

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**  
**BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND**  
**SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER**

ITA No.153/Nag./2022  
(Assessment Year : 2010-11)

Bank of India, Dongargaon  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA Nos.154& 155 /Nag./2022  
(Assessment Years : 2010-11 & 2011-12)

Bank of India, Dharampeth  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.155/Nag./2022  
(Assessment Year : 2010-11)

Bank of India, Devalamati  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA Nos.156&167/Nag./2022  
(Assessment Years : 2010-11 & 2011-12)

Bank of India, Bazargaon  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA Nos.158&162 /Nag./2022  
(Assessment Years : 2010-11 & 2011-12)

Bank of India, Nagpurmain  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.157/Nag./2022  
(Assessment Year : 2010-11)

Bank of India, Shitalwadi  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.160/Nag./2022  
(Assessment Year : 2011-12)

Bank of India, Mahal  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.161/Nag./2022  
(Assessment Year : 2011-12)

Bank of India, Besa  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.163/Nag./2022  
(Assessment Year : 2011-12)

Bank of India, Itwari  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.164/Nag./2022  
(Assessment Year : 2011-12)

Bank of India, Takalghat  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
Aaykar Bhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.165/Nag./2022  
(Assessment Year : 2011-12)

Bank of India, Mowar  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
Aaykar Bhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.166/Nag./2022  
(Assessment Year : 2011-12)

Bank of India, Gandhibagh  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
Aaykar Bhawan, Civil Lines  
Nagpur-440 001

..... Respondent

ITA No.168/Nag./2022  
(Assessment Year : 2011-12)

Bank of India, Anjisquare  
Nagpur Zonal Office  
3<sup>rd</sup> Floor, CSD department  
Kingsways  
Nagpur-440 001

..... Appellant

PAN No: AAACB0472C

v/s

DCIT(TDS), Circle-1  
AaykarBhawan, Civil Lines  
Nagpur-440 001

..... Respondent

Assessee by : Shri Hardik Chordia, C.A, Shri Pratik Sadrani, C.A  
Revenue by : Shri Vitthal M.Bhosale, JCIT

Date of Hearing - 03.06.2022

Date of Order - 09.06.2022

**ORDER**

**PER BENCH:**

These are bunch of sixteen appeals filed by the aforesaid assessee in respect of its various branches situated at Nagpur against the respective orders of Learned Commissioner of Income Tax(Appeals), pertaining to FY 2009-10 and FY 2010-11 corresponding to A.Y. 2010-11 & 2011-12 respectively. All these appeals were heard together and are disposed-off by this consolidated order.

2. For the purpose of present discussion, with the consent of both the parties, the case of the assessee in respect of its Itwari Branch in ITA No.163/Nag/2022 was taken as a lead case.

3. In ground No.1, the assessee has challenged the action of ld. CIT(A) in rejecting the prayer of the assessee for condoning the delay in filing the appeal. In this regard, the ld. AR submitted that the assessee is a Branch of Bank of India, Nagpur Circle. The branches of Bank of India, Nagpur Circle received orders under sec 201(1)/201(1A) for FY 2009-10 in month of April 2017 and for FY 2010-11, orders under sec 201(1)/201(1A) are received in month of April 2018. The order copies were received individual branch wise and hence, demand notices were received at branch address. Branch staff and Branch managers are generally not aware about intricacies and procedural aspects of income tax assessment. Even, they have no idea regarding filing of appeal within 30 days of received of order. Moreover, the concerned at the branch was transferred shortly after which led to oblivion towards the matter. Since then due to continuous changes of branch managers and no centralized handling of each individual branch orders, unintentionally branches have failed to comply with same. Also due to corona virus pandemic in last 2 years, the matter has been delayed. It was submitted that the Zonal Office of Bank of India, Nagpur thereafter took up the matter for all the branches of Nagpur Zone and appointed a centralized consultant for

all the branches for filing of appeals and compliances of sec 201(1) and sec 201(1A) notices and orders. After that, the consultant has filed appeals for all the branches in co-ordination with Income Tax Department and complied with all the pending cases and notices. Considering the above difficulties, we request the Tribunal to condone the delay in filing of appeals and consider the appeal of appellant Bank.

4. It was submitted that the bank did not derive any benefit from delay in filing of appeals; rather it suffered a serious risk of high handed demand. The judiciary is respected on account of its power to provide justice and not for condoning injustice on technical grounds. The judiciary is capable, and is expected to do so, of removing technical difficulties in the interest of justice. The appellant Bank relies on the decision of the Hon'ble Supreme Court in the case of "Collector, Land Acquisition Vs Mst. Katiji(1987) 167 ITR 471 and also on the decision of Hon'ble Mumbai High Court in the case of Sunil Chandra Vohra Vs ACIT (2009) 32 SOT 365 (Mum) where it has been held that for substantial interest of justice, technical delay should be ignored. The appellant Bank further relies on the decision of Jaipur Benches in case of Oriental Bank of Commerce, Umrao Complex, M.I. Road, Jaipur vs DCIT (TDS), Jaipur. The appellant Bank further relies on the decision of Hon'ble Apex Court in the case of Anil Kumar Nehru Vs. ACIT (2018) 103 CCH 0231 ISCC where it was held that even if there is substantial delay in filing of

appeals it can be condoned on the ground that it involves a question of law which goes into the root of the matter. This present appeal pertains to a question of Law. The questions of law involved here are: i) Whether the order passed by Ld. DCIT (TDS) u/s 201(1)/(1A) is barred by limitation, ii) Whether the appellant bank can be treated as Assessee in default u/s 201(1)/(1A) for non-deduction of TDS on receipt of Form 15G/15H. Considering the above decisions, the appellant Bank requests the Tribunal to condone the delay in filing of appeal before Hon'ble CIT(A) and consider this appeal and prays that the proceedings under section 201(1) and 201(1 A) be quashed and order passed by Ld. CIT(A) be set aside.

5. Per contra, the ld. DR submitted that in the lead case of the assessee in ITAT No. 163/Nag/2022, the Assessing Officer has passed the order on 27.03.2018 and which was duly served on the assessee on 29.03.2018 and the appeal was e-filed before the ld.CIT(A) on 09.01.2021. Hence, there was a delay of around 987 days in filing the appeal from the date of the service of the order. It was submitted that the ld.CIT(A) has considered the decision of Hon'ble Supreme Court, wherein the period of limitation has been extended on account of pandemic COVID-19 and even after excluding the said period, there is a still a delay of '687' days in filing the present appeal. It was submitted that the principle of equality has to be applied between the private and public

institutions except in compelling circumstances, the ignorance of law, the appellant's neglect or failure to seek legal advice is not a sufficient ground for condonation of delay. There is clear negligence or sheer carelessness on the part of the assessee for the inordinate delay in filing the present appeal. It was further submitted that lack of internal processes for filing of appeal, when the provisions of TDS were in existence since long in statute, cannot constitute sufficient cause. The appellant in his submissions has not satisfactorily explained each delay of delay in filing the present appeal. It was submitted that in light of the above, the fact that the assessee has neither substantiated the statement made before the ld. CIT(A) nor the statements so submitted are genuine cause of delay, the ld.CIT(A) has rightly held that the said statement cannot constitute sufficient cause and has rightly rejected the assessee prayer for condonation of delay and the appeal was dismissed in limine as the same has been submitted beyond the prescribed time limit. It was further submitted that in other appeals as well, there is also substantial delay ranging from '689' days to '1054' days and the aforesaid contention may be considered in respect of those appeals as well. It was accordingly submitted that there is no infirmity in finding of the ld. CIT(A) in dismissing the prayer of the assessee seeking condonation of delay in all these sixteen matters.

6. We have heard the rival submissions and perused the material available on record. There is no dispute that there has been a delay in filing the present appeal and the period of delay as admitted by the assessee comes to 687 days after excluding the Covid period. Similarly, it is an admitted fact that in other fifteen appeals as well, there has been delay ranging from 689 to 1054 days excluding the Covid period. There is also no dispute that under section 253(5) of the Act, the Tribunal may admit an appeal filed beyond the period of limitation where it is satisfied that there was sufficient cause on the part of the assessee for not presenting the appeal within the prescribed time. The explanation of the assessee therefore becomes relevant to determine whether the same reflects sufficient cause on its part in not presenting the present set of appeals within the prescribed time. In the instant case, we are of the considered view that the assessee in its averments has not made out any case that there was reasonable cause which being beyond the control of the assessee, prevented it from filing the appeals in time before the Tribunal. The delay cannot be condoned merely because the assessee's case calls for sympathy or merely out of benevolence. For the exercise of discretion in condoning the delay, it must be established beyond the shadow of doubt that the assessee was diligent and was not guilty of negligence on its part. Sufficient cause as contemplated in the limitation provisions must be a cause which is beyond the control of the assessee. In the case on hand and on careful consideration of the factual matrix, it

is clearly establishes that the delay was due to the latches and inaction on the part of the assessee, which could have been avoided by the assessee if it had exercised due care and attention and we agree with the contention of the ld DR that there were no compelling circumstances which prevented the assessee from filing the appeal in time and lack of internal processes cannot be a valid reason for condoning the delay and merely because the assessee is a public institution, it shouldn't expect any advantage over any other private entity. At the same time, respectfully following the decision of the Hon'ble Supreme Court in case of Anil Kumar Nehru (*supra*) and in the interest of substantial Justice, we hereby condone the delay subject to cost of Rs 500/- for each of the sixteen appeals totaling to Rs 8,000/- to which the ld AR has agreed and submitted his acceptance on behalf of the assessee. The assessee is directed to deposit the said sum and submit the proof thereof to the Assessing officer under intimation to the Registry. In light of the same, the ground of appeal is disposed off and the appeals are admitted for adjudication on merits.

7. Now, coming to the ground No.2 of the assessee in respect of its Itwari Branch wherein the assessee has challenged the order of Assessing Officer as passed beyond the limitation period provided under section 201(3)(i) of the Act.

8. In this regard, the ld. AR submitted that the assessee in respect of its Itwari Branch filed quarterly TDS statement in Form 26Q for Q1 on 16.09.2010, for Q2 on 25.06.2011, for Q3 on 15.01.2011 and for Q4 on 17.05.2011. It was submitted that all these TDS statements were filed as referred to in section 200 of the Act. The Ld. AR further drawn our reference to the provisions of section 201(3) of the Act, which were introduced w.e.f. 01.04.2010 by Finance (No.2) Act, 2009, which provides period of limitation of two years from the end of the financial year in which the statement referred to section 200 has been filed and four years from the end of the financial year in which payment is made or credit is given in any other case. It was submitted that in the instant case, the assessee has filed the last of the quarterly TDS statement on 17.05.2011 and therefore, the limitation period for passing the order under section 201 expires on 31.03.2014, whereas, the order under section 201 has been passed by the Assessing Officer on 27.03.2018. It was submitted that the said order is clearly passed beyond the limitation period as provided in section 201(3) of the Act. It was further submitted that section 201(3) was subsequently amended on 28.05.2012 by the Finance Act, 2012 with retrospective effect from 01.04.2010, wherein the limitation of four years was substituted to six years, in cases, where the TDS statement has not been filed. However, as far as the cases, where the TDS statement has been filed, there was no amendment, which has

been brought in by the Finance Act, 2009 and the earlier limitation of two years continues to stand.

9. It was further submitted that subsequently section 201(3) of the Act was further amended on 01.10.2014 by the Finance Act, 2014, wherein the earlier sub-section (3) of section 201 was omitted and a new sub section (3) to section 201 was brought in on the statute wherein the distinction between the cases where the statement has been filed and cases where the statement were not filed was removed and a common period of limitation of seven years from the end of the financial year, in which the payment is made or credit is given was provided. It was submitted that the said amendment is not from retrospective date, not does it specifically say that it is from retrospective effect. It was submitted that the amendment by the Finance Act, 2014 was expressly made prospective w.e.f. 01.10.2014 and therefore, the impugned order passed for financial year 2010-11 relevant to A.Y. 2011-12 has been erroneously passed by the Assessing Officer beyond the limitation period so provided under section 201(3)(i) of the Act. In support, the assessee placed reliance on the decision of Hon'ble Gujarat High court in case of *Tata Teleservice v/s Union Of India and Anr* (2016) 385 ITR 497 (Guj). Further, the ld. AR placed reliance on the decision of Pune Benches of the Tribunal in case of *Bank of India v/s ITO, TDS, Kolhapur (ITA No.*

119/Pune/2019 & others dated 25.07.2019) wherein the order passed by the Assessing Officer was held as barred by the limitation.

10. It was submitted that the Pune Benches decision squarely applies in the facts of the present case and other cases of the assessee which pertains to A.Y 2010-11 and 2011-12 respectively. Further, reliance was placed on Sodexo SVC India Pvt.Ltd. v/s DCIT, Mumbai in (ITA No.619& 620/Mum/2019, dated 06.03.2019). Further, our reference was drawn to the following table containing the dated of filing of the TDS statements and the date of passing of the order by the Assessing officer u/s 201(1)/201(1A) which reads as under:

TAN	NAME OF BRANCH	FY	Date of filing of Q126Q TDS Return	Date of filing of Q226Q TDS Return	Date of filing of Q326Q TDS Return	Date of filing of Q426Q TDS Return	Date of AO Order
NGPB01937F	Bazargaon, Branch	2009-10	29.06.2010	25.01.2011	25.01.2011	25.01.2011	27-Mar-17
NGPB01722A	Devalamati, Branch	2009-10	13.07.2009	12.10.2009	06.01.2010	17.04.2010	27-Mar-17
NGPB01586E	Dharampeth, Branch	2009-10	24.08.2009	18.11.2009	17.02.2010	04.06.2010	29-Mar-17
NGPB01638A	Nagpurmain, Branch	2009-10	16.07.2009	15.10.2009	02.02.2010	04.06.2010	29-Mar-17
NGPB01770G	Shitalwadi, Branch	2009-10	16.7.2009	15.10.2009	15.1.2010	16.4.2010	29-Mar-17
NGPB01664F	Ajnisphere, Branch	2010-11	03.08.2010	28.12.2010	09.03.2011	01.06.2011	26-Mar-18
NGPB01937F	Bazargaon, Branch	2010-11	24.01.2011	24.01.2011	24.01.2011	27.04.2011	23-Mar-18
NGPB01630G	Gandhibagh, Branch	2010-11	31.07.2010	25.10.2010	20.01.2011	14.04.2011	27-Mar-18
NGPB01654C	Itwari, Branch	2010-11	16.09.2010	25.06.2011	15.01.2011	17.05.2011	27-Mar-18
NGPB01584C	Mahal, Branch	2010-11	7.8.2010	22.10.2010	17.01.2011	6.7.2011	22-Mar-18
NGPB02828A	besa, Branch	2010-11	15.07.2010	06.12.2010	15.01.2011	14.05.2011	21-Mar-

							18
NGPB01586E	Dharampeth, Branch	2010-11	05.08.2010	28.10.2010	15.01.2011	19.04.2011	27-Mar-18
NGPB01825F	Mowar, Branch	2010-11	15.07.2010	15.10.2010	15.01.2011	18.04.2011	21-Mar-18
NGPB01638A	Nagpurmain, Branch	2010-11	03.02.2011	03.02.2011	03.02.2011	18.05.2011	21-Mar-18
NGPB01673A	Takalghat, Branch	2010-11	15.7.2010	14.10.2010	15.1.2011	14.5.2011	21-Mar-18
NGPB02965E	Dongargaon, Branch	2009-10	-	-	-	15.6.2010	27-Mar-17

11. It was submitted that in all these cases, the assessee has filed the TDS quarterly statement pertaining to A.Y. 2010–11 and 2011–12 and in all these cases, the limitation period expires on 31.03.2013 for A.Y. 2010–11 and on 31.03.2014 for A.Y. 2011–12, whereas the orders u/s 201(1)/(1A) have been passed by the Assessing Officer in March, 2017 & March, 2018, which are clearly beyond the limitation period. It was accordingly submitted that all the impugned orders passed under section 201(1) r.w.s. 201(1)(1A) therefore, deserve to be quashed as barred by limitation.

12. Per contra, ld. DR has relied on the amendment brought in by the Finance Act, 2014, which prescribes for a period of seven years from the end of the financial year, in which payment is made. It was submitted that in all these cases, the assessment order has been passed within the limitation period so prescribed by the statute as amended by the Finance Act, 2014. During the course of hearing, the ld DR was asked to verify the details so submitted to determine the limitation period and call for a report from the Assessing officer and in this regard, the ld DR vide his

letter date 7.06.2022 has filed a report received from the office of DCIT (TDS) Circle -1, Nagpur vide letter No. F.No. DCIT(TDS)Cir-1/NGP/Bench/BOI/2022-23, dated 07.06.2022 and the contents thereof read as under:

*“2. With regards to the above, in the case of 16 appeals of the appellant assessee Bank of India as mentioned in above referred letter, order u/s 201(1)/201(1A) of the Income Tax Act, 1961 has been passed in the following dates mentioned in table below:*

Sr. No.	Name of Branch of Bank of India	A.Y.	Date of order u/s 201(1)/201(1A) of the I.T. Act, 1961
1.	Bazargaon Branch	2010-11	27.03.2017
2.	Devalamati Branch	2010-11	27.03.2017
3.	Dongargaon Branch	2010-11	27.03.2017
4.	Dharampeth Branch	2010-11	29.03.2017
5.	Nagpurmain Branch	2010-11	29.03.2017
6.	Shitaiwadi Branch	2010-11	29.03.2017
7.	Ajnissquare Branch	2011-12	26.03.2018
8.	Bazargaon Branch	2011-12	23.03.2018
9.	Gandhibagh Branch	2011-12	27.03.2018
10.	Itwari Branch	2011-12	27.03.2018
11.	Mahal Branch	2011-12	22.03.2018
12.	Besa Branch	2011-12	21.03.2018
13.	Dharampeth Branch	2011-12	27.03.2018
14.	Mowar Branch	2011-12	21.03.2018
15.	Nagpurmain Branch	2011-12	21.03.2018

16.	Takalghat Branch	2011-12	23.03.2018
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3. As per para 2(i) of the above referred letter, it has been asked whether the Assessing Officer has passed the order u/s 201(1)/ 201(1A) of the Income Tax Act, 1961 within the prescribed time limitation. In this connection, it is stated that these above mentioned orders have been passed within prescribed time limitation given u/s 201(3) of the Act, 1961, which is produced as below:

*" 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 expiry of seven years from the end of the financial year in which payment is made or credit is given or two years from the end of the financial year in which the correction statement is delivered under the proviso to sub-section (3) of section 200, whichever is later."*

13. We have heard the rival contentions and perused the material available on record. The issue under consideration relates to the amendment brought in by the Finance Act, 2014 to section 201(3) of the Act and where the said amendment has to be read prospectively or from a retrospective date. In this regard, Hon'ble Gujarat High court in case of Tata Teleservice v/s Union of India and Anr (*supra*) had an occasion to examine the said matter and the following question came up for its kind consideration:

*“11.02. Short question posed for consideration of these petitions is as to, whether section 201(3) of the Income Tax Act as amended on 1/10/2014 by Finance Act of 2014 would be applicable retrospectively or prospectively and whether the said provision would be applicable with respect to the proceedings under the Income Tax Act for A.Y. 2008-09 and 2009-2010, the proceedings which had already become time barred in view of the provisions of section 201(3) of the Act prior to amendment in section 201(3) of the Act by Finance Act 2014?”*

14. The Hon'ble High Court thereafter referring to the earlier amendments to section 201(3) and the latest amendment by the Finance Act, 2014 held that wherever the Parliament wanted to make provisions applicable retrospectively, it has been so provided and the amendment by the Finance Act has been specifically stated to be with effect from 1.10.2014 and held as under:

*“12.14. At this stage, it is required to be noted that earlier section 201(3) of the Act as amended by Finance Act, 2012 amended on 28/5/2012 was specifically made applicable retrospectively w.e.f. 1/14/2012, whereby limitation period was substituted from four years to six years for passing orders where TDS Statement had not been filed. However, section 201(3) of the Act as amended by Finance Act No.2 of 2014, as mentioned in the memorandum of*

*the Finance Bill No.2 of 2014 is stated to have effect from 1st October, 2014.*

*Thus, wherever the Parliament / Legislature wanted to make provisions applicable retrospectively, it has been so provided.*

15. The Hon'ble High Court thereafter, in Para 15 has held that section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable retrospectively and therefore, no order under section 201(1) of the Act can be passed for which limitation had already expired prior to amended section 201(3) as amended by Finance Act No.2 of 2014 and findings read as under:

*“15.00. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, to the facts of the case on hand and more particularly considering the fact that while amending section 201 by Finance Act, 2014, it has been specifically mentioned that the same shall be applicable w.e.f. 1/10/2014 and even considering the fact that proceedings for F.Y. 2007-08 and 2008-09 had become time barred and/or for the aforesaid financial years, limitation under section 201(3)(i) of the Act had already expired on 31/3/2011 and 31/3/2012, respectively, much prior to the amendment in section 201 as amended by Finance Act, 2014 and therefore, as such a right has been accrued in favour of the assessee and considering the fact that wherever legislature wanted to give*

*retrospective effect so specifically provided while amending section 201(3)*

*(ii) of the Act as was amended by Finance Act, 2012 with retrospective effect from 1/4/2010, it is to be held that section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable retrospectively and therefore, no order under section 201(i) of the Act can be passed for which limitation had already expired prior to amended section 201(3) as amended by Finance Act No.2 of 2014. Under the circumstances, the impugned notices / summonses cannot be sustained and the same deserve to be quashed and set aside and writ of prohibition, as prayed for, deserves to be granted.”*

16. The Pune Benches of the Tribunal in case of assessee's own case though pertaining to other branches had an occasion to examine similar issue and the relevant findings read as under:-

*“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 (ITANo.121, 125 & 127/PUN/2019) for all the 4 quarters and the date of filing for the last quarter is 20.04.2009 (ITANo.121/PUN/2019), 16.04.2009 (ITANo.125/PUN/2019) and 26.07.2011 (ITANo.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 ITANos.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. ITANos.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.”*

17. In the instant case, we find that the TDS statements in Form 26Q have been filed by the respective branches of the assessee bank for each of the four quarters pertaining to financial year 2009-10 and financial 2010-11 and considering the limitation period of two years from the end of the financial year in which the last of the quarterly statements have been filed, we find that the limitation period for the financial year 2009-10 relevant to assessment year 2010-11 expires on 31.03.2013 and for the financial year 2010-11 relevant to assessment year 2011-12 expires on 31.03.2014 whereas the assessment orders u/s 201(1)/201(IA) have

been passed in last week of March 2017 and March 2018 respectively as noted above. Respectfully following the above legal proposition so laid down by the Hon'ble Gujarat High Court and also following the decision of the Coordinate Pune Benches, section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable in the instant case as limitation had already expired prior to amended section 201(3) as amended by Finance Act No.2 of 2014 w.e.f 1.10.2014. In light of the same, we are of the considered view that all the orders passed by the Assessing officer under section 201(1)/201(IA) are barred by the limitation and are hereby set-aside. The ground of appeal taken by the assessee in all these sixteen appeals wherein the order of the Assessing officer has been challenged as barred by limitation is thus allowed.

18. In light of above, where we have set-aside the orders passed by the Assessing officer as barred by limitation, the other grounds raised by the assessee in all sixteen appeals have become academic and the same are dismissed as infructious.

In the result, all the appeals are partly allowed in light of aforesaid directions.

Order pronounced in the open Court on 09.06.2022

**Sd/-**  
**YOGESH KUMAR U.S**  
**JUDICIAL MEMBER**

**Sd/-**  
**VIKRAM SINGH YADAV**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED:09 .06.2022**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Nagpur City concerned;*
- (5) *The DR, ITAT, Nagpur;*
- (6) *Guard file.*

*KasarlaThirumalesh*  
*Sr. Private Secretary*

True Copy  
By Order

(A.R./Sr. P.S./P.S.)  
ITAT, Nagpur