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IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SRI MAHAVIR SINGH, JM AND SRI M BALAGENSH, AM

ITA Nos..619 & 620 /Mum/2019

Assessment Years: 2010-11 & 2011-12)

Sodexo SVC India Pvt Ltd., 503 & 504, 5th floor, B-wing, Hiranandani Fulcrum, Sahar Road, Andheri (East), Mumbai	Vs.	DCIT, (TDS) 2(2), Mumbai,
(Appellant)	..	**Respondent)**
PAN No. AALCS 9822 Q		

Revenue by	:	Shri B.B. Rajendra Prasad, CIT(Departmental Representative)
Assessee by	:	Shr F.B. Andhyarujina, Sr. Counsel/Shri Gautam Thacker/Mr Yazdi P.Jijina, Ars

Date of hearing: 6.3.2019 **Date of pronouncement :** 6. 03-2019

O R D E R

PER MAHAVIR SINGH, JM:

These appeals by the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-60, Mumbai [in short CIT(A)], in appeal No. 60/IT-10160/DCIT/(TDS)-2(2)/2016-17 and No. 60/IT-10020/DCIT/(TDS)-2(2)/2016-17 dated 28.12.2018. The Assessments were framed by the DY. Commissioner of

Income Tax(TDS)-2(2) dated 21.03.2016 under section 201(1)/201(1A) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first common issue in these two appeals of the assessee is against the order of the CIT(A) in holding that the order passed by the Assessing Officer under section 201(1)/201(1A) of the Act is within the time limit allowed under section 201(3) of the Act. For this, the assessee has raised the following three grounds for the assessment year 2010-11:

> "1. The Learned Commissioner of Income-Tax [Appeals} erred in holding that the Order passed under Section 201/201[1A} of Income-Tax Act, 1961 (the "Act") was within the time limit allowed under sub-section [3) to Section 201 of the Act.
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> 2. On an identical position in facts and in law and in the circumstances, the Learned Commissioner of Income-Tan (Appeals) erred in not following the judgement of the IT AT, J-Bench, Mumbai in case of the Appellant itself, for the AY 2012-13, holding that the impugned order under Section 201(1)/201(1A) for the AY 2012-13, wartime barred.
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> 3. The Learned Commissioner of Income-Tan (Appeals), erred in law, by departing from the well-established principle of consistency particularly where, no demands have been raised and/or adverse orders have been passed on account of non-deduction of tax in respect of reimbursements made to the Appellant's Affiliates under section 194C of the Act, since inception of the Appellant Company."

3. Similar are the grounds in assessment year 2011-12 and facts and circumstances are also identical. Hence, we take up the facts from the assessment year 2010-11 and the decision will apply to the assessment year 2011-12 also.

4. Brief issue involved in this appeal of the assessee is, whether the assessee was required to deduct TDS under section 194C of the Act on the reimbursement of the meal vouchers to the affiliates (restaurants/eating joints etc) by the assessee,

which used by the employees of the assessee's customers for the purchase of food and non-alcoholic beverages. For this, the assessee has challenged the very order passed under section 201(1)/201(1A) of the Act as barred by limitation in view of section 201(3) of the Act.

5. The assessee is a private limited company registered under the Companies Act, 1956 and is authorized by the Reserve Bank of India by section 7 of the Payment and Settlement Systems Act, 2007 to carry on the business of operating alternate payment settlement system where it can issue prepaid instruments to its clients. The assessee has been carrying on the aforesaid business since past several years. A survey under section 133(2A) of the Act was conducted by the DCIT(TDS)- 2(2), Mumbai on 21.01.2016. The survey was conducted with the purpose to verify the compliance made by the assessee with respect to TDS. The survey party noted from the transaction carried out by the assessee in the course of business and a statement from the Chief Finance Officer of the assessee was also recorded under section 131 of the Act, wherein, he undertook to submit various details relating to reimbursement made to affiliates. Subsequently on 22.02.2016, the Assessing Officer issued show cause notice under section 201(1)/201(1A) of the Act asking the assessee to show cause as to why the assessee should not be treated as assessee in default for failure to deduct TDS under section 194C of the Act on the reimbursement of vouchers to various affiliates during the financial year 2010-11. In response to show cause notice, the assessee replied that the notice issued by Assessing Officer for financial year 2009-10 relevant to assessment year 2010-11 is barred by limitation but the Assessing Officer passed order under section 201(1)/201(1A) of the Act. Aggrieved, the assessee preferred appeal before the CIT(A).

6. Before the CIT(A), the assessee claimed that the issue under appeal is squarely covered by the decision of the Tribunal in assessee's own case for the assessment year 2012-13 in ITA No.980/Mum/2018 order dated 28.03.2018 but the CIT(A) noted that the assessee has filed correction statements even on 31.01.2018 and in view of the provisions of section 201(3), the time limit available with the Assessing Officer is seven years in terms of amendment carried out by the Finance Act (No.2), 2014 with effect from 01.10.2014 under the provisions of section 201(3) of the Act. The CIT(A) stated that the facts in assessment year 2012-13 and the relevant assessment year 2010-11 are different and distinguishable and hence, in such a situation, the reliance placed by the assessee on Tribunal's decision in own case is misplaced. The CIT(A) decided the issue against the assessee by observing in paras 6.1 to 6.8 as under:

> "6.1 I have gone through the facts of the case and the appellant's contention The appellant has submitted a factual details of its TDS statements filed u/s 200(3). Section 200 of the IT Act entails the duty of the person deducting tax. Section 200$) casts a onus on the deductor to prepare such statement and submit it on prescribed time. For clarification purposes, section 200(3) is reproduced below –
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> ***"Duty of Person* deducting tax**
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> 200(3.) *Any person deducting* any *sum* on or after *the 1st* day of April 2005 *in* accordance *with the foregoing provisions of this Chapter or,* as *the* case may be, *any* person being an employer *referred to in* sub-section*(1A)* of section 192 shall, after paying *the* tax deducted to *the credit of the* Central *Government within the* time, prepare such statements for such period *as* may *be prescribed* and deliver or cause to *be delivered to* the prescribed Income tax *authority of the* person *by such authority such statement* in *such* from and verified *in* such manner and setting forth such particulars and within such time as may be prescribed.,
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> Provided that the person may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information ***furnished*** *in the statement delivered under this sub-section* in *such* ***form and verified in such manner 9$*** *maybe specified by the authority.]"*

6.2 Thus, a correction statement is also a part of section 200(3) which provides that the person can file the correction statement for any year for rectification of any mistake or to add, delete, or update the information furnished in the statement delivered under this subsection in such form and verified in such manner as may be specified by the authority To explain with an example, suppose in the first instance, the deductor has deducted only on rental payments made and has filed the statement u/s 200(3). Later on it transpires that they were also supposed to deduct tax on professional services paid u/s 194J. In that event, they can file a correction statement by virtue of proviso to section 200(3). The department will treat this statement for processing u/s 2.00A and further scrutiny if required All the operational sections as per legal provisions will be applied de novo on this correction statement Hence, for all purposes, the correction statement fled is as good as and equivalent to a statement filed u/s 200(3) of the Act.

6.3 The appellant's contention is that this proviso is effective from 01/10/2014 and thus does not apply to the return of the Assessment Year under consideration. It is the appellant's case, since it is effective from 01/10/2014, no correction returns can be filed for the prior year's However, it is seen that the appellant himself has filed not one but multiple correction returns for this year which was accepted by the CPC TDS and was also processed. The details of all such statements tiled u/s 200{3) are as follows .

Sr N	Financial Yea	Quarter	Form Type	Date of filing	Remarks
1	2009-10	Q1	26Q	15-07-2009	REGULAR
2	2009-10	O2	26Q	14-10-2009	REGULAR
3	2009-10	O3	26Q	13-01-2010	REGULAR
4	2009-10	Q4	260	11-07-2010	REGULAR
5	2009-10	Q1	26O	24-04-2012	CORRECTION
6	2009-10	01	26Q	24-04-2.012	CORRECTION
7.	2009-10	Q1	2SQ	15-03-2013	CORRECTION
8.	2009-10	Q1	260	30-01-^018	CORRECTION
9	2009-10	01	26Q	30-01-2018	CORRECTION
10	2009-10	02	26Q	24-04-2012	CORRECTION
11.	2009-10	Q2	26Q	15-03-2013	CORRECTION
12	2009-10	Q2	26Q	30-01-2018	CORRECTION

13	2009-10	02	26Q	30-01-2018	CORRECTION
14.	2009-10	Q3	26Q	24-04-2012	CORRECTION
15	2009-10	O4	26G	15-03-2013	CORRECTION
16	2009-10	Q3	26O	30-01 -20 18	CORRECTION
17	2009-10	Q3	2GQ	30-01-2018	CORRECTION

6.4 Thus, it is seen that the appellant has been revising the original statement with correction statement on various dates. In fact, the last statement for the said year was filed on 30/01/2018. Once a correction statement is filed the inevitable effect is that, it partakes the character of statement filed u/s 200(3) In all such cases the statements / correction statements are liable to be processed and scrutinized. In fact, all the proceedings on such correction statements filed will take place subsequently as is normally taken in cases where the original statement are filed.

6.5 On a comparative logic, the returns filed u/s 139 is compared with statements filed u/s 200(3) In case of returns of income filed u/s 139, there is a definite period after which it cannot be revised / filed There is a time barring period presented for filing a return u/s 139. After expiry of the prescribed date as per law, it is the responsibility of the AO to issue a notice u/s 146 calling for return of income. However, the situation is different in the case of filing of statements u/s 200(3). Though there is a limitation lime for passing assessment orders on statements filed as per sec 201(3). There is no bar on filing of correction statements u/s 200(3) In that event, it is obvious that the lime available to finalize a Statement will be reckoned from the date on which the recent statement has been filed under section 200{3) The natural legal logic will be that when a correction statement is filed, the corresponding action statutory required will be as per The legal provisions of the Act from the date on which such correction statement was filed.

6.6 In order to further enlarge my argument, the Apex Court in the case of Hind Wire Industry Lid vs. CIT 1995 80 taxmann.com 79 has held that *"The word order in the expression 'from the date of the order sought to be amended in section 154(7} as it stood at She relevant* assessment year *had no! been qualified in any way and it did not necessarily mean the original order. It could be any order including She amended or rectified order Therefore, the Tribunal was correct in holding that the second rectification application was well limitation.*

6.7 Applied to the facts of the appeal at hand and on this analogy, the consequent statutory action pursuant to filing of the correction statement is

pending and has to be done de novo. For this Financial Year, it is not disputed that last corrected statement was filed for the said year on 30/01/2018, which requires processing and is subject to verification as Appropriate.

6.8 These facts have been brought on record to distinguish that the order passed by the Hon'ble Tribunal for the Assessment year 2012-13 did not have any occasion to consider this factual aspect in that appeal The facts for AY 2012-13 lie FY 2011-12) was as follows:

Sr.No.	F.Y.	Form Type	Date of filing	Remarks
1.	2011-12	24Q	9.5.2012	Original
2.	2011-12	26Q	11.5.2012	Original
3.	2011-12	26Q	14.10.2011	Original
4.	2011-12	26Q	14.7.2011	Original
5.	2011-12	26Q	13.1.2012	Original
6.	2011-12	26Q	24.9.2012	correction

Since, in AY 2012-13, the only correction statement was filed on 24/09/2012, the facts were different and distinguishable. In such a situation, the appellant's argument that the impugned order for this year is covered by the order of the Hon'ble Tribunal is misplaced The assessee has last filed the last correction statement on 30/01/2016 and thus, the impugned order dated 21.3.2016 by the AO is not time barred."

Aggrieved, now the assessee is in appeal before the Tribunal.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, ld Counsel for the assessee Shri F.B. Andhyarujina, Sr. Counsel argued that the impugned proceedings initiated and consequent order passed under section 201(1)/201(1A) of the Act is time barred for the financial year 2009-10 relevant to assessment year 2010-2011 in view of section 201(3) of the Act as it stood at the relevant time. Ld Sr. Counsel before us, explained that the assessee has been regularly filing TDS statements as provided under section 200(3) of the Act and for the financial year 2009-2010 relevant to A.Y.2010-2011 TDS statements under section 200(3) were filed on the following dates:

Fin. Year	Quarter	Date of filing
2010-11	Qr.1	15.7.2010
2010-11	Qr.2	13.10.2010
2010-11	Qr.3	13.10.2011
2010-11	Qr.4	3.5.2011

8. Ld Counsel for the assessee stated that the impugned proceedings and consequent order passed is time barred for the assessment year 2010-11. For this, ld Counsel explained that the impugned order under section 201(1)/201(1A) of the Act for the assessment year 2010-11 was passed on 31.03.2016 and the same was passed in consequence to show cause notice issued dated 09.03.2016. ld Counsel explained that show cause notice for the financial year 2009-2010 has been issued in view of provisions of sub-section(3) of section 201 of the Act. He took us through the relevant provisions, which reads as under:

: 201. Consequences of failure to deduct or pay:

"(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 seven years from the end of financial year in which payment is made or credit is given."

In this context, it may also be stated that the erstwhile sub-section(3) of section 201 was substituted by the Finance (No.2) Act, 2014 with effect from 1.10.2014. Prior to its substitution, sub-section (3) as amended by the Finance Act, 2012 w.e.f 1.4.2010 read as follows:

: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 he passed at any lime on or before the 31s1 day of March, 2011.

In the light of the aforesaid reasons, it is clearly established that the increased limitation period of seven (7) years under section 201(3), as amended by the Finance (No,2) Act, 2014, w,e.f. 1,10.2014, shall not apply retrospectively to orders which had become lime-barred under the old lime limit (2 years / 6 years) set by the un-amended section 201(3). Hence, **no order under section 201(1) of the Act,** deeming the **tax-deductor to be assessee-in-de**fault could be passed, if limitation had already expired as on **1.10.2014.**

In the present case, Sodexo has been filing the requisite TDS statements referred to in section 200 of the Act Therefore, clause (i) of erstwhile section 201 (3) will apply in the present case."

9. Ld Counsel for the assessee took us through the erstwhile sub-section (3) of section 201 which was substituted by the Finance (No.2) Act 2014 w. e. f 01.10.2014 and prior to this substitution sub-section(3) as amended by Finance (No.2) Act, 2012 with effect from 01.04.2010 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 he passed at any lime on or before the 31s1 day of March, 2011."

10. Ld Counsel for the assessee in view of above clear provisions stated that the increased period of limitation of seven years under section 201(3) of the Act as amended by Finance (No.2) Act, 2014 with effect from 01.10.2014 shall not apply retrospectively to the orders which have become time barred under the old time limit i.e of two years/six years, as set out by the un-amended section 201(3) of the Act. In view of the clear provisions, he explained that no order under section 201(1) of

the Act deeming the tax deductor to be assessee in default could be passed, if limitation had already expired as on 01.10.2014. Ld Counsel relied on the decision of Hon'ble Gujarat High Court in the case of **Tata Teleservices vs. Union of India 385 ITR 497 (Guj), wherein, it has been** held that the increased limitation period of seven years under section 201(3) of the Act, as amended by the Finance (No.2) Act, 2014, w, e. f. 01-10.2014 shall not apply retrospectively to orders which had become time-barred under the old time limit of 2 years/6 years as set out by the un-amended section 201(3) of the Act. Hence, no order under section 201 (1) of the Act, deeming tax-deductor to be assessee-in-default can be passed if limitation had already expired as on 01.10,2014. The relevant paragraph 15 & 16 of the decision of Hon'ble Gujarat High Court reads as under:

> 15. 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 201as amended by Finance Act, 2014 and therefore, as such a right has been accrued in favour of the assessee and considering HC-NIC Page 62 of 64 Created On Tue Mar 22 01:53:00 IST 2016 62 of 64the 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.
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> 16.. In view of the above and for the reasons stated above, all these petitions succeed. The impugned notices / summonses are held to be invalid and the same are hereby quashed and set aside and the respondents herein are hereby restrained by writ of prohibition from proceedings with the impugned

notices / summonses which are, as such, hereby quashed and set aside. Rule is made absolute accordingly in each of the petitions. In the facts and circumstances of the case, there shall be no order as to costs."

11. In reply to same, ld CIT Departmental Representative first of all drew our attention to the order of the CIT(A) at page 14 wherein the assessee has filed regular returns as well as correction statements and the relevant chart as brought to our notice, which is reproduced in para 6.3 of the CIT(A)'s order as reproduced above at para 6. In view of above, ld CIT Departmental Representative stated that once the correction statements are filed, which is a continued proceedings and the Assessing Officer cannot foresee how the assessee will revise the statements and hence extended limitation period in view of the proviso to section 201(3) of the Act will apply and accordingly, the enlarged limitation of seven years will apply to the facts of the present case. For this, ld CIT Departmental Representative relied on the decision of Hon'ble Allahabad High Court in the case of Mass Awash (P) Ltd vs CIT (International Taxation) 397 ITR 305 (All), wherein, it is held that revenue cannot be held guilty of undue and unreasonable delay of 10 years in initiating proceedings under section 201(1)/201(1A) of the Act on its own inasmuch as when factum of payee, being an NIR, came to its notice, it continuously prosecuted the matter and having failed to realize any amount of tax from her, power had been exercise under section 201(1)/201(1A) of the Act. In view of above decision of Hon'ble Allahabad High Court in the case of Mass Awash (P) Ltd (supra), CIT Departmental Representative stated that the assessee's case is not hit by any proviso rather the assessee's case squarely falls under the amended proviso by Finance (No.2) Act 2014 with effect from 01.10.2014 i.e. section 201(3) of the Act. Ld CIT(DR) also stated that the CIT(A) has rightly brought into the light the corrected statements filed by the assessee which are statutorily to be filed by the assessee and acted upon by

the Assessing Officer. In terms of above, the CIT Departmental Representative stated that the proceedings are not time barred or not hit by limitation.

12. We find that the case laws relied on by the CIT Departmental Representative of the Hon'ble Allahabad High Court in the case of Mass Awash (P) Ltd (supra) is prior to amendment and relates to assessment year 2006-07. Similarly, the decision relied on by ld CIT Departmental Representative of the Hon'ble Calcutta High Court in the case of Bhura Exports Ltd vs ITO, (2011) 13 taxmann.com 162(Calcutta) also relates to assessment year 2002-03 and also prior to amendment. We find that the first amendment bringing time limitation in the statute book was brought out by the Finance (No.2) Act 2012 with effect from 01.04.2010 and that also the condition of two years or six years as per the provisions of section 201(3)(ii) of the Act. Subsequently, the erstwhile sub-section(3) of section 201 was substituted by Finance (No.2) Act, 2014 w. e. f. 01.10.2014, wherein, sub-section(3) of section 201 was amended and time limitation of seven years from the end of the financial years in which the payment is made was brought in. The facts of the present case are that the assessee filed quarterly returns for F.Y. 2010-11 on 15.07.2010. For Qr. No.. on 13.10.2010. At this point of time, the erstwhile sub-section (3) of section 201 of the Act was enforced and as per section 201(3)(ii) of the Act, the condition of two years was applicable to the facts of the present case and hence, on the date of amendment i.e. amendment of sub-section(3) of section 201 by the Finance (No.2) Act 2014 with effect from 01.10.2014 has already expired. In the light of the aforesaid reasons, it is clearly established that increased limitation of seven years under section 201(3) of the Act as amended by the Finance (No.2) Act 2014 with effect from 01.04.2014 shall not apply retrospectively to the orders which had become time barred under the old time limitation of two years as set out by the un-

amended section 201(3)(i) of the Act and hence no order under section 201(1)/201(1A) of the Act deeming the tax deductor to be assessee in default could be passed if limitation has already expired as on 01.10.2014.

13. As regards correction statements, we noticed that the same has been filed only for rectification for very small and meager amount and/or added/deleted the update information furnished in the TDS statements like PAN of other party, the authorised signatory, the details of CFO of the assessee etc. The said changes have no bearing on the amount of tax deducted at source and/or deposited with the revenue. The amount of correction carried out is quite negligible. We also find that even the ITAT in assessee's own case for the assessment year 2012-13 dated 28.3.2018 noted that the issue of correction of statements in para 7 and for the same we reproduce substantially from the order of the Tribunal, which reads as under:

> "7. We have heard rival submissions and perused materials available on record in the light of the decisions cited. So far as the factual aspect of the issue is concerned, there is no dispute that in terms of section 200(3), the assessee has filed statements of TDS before the Department within the prescribed time. In fact, in the submissions made by the assessee as reproduced in Para–5.2 of the impugned order of the learned Commissioner (Appeals), the fact of filing of TDS statements by the assessee has been clearly brought out. Therefore, we have to proceed on the basis that in assessee's case, the statements of TDS have been filed. Keeping the aforesaid factual position in view it is necessary to examine the relevant statutory provisions. Section 201 which lays down the consequences of failure to deduct tax at source or having deducted not remitted to the Government account, in its original form, did not provide any time limit for passing the order under sub–section (1) of section 201. Looking at the dispute arising out of proceedings being taken up and completed after lapse of substantial time in the absence of a time limit, the legislature through Finance Act, 2009, introduced sub– section (3) to section 201 providing limitation period of two years for passing the order under section 201(1) from the end of the financial year in which statement of TDS is filed by the deductor and in a case where no statement is filed the limitation was extended to before expiry of four years from the end of financial year in which the payment was made or credit given. The aforesaid amendment was made effective from 1st April 2010. Subsequently, by Finance Act, 2012, sub–section (3) of section 201 was again amended with retrospective effect from 1st April 2010. The aforesaid amended provision 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: 9 Sodexo SVC India Pvt. Ltd. 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."

8. As could be seen from a reading of the aforesaid provision, the only change which was effected from the earlier provision was the limitation period of four years in case of a deductor not filing TDS statement was extended to six years from four years. Whereas, in case of a person / deductor filing TDS statement, the limitation period of two years remained unchanged. The aforesaid sub–section (3) of section 201 was again amended by Finance Act, 2014, w.e.f. 1st October 2014 by substituting the earlier provision with the following:–

"(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 seven years from the end of the financial year in which payment is made or credit is given."

9. Thus, as could be seen from the aforesaid amended provision a uniform limitation period of seven years from the end of relevant financial year wherein payments made or credit given was made applicable. The issue before us is, whether the un–amended sub– section (3) which existed before introduction of amended sub–section (3) by Finance Act, 2014, will apply to assessee's case or not. It is the case of the assessee that, since, clause (i) of sub–section (3) of section 201 is applicable to the assessee and the limitation period of two years has expired by the time the provision was amended by Finance Act, 2014, the extended period of limitation of seven years as per the amended provision will not apply. Whereas, it is the case of the Department that the amended sub–section (3) brought into the statute by Finance Act, 2014, will apply retrospectively, hence, the impugned order passed by the Assessing Officer within the period of seven years is valid. It is a fact on record that by the time the amended provisions of sub–section (3) was introduced by Finance Act, 2014, the limitation period of two years as per clause (i) of sub– section (3) of section 201 (the un–amended provision) has already expired. The learned Commissioner (Appeals) has applied the amended provision of sub–section (3) of section 201 by referring to the objects for making such amendment and on the reasoning that the said provision being a machinery provision will apply retrospectively. However, on a careful perusal of the objects for introduction of the amended provision of

sub–section (3), we do not find any material to hold that the legislature intended to bring such amendment with retrospective effect. If the legislature intended to apply the amended provision of sub–section (3) retrospectively it would definitely have provided such retrospective effect expressing in clear terms while making such amendment. This view gets support from the fact that while amending sub–section (3) of section 201 by Finance Act, 2012, by extending the period of limitation under sub–clause (ii) to six years, the legislature has given it retrospective effect from 1st April 2010. 11 Sodexo SVC India Pvt. Ltd. Since, no such retrospective effect was given by the legislature while amending sub–section (3) by Finance Act, 2014, it has to be construed that the legislature intended the amendment made to sub–section (3) to take effect from 1st October 2014, only and not prior to that. The Hon'ble Supreme Court in Vatika Township Pvt. Ltd. (supra) while examining the principle concerning retrospectivity of an amendment brought to the statutory provisions has observed that unless a contrary intention appears, a legislation is presumed not to be intended to have retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. The Hon'ble Court observed, legislations which modified accrued rights or which impose obligations or imposes new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect. It was observed, if a provision is not for the benefit of a community, but, imposes some burden or liability the presumption would be it will apply prospectively. The rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Similar view has been expressed in the case of Reliance Jute and Industries Ltd. (supra) as well as Shah Sadiq & Sons (surpa). In case of Tata Teleservices (supra), which is 12 Sodexo SVC India Pvt. Ltd. directly on the issue of retrospective application of the amended sub– section (3) of section 201, the Hon'ble Gujarat High Court, after extensively dealing on the issue of retrospective applicability of the provisions and applying the principles laid down by the Hon'ble Supreme Court in a number of cases, held 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."

10. Following the aforesaid decision of the Hon'ble Gujarat High Court in Troykaa Pharmaceuticals Ltd. (supra) again expressed the same view.

"7. Examining the facts of the present case in the light of the principles enunciated in the above decision, the present case relates to financial year 2008-2009. The petitioner had filed statements as required under section 200 of the Act. The limitation for initiating proceedings under section 201(1) of the Act would, therefore, be governed by section 201(3)(i) of the Act as it stood at the relevant time which provided for a period of limitation of two years from the end of the financial year in which statement was filed in a case where the statement referred to in section 200 has been filed. The limitation for initiating action under section 201(1) of the Act, therefore, elapsed on 31st March, 2012 whereas the amendment in section 201 of the Act as amended by Finance Act No. 2 of 2014 came into force with effect from 28th May, 2012. The impugned notice, therefore, is clearly barred by limitation and, therefore, cannot be sustained. For the detailed reasons recorded in the judgment and order dated 5th February, 2016 rendered in the case of Tata Teleