment proceedings, the Assessing Officer verified the details of interest paid by the bank on FDRs of the customers. The Assessing Officer noticed that despite the fact that the interest paid on the Fixed Deposits (FDs) to customers exceeded the basic exemption limit chargeable to tax, no TDS was deducted u/s. 194A of the Act by the assessee bank. The assessee contended before the Assessing Officer that

the depositors filed Form No.15G & 15H and therefore, no TDS was made. However, the Assessing Officer was of the view that if the depositors filed declarations in Form No.15G/15H, the bank was required to file relevant information to this effect in its TDS return and not doing so is a violation of section 197A(1A) and section 197A(1C) of the Act. The Assessing Officer noted that in some cases, the amount of aggregate interest credited/paid exceeded the basic exemption limit of taxation, and that the bank had still not deducted TDS on the strength of incorrect Form No.15H & 15G filed by the depositors. The Assessing Officer was of the view that all cases where TDS was not deducted, had to be mentioned in the TDS return and appropriate flag of Form No.15G/Form No.15H was needed to be filed mentioning the reason for not deducting the TDS. The Assessing Officer contended that by not deducting TDS, on the basis of incorrect Form No.15G & 15H filed by the depositors, the assessee bank had created a leakage of revenue and it was impossible on the part of the Department to find out whether such interest income had been properly offered to tax or not by the respective customers of the Bank. The Assessing Officer referred to Note-6 in Form No.15G as prescribed under the Income Tax Rules, 1962 and was of the view that the Rules have clearly cast responsibility on the deductor/payer to ensure that Form No.15G & 15H should not be accepted if the income credited or paid was likely to exceed the maximum amount not chargeable to tax.

8. The Assessing Officer noted that for this year, the interest on FDRs on which TDS was not deducted by the assessee bank was far in excess of the maximum amount not chargeable to tax and therefore the

assessee bank was proposed to be treated as an **“assessee in default”**. The Assessing Officer, after careful consideration of the assessee's submission, held that the payees in the case of the assessee bank was individual, and therefore as per section 194A(3)(i) of the Act, the assessee bank was required to deduct tax at source from the payments of interest made to them exceeding Rs.10,000, unless, such payee had produced certificate to the payer for deducting TDS at lower rate or Nil rate as provided u/s. 197(1) of the Act, which admittedly was not the case. Regarding the contention of the assessee that the payee had duly offered to tax the interest received on FDRs, the Assessing Officer held that no evidence for the same was filed before him and therefore the assessee was in violation of the TDS provisions and was an assessee in default. The Assessing Officer was of the view that the assessee bank had a responsibility to verify the Form No.15G/15H filed before it, which it admittedly did not. The assessee bank should have refused to accept the Form No.15G/15H filed before it as the limit of interest credited/paid had exceeded the maximum amount chargeable to tax. The assessee, however, failed to do so and merely accepting such forms had not deducted TDS and therefore it was liable to be treated as an assessee in default for payment of tax and interest u/s 201(1) & 201(1A) of the Act.

9. Regarding the decision of the case of ACIT Vs. Wockhardt Hospital Ltd., Mumbai relied upon by the assessee, the Assessing Officer contended that the said judgement was delivered by the Hon'ble Court on different fact and perspective. In that case, confirmations from payees regarding disclosure of payment (income) made by the assessee-payer with PAN of payee etc. was produced on record; whereas in the present

case, mere correspondence made with the payee regarding its tax matter was filed which could not come to rescue the assessee bank. The Assessing Officer, therefore, computed the tax u/s 201(1) of Rs.15,904/- and interest u/s 201(1A) at Rs.13,356/-. Aggrieved with the said action of the Assessing Officer, the assessee carried the matter before the CIT(A).

10. Before the CIT(A), the assessee raised a legal issue in addition to the grounds on merits. The legal issue raised before the CIT(A) relates to the **time barring nature** of the assessment orders passed by the Assessing Officer u/s 201(1) & 201(1A) of the Act. The CIT(A), as per discussion given in para 5 and 5.1 of his order, dismissed the said legal ground relying on the decision of Pune Bench of the Tribunal in the case of **Vodafone Cellular Ltd.** (2018) 19 taxmann.com 466 (Pune-Trib). For the sake of completeness, the said para 5.1 of the order of the CIT(A) is extracted hereunder :-

*“5.1 Ground 1: The case of the appellant is that the order u/s 201(1) & 201(1A) is **barred by limitation** as it is passed beyond 2 years from the end of the FY in which the TDS returns were filed. This ground is identical to the additional ground 1 raised in case of Bank of India Miraj Branch in appeal no CIT(A)-1/10037/2016-17, which has been decided by me today. I have held in that decision of the appellant’s Miraj Branch that the provisions of sec 201(3) as amended w.e.f 01/04/2014 would apply and the **time limit available to the AO for passing orders u/s 201(1) would be 7 years from the end of the FY** in which the payment was made. I have also held that there is no such time limit prescribed for the order u/s 201(1A). I have held so respectfully following the decision of the Hon’ble ITAT Pune bench in the case of Vodafone Cellular Ltd (2018) 91 taxmann.com 466 (Pune-Trib). Reference could be made to my appeal order dated today in the case of Bank of India Miraj Branch in appeal no CIT(A)-1/10037/2016-17. In the case of the present appeal, the payment of interest has been made in the FY 2008-09 & therefore the time limit available with the AO for an order u/s 201(1) is upto 31/03/2016. The AO having done so, is well within the time provided under the section. I am therefore of the view that **the order u/s 201(1) is not barred by limitation** for the same identical reasons and facts as in the case of the appellant’s Miraj Branch (reference could be made to that order for detailed reasons). Further, as held in the case of Miraj Branch, the order u/s 201(1A) is also not barred by limitation as there is no time limit specified for such order. Ground 1 is dismissed.”*

11. Aggrieved with the said decision of the CIT(A), the assessee is in appeal before the Tribunal with the above extracted grounds/additional grounds (ground no.1 & 2 and additional ground no.2). Assessee also raised the additional ground no.1 mentioning the requirement of passing the quarter-wise order u/s (3) of section 201 of the Act.

12. Before us, on the both additional ground no.1 & 2 as well as the ground no.1 & 2, ld. counsel for the assessee filed their written submissions before us. The relevant portion of the said written submissions are extracted as under :-

“3] The order passed u/s 201(1) is barred by limitation --

3.1] The assessee submits that the learned A.O. has passed order u/s 201(1) on 29.03.2016. It is submitted that the order passed u/s 201(1) is barred by limitation. It is submitted that as per sub section (3) of section 201, the A.O. was required to pass the order within a period of two years from the end of the financial year in which the statement u/s 200 was furnished by the assessee. In the case of Bank of India Miraj Branch, the TDS statements were furnished as under –

<i>Quarter</i>	<i>Date of filing statement u/s. 200</i>
<i>June</i>	<i>23.09.2008</i>
<i>September</i>	<i>23.07.2011</i>
<i>December</i>	<i>23.07.2011</i>
<i>March</i>	<i>26.07.2011</i>

3.2] Now, as per the relevant provisions of sub section (3) of section 201, the learned A.O. should have passed the order u/s 201 by 31.03.2014. However, in the present case, he has passed the order on 29.03.2016. Accordingly, the same is barred by limitation. The learned CIT(A) has not accepted the said contention of the assessee on the ground that there was an amendment to sub section (3) by Finance Act, 2014 w.e.f. 01.10.2014. As per the amended provisions, the order u/s 201 could be passed within a period of 7 years from the end of the financial year in which the payment has been made. According to the learned CIT(A) the A.O. has passed the order on 29.03.2016 and at that point of time, the period of 7 years was available for passing the order u/s 201(1). Hence, he has held that the order passed u/s 201(1) is valid in law.

3.3] The assessee submits that the learned CIT(A) is not justified in holding that the order passed u/s 201(1) is within the limitation period. As stated above, as per the relevant provisions of sub section (3) of section 201, the A.O. was required to pass the order within a period of 2 years from the end of the financial year in which the statement u/s 200 was filed. Now, as per the said provisions, the time limit for passing the order

was up-to 31.03.2014. The assessee submits that by the time the amended provisions of sub section (3) of section 201 was introduced from 01.10.2014, the limitation period of 2 years from the end of the relevant financial year in which the statement u/s 200 was filed had already expired. It is submitted that A.O. had no power to pass an order u/s 201 after 31.03.2014. Now, once the period of limitation for passing the order u/s 201(1) has expired, the same cannot be revived on the basis of the subsequent amendment introduced w.e.f. 01.10.2014. This principle has been laid down in the following decisions -

a. *Troikaa Pharmaceuticals Ltd. v. UOI* [68 taxmann.com 299 (Guj HC)]

In this case, the relevant asst. year is A.Y. 2009 - 10. The A.O. issued a notice u/s 201(1) to the assessee dated 14.09.2015. The assessee filed a writ before Hon'ble H.C. stating that the said notice issued u/s 201(1) was barred by limitation. It was stated that as per sub section (3) of section 201, the A.O. could have passed the order by 31.03.2012 and since in this case no order was passed, the proceedings u/s 201(1) were barred by limitation and accordingly, the notice issued u/s 201(1) dated 14.09.2015 was invalid in law. Hon'ble H.C. held that the notice issued was illegal since as per the existing provisions of sub section (3) of section 201, the order could have been passed by 31.03.2012. Hon'ble H.C. has relied upon the decision in the case of *Tata Teleservices*.

b. *Tata Teleservices v. UOI* [66 taxmann.com 157 (Gujarat HC)]

In this case, the relevant asst. year involved are A.Y. 2008 - 09 & 2009 - 10. The A.O. issued notice u/s 201(1) after 31.03.2014. The assessee challenged the said notices on the ground that the proceedings were barred by limitation. The revenue contended that in view of the amendment to sub section (3) by Finance Act, 2014, the proceedings were within limitation. Hon'ble H.C. has held that the amendment introduced by Finance Act, 2014 w.e.f. 01.10.2014 shall not be applicable retrospectively. In para 15 of the order, it has been held that no order u/s 201(1) can be passed for which limitation period has already expired prior to the amended section 201(3) by Finance Act, 2014.

c. *Sodex SVC India (P) Ltd. v. DCIT (TDS) 2(2)* [92 taxmann.com 260 (ITAT Mumbai)]

In this case, the relevant asst. year is A.Y. 2012-13. In this case again, the A.O. passed an order u/s 201(1). The assessee challenged the said order on the ground that it was barred by limitation. Hon'ble ITAT following the decisions of Gujarat H.C. in the above referred cases has held that the order passed u/s 201(1) was barred by limitation since the time limit for passing the order had already expired before insertion of the amendment by Finance Act, 2014.

Considering the above decisions, the assessee submits that in the present case the order passed u/s 201(1) is barred by limitation.

3.4] The ld. CIT(A) has referred to the decision of Hon'ble ITAT Pune in the case of *Vodafone Cellular Ltd.* [91 Taxmann.com 466]. The assessee submits that in that case, the concerned asst. year was 2009-10. The A.O. had passed order u/s. 201(1) on 15.03.2012. The assessee submitted that the order passed u/s. 201(1) was barred by limitation. Hon'ble ITAT held that the assessee had furnished the statements u/s. 200 for all the four quarters. It was held that the order u/s. 201(1) was required to be passed

for the first three quarters by 31.03.2011 as per the provisions of sub-section (3) of section 201. Since the order was passed on 15.03.2012, the same was held to be barred by limitation. As regards the 4th quarter, it was held by Hon'ble ITAT that since the extended time limit was available, the order passed u/s. 201 was within the limitation period.

3.5] The assessee submits that the ld. CIT(A) has erred in placing reliance on the decision of Hon'ble ITAT Pune in the case of Vodafone Cellular Ltd. In that case, there was no issue before Hon'ble ITAT as to whether the amendment to sub-section (3) was retrospective. In fact, Hon'ble ITAT applied the unamended provisions and held that the order passed for the first three quarters was barred by limitation. The assessee submits that in view of the decisions cited supra, the order passed u/s. 201(1) by the ld. A.O. is barred by limitation.

3.6] In the course of hearing, the learned CIT D.R. argued that the order passed by the learned A.O. u/s 201(1) is within limitation. According to him, the assessee is required to furnish statement u/s 200 on quarterly basis. The assessee is required to submit the details of the TDS deducted and also submit the details of the payments wherein no TDS has been deducted. According to him, the assessee had not submitted the details of the payments wherein no TDS was deducted in the statements furnished u/s 200. Hence, it was submitted that even though, the statement u/s 200 was furnished since the relevant information was not reported, it should be considered as a case wherein no statement was furnished. Thus, he contended that the order passed was within limitation period.

3.7] The assessee submits that this contention of the learned CIT D.R. is not justified. It is submitted that there is no dispute that the assessee has furnished statement u/s 200. Now, once the statement u/s 200 is furnished, as per sub section (3) of section 201, the time limit for passing the order is within two years from the end of the financial year in which the statement is furnished. There is no exception in the section that in case, the relevant details are not reported in the statement furnished u/s 200, the extended time limit of 6 years would apply. Accordingly, the assessee submits that once the statement is furnished u/s 200 irrespective of the fact the relevant details are submitted or not, the time limit for passing the order would be two years from the end of the relevant financial year in which the statement was furnished. Applying the said principle, the assessee submits that in the present case, the order passed u/s 201(1) is barred by limitation.”

13. Further, the assessee filed a chart before us showing the passing date of the assessment order and the same is as under :-

Sr No	ITA NO.	ASSESSMENT YEAR	BRANCH	DATE OF A.O. ORDER
1	ITA 119/PUN/2019	2009-10	PETH VADGAON	29-03-2016
2	ITA 123/PUN/2019	2009-10	SHAHUPURI	29-03-2016
3	ITA 138/PUN/2019	2010-11	ATPADI	24-03-2017
4	ITA 131/PUN/2019	2010-11	CHUYE	22-03-2017
5	ITA 122/PUN/2019	2010-11	ISLAMPUR	23-03-2017
6	ITA 126/PUN/2019	2010-11	JAYSINGPUR	23-03-2017
7	ITA 133/PUN/2019	2010-11	KAWATHE MAHANKAL	22-03-2017
8	ITA 139/PUN/2019	2010-11	MURGUD	22-03-2017
9	ITA 120/PUN/2019	2010-11	PETH VADGAON	22-03-2017

10	ITA 146/PUN/2019	2010-11	SANGLI	22-03-2017
11	ITA 144/PUN/2019	2010-11	SHAHUWADI	24/03/2017

Sr No	ITA NO.	ASSESSMENT YEAR	BRANCH	DATE OF A.O. ORDER
1	ITA 121/PUN/2019	2009-10	ISLAMPUR	30-03-2016
2	ITA 125/PUN/2019	2009-10	JAYSINGPUR	29-03-2016
3	ITA 127/PUN/2019	2009-10	MIRAJ	29-03-2016
4	ITA 135/PUN/2019	2010-11	AMRUTNAGAR	22-03-2017
5	ITA 136/PUN/2019	2010-11	ICHALKARANJI	27-03-2017
6	ITA 134/PUN/2019	2010-11	KASBA BAWADA	22-03-2017
7	ITA 129/PUN/2019	2010-11	KHARSUNDI	22-03-2017
8	ITA 132/PUN/2019	2010-11	KOLHAPUR MAIN	27-03-2017
9	ITA 143/PUN/2019	2010-11	KURUNDWAD	22-03-2017
10	ITA 128/PUN/2019	2010-11	MIRAJ	22-03-2017
11	ITA 140/PUN/2019	2010-11	PORLE TARF THANE	22-03-2017
12	ITA 124/PUN/2019	2010-11	SHAHUPURI	24-03-2017
13	ITA 142/PUN/2019	2010-11	VISHRAMBAG	27-03-2017
14	ITA 145/PUN/2019	2010-11	VITE	27-03-2017

14. The above table demonstrates that the assessment years 2009-10 and 2010-11 are involved and the date of filing of the statement of TDS for any of the quarter involved falls in the financial year is July 2011. Relevant statement is extracted as under :-

IN THE FOLLOWING CASES, TDS STATEMENT UNDER SEC 200 HAVE BEEN FILED FOR ALL THE QUARTERS

Sr No	ITA NO	Assessment Year	Branch	Quarter	Date of filing
1	ITA 121/PUN/2019	2009-10	ISLAMPUR	Q1	29/07/2008
				Q2	27/10/2008
				Q3	17/01/2009
				Q4	20/04/2009
2	ITA 125/PUN/2019	2009-10	JAYSINGPUR	Q1	07/01/2009
				Q2	07/01/2009
				Q3	02/03/2009
				Q4	16/04/2009
3	ITA 127/PUN/2019	2009-10	MIRAJ	Q1	23/09/2008
				Q2	23/07/2011
				Q3	23/07/2011
				Q4	26/07/2011
4	ITA 135/PUN/2019	2010-11	AMRUTNAGAR	Q1	03/08/2009
				Q2	23/11/2009
				Q3	02/02/2010
				Q4	07/05/2010
5	ITA 136/PUN/2019	2010-11	ICHALKARANJI	Q1	30/07/2009
				Q2	28/04/2010
				Q3	16/04/2010
				Q4	26/05/2010
6	ITA 134/PUN/2019	2010-11	KASBA BAWADA	Q1	10/08/2009
				Q2	09/01/2010
				Q3	15/01/2010
				Q4	03/06/2011
7	ITA 129/PUN/2019	2010-11	KHARSUNDI	Q1	16/11/2009

				Q2	16/11/2009
				Q3	14/01/2010
				Q4	10/04/2010
8	132/PUN/2019	2010-11	KOLHAPUR MAIN	Q1	15/07/2009
				Q2	12/03/2010
				Q3	15/03/2010
				Q4	10/05/2010
9	ITA 143/PUN/2019	2010-11	KURUNDWAD	Q1	17/12/2009
				Q2	17/12/2009
				Q3	17/03/2010
				Q4	07/05/2010
10	ITA 128/PUN/2019	2010-11	MIRAJ	Q1	31/07/2009
				Q2	30/03/2011
				Q3	30/03/2011
				Q4	30/03/2011
11	ITA 140/PUN/2019	2010-11	PORLE TARF THANE	Q1	17/07/2009
				Q2	16/10/2009
				Q3	16/01/2010
				Q4	24/05/2010
12	ITA 124/PUN/2019	2010-11	SHAHUPURI	Q1	29/10/2009
				Q2	18/12/2009
				Q3	14/01/2010
				Q4	06/05/2010
13	ITA 142/PUN/2019	2010-11	VISHRAMBAG	Q1	12/08/2009
				Q2	12/11/2009
				Q3	20/01/2010
				Q4	23/09/2010
14	ITA 145/PUN/2019	2010-11	VITE	Q1	22/07/2009
				Q2	13/11/2009
				Q3	19/01/2010
				Q4	28/04/2010

IN THE FOLLOWING CASES, TDS STATEMENT UNDER SEC. 200 HAVE BEEN FILED FOR FEW QUARTERS

Sr No	ITA NO	Assessment Year	Branch	Quarter	Date of filing
1	ITA 119/PUN/2019	2009-10	PETH VADGAON	Q1	11/07/2008
				Q4	12/06/2010
2	ITA 123/PUN/2019	2009-10	SHAHUPURI	Q2	06/06/2012
				Q3	13/06/2009
				Q4	03/08/2010
3	ITA 138/PUN/2019	2010-11	ATPADI	Q1	26/03/2010
				Q2	16/04/2010
				Q3	16/04/2010
4	ITA 131/PUN/2019	2010-11	CHUYE	Q1	25/07/2009
				Q2	27/10/2009
				Q4	23/04/2010
5	ITA 122/PUN/2019	2010-11	ISLAMPUR	Q1	03/08/2009
				Q2	10/11/2009
				Q3	20/01/2010
6	ITA 126/PUN/2019	2010-11	JAYSINGPUR	Q3	15/01/2010
				Q4	10/06/2010
7	ITA 133/PUN/2019	2010-11	KAWATHE MAHANKAL	Q2	29/03/2010
				Q3	15/02/2010
				Q4	27/04/2010
8	ITA 139/PUN/2019	2010-11	MURGUD	Q1	07/12/2009
				Q2	17/03/2010
				Q4	07/04/2011

9	ITA 120/PUN/2019	2010-11	PETH VADGAON	Q1	12/06/2010
				Q4	16/10/2010
10	ITA 146/PUN/2019	2010-11	SANGLI	Q1	15/04/2010
				Q2	12/04/2010
				Q3	12/04/2010
11	ITA 144/PUN/2019	2010-11	SHAHUWADI	Q4	29/10/2010

15. Before us, on this legal issue relating to limitation of time, ld. Counsel for the assessee brought our attention to sub-section (3) of section 201 of the Act and submitted that the assessee is under obligation to furnish the statements of TDS referred in to section 200 of the Act in 4 quarters ending on 30th June, 30th September, 31st December and 31st March and the due dates for that are 31st July, 31st October, 31st January and 31st May of the relevant financial years respectively. Explaining the related provisions of section 201(3) relating to time limitation, ld. AR submitted that, as per the pre-amended provisions of section 201(3) of the Act, no order shall be made under sub-section (3) of the Act at any time after expiry of two years from the end of the financial year in which the statement is filed u/s 200 of the Act. Further, no order shall be made under sub-section (3) of the Act at any time after expiry of six years from the ending of the financial year in which the payment is made or credited given in any other case including the cases where the statement as required u/s 200 of the Act is never filed. Referring to the order for a financial year upto 01.04.2007, the time limits are 31st March 2011 is the deadline as per the said sub-section (3) of section 201 of the Act in respect of order for financial year ending on or before 01.04.2007. The above refer legal position has undergone change w.e.f. 01.10.2014 brought by the Finance (No.2) Act, 2014. As per the current law enforce, no order shall be made at any time after expiry of 7 years from the end of financial year in which payment is

made or credit is given. As per ld. AR, the law stood before the said **amendment applies** to the assessment year 2009-10 and 2010-11 under consideration.

16. Ld. DR for the Revenue relied on the orders of the Assessing Officer/CIT(A).

17. We heard both the parties and perused the orders of the Assessing Officer/CIT(A), the decisions cited and the provisions of law. We find relevant to extract sub-section (3) of section 201 of the Act. (**prior to amendment**). The same reads as under :-

“(3) No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of –

- (i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;*
- (ii) six years from the end of the financial year in which payment is made or credit is given, in any other case;*

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.”

18. The above provisions are applicable to the year under consideration and they deal with two scenarios, namely, (i) where the statements of the TDS are filed in a financial year and (ii) where such TDS statements are not filed. The proviso provides for the orders of a financial year commencing on or before 1.4.2007. Accordingly, the time limits are specified. In a case where the statements were filed, the due date for passing an order u/s 201(3)(i) of the Act is two years from the

end of the financial year in which the statement is filed. In the other group of cases, where the statements were not filed, the due date u/s 201(3)(ii) of the Act is 6 years from the end of the financial year in which the statement is made or credit is given.

19. **Set of 14 Appeals:** Applying the said time limits to the present set of appeals i.e. Sl.No.1 to 14 of the table given in para 14 of this order, we find there are two assessment years involved in these set of 14 appeals. In this bunch of 14 appeals, the assessee filed quarterly statements for all the 4 quarters in all the appeals. Therefore, we proceed to adjudicate the time limits giving the credit to the date of filing of the TDS statements in financial year in the following manner :-

A. Time limits of appeals for the assessment year 2009-10 - Filing of quarterly statement is in the financial years 2009-10 and 2010-11.

20. As seen from the table cited above (supra), the assessee filed the TDS statements for the assessment year 2009-10 (ITA No.121, 125 & 127/PUN/2019) for all the 4 quarters and the date of filing for the last quarter is 20.04.2009 (ITA No.121/PUN/2019), 16.04.2009 (ITA No.125/PUN/2019) and 26.07.2011 (ITA No.127/PUN/2019) respectively. Thus, all these 3 appeals, considering the date of filing of the statements of TDS for 4 quarter of the year, the financial year involved is F.Y. 2009-10 & 2011-12. In that case, the due date for passing of order under sub-section (3)(i) of section 201 of the Act is 2 years from the end of the financial year 2009-10 or 2011-12, as the case

may be. Thus, the Assessing Officer had time to pass an order for such appeals till 31st March, 2012 and 31st March, 2014, as the case may be.

21. Whereas in these 3 appeals, the Assessing Officer passed the order u/s 201(3)(i) of the Act only 30th March, 2016, 29th March, 2016 and 29th March, 2016 for the appeals in ITA Nos.121, 125 & 127/PUN/2019 respectively. From this point of interpretation of the Statute, we are of the opinion, the order passed by the Assessing Officer in these 3 appeals are without valid jurisdiction. The orders stand barred by limitation in these cases. Accordingly, the legal issue raised by the assessee is allowed.

22. Considering the relief on this legal issue, the other legal issues and other grounds on merits and their adjudication becomes academic exercise. Accordingly, the same are dismissed as academic.

23. In the result, all the **three appeals are partly allowed** as above.

B. Time limits of appeals for the A.Y. 2010-11 - Filing of quarterly statement is in the financial years 2009-10 and 2010-11.

24. As seen from the table cited above (supra), the assessee filed the TDS statements for the assessment year 2010-11 for all the **11 appeals** (i.e. ITA Nos.135, 136, 134, 129, 132, 143, 128, 140, 124, 142 & 145/PUN/2019) for all the 4 quarters. There are 11 appeals in this group and they relates to the assessment year 2010-11. In this bunch of 11 appeals, the financial year in which the TDS statements are filed, covers the financial years 2009-10 and 2010-11. Considering the fact,

the last quarter of the statement is filed in the financial year 2010-11, the time limits available to the Assessing Officer to pass an order u/s 3(i) of section 201 of the Act is two years from the end of the said financial year 2010-11. Thus, in that case, the Assessing Officer is under obligation to pass an order in these circumstances by 31st March, 2013.

25. Whereas the Assessing Officer passed the order in these 11 appeals in the year 2016 and 2017 respectively i.e. subsequent to the due date specified in the Act.

26. From this point of view and the interpretation of the Statute, the orders passed by the Assessing Officer are without any valid jurisdiction. Accordingly, the said relevant legal issue raised by the assessee in all the 11 appeals are allowed. Consequently, the other additional grounds and grounds raised by the assessee stands dismissed as academic.

27. In the result, all the **11 appeals are partly allowed** as above.

28. We shall now take up the other bunch of 11 appeals in the subsequent paragraphs. This is the bunch where the assessee failed to file TDS statements for all the four quarters in a financial year. For the sake of convenience, this bunch is also bifurcated based on the assessment years involved.

C. Time limits for passing the order in respect of assessment year 2009-10 (2 appeals) of 11 group of cases where quarterly statements of TDS are not furnished for all the 4 quarters of the financial year.

29. The quarterly statements relevant to the assessment year 2009-10 in this bunch of **two appeals** (ITA No.119 & 123/PUN/2019) were

furnished during the financial years 2008-09, 2009-10, 2010-11 and 2012-13, as the case may be. Notwithstanding the failure of the assessee in furnishing the statements for all the 4 quarters, the due date of filing for the last quarter of TDS statement is 12.06.2010 for **ITA No.119/PUN/2019**. Considering the fact, the last quarter of the statement is filed in the financial year 2010-11, the time limits available to the Assessing Officer to pass an order u/s 3(i) of section 201 of the Act is two years from the end of the financial year 2010-11 i.e. 31st March, 2013; whereas, the Assessing Officer passed an order for ITA No.119/PUN/2019 only on 29.03.2016. Considering the above manner of interpretation of the law and calculation of the date with reference to the financial year, the order passed by the Assessing Officer in this appeal (ITA No.119/PUN/2019) is without any valid jurisdiction.

30. With reference to the other appeal in **ITA No.123/PUN/2019**, the financial year in which the last quarterly statement of TDS is furnished is 03.08.2010 for the relevant financial year 2010-11. Consequently, the due date for passing an order is 31st March, 2013.

Thus, for this bunch of two appeals pertaining to assessment year 2009-10, the last due date for passing the order u/s 201(3)(i) of the Act is 31st March, 2013. In both the appeals, the order passed by the Assessing Officer on 29.03.2016 commonly i.e. subsequent to the said due date. Accordingly, this bunch of two appeals relating to assessment year 2009-10 has to be allowed on technical ground. Considering the relief, the adjudication of the other grounds/additional grounds becomes academic exercise.

31. In the result, **both the appeals are partly allowed** as above.

D. Time limits for passing the order in respect of assessment year 2010-11 (9 appeals) of 11 group of cases where quarterly statements of TDS are not furnished for all the 4 quarters of the financial year.

32. The quarterly statements relevant to the assessment year 2010-11 in this bunch of **9 appeals** (ITA Nos.138, 131, 122, 126, 133, 139, 120, 146 & 144/PUN/2019) were furnished during the financial years 2009-10, 2010-11 and 2011-12, as the case may be. Considering the fact, the last quarter of the statement is filed in the financial year 2011-12, the time limits available to the Assessing Officer to pass an order u/s 3(i) of section 201 of the Act is two years from the end of the financial year 2011-12 i.e. 31st March, 2014.

33. Whereas, the Assessing Officer passed orders in this bunch of 9 appeals in the month of 2016 and in the month of 2017 i.e. subsequent to the expiry of the said due date. In any case, these orders were not passed before March, 2014.

34. Considering the above referred interpretation of the Statute as well as the facts available on record, we are of the opinion, the order passed by the Assessing Officer under sub-section 3(i) of section 201 of the Act is without any valid jurisdiction. Accordingly, the adjudication of other additional grounds as well as grounds in these 9 appeals becomes academic exercise. Accordingly, they are dismissed as academic.

35. In the result, all the **9 appeals are partly allowed** as above.

36. Resultantly, all the 25 appeals of the assessee are **partly allowed**.

Order pronounced on 25th day of July, 2019.

Sd/-
(विकास अवस्थी /VIKAS AWASTHY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(डी. करुणाकरा राव/D. KARUNAKARA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th July, 2019.
Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned.
4. The CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.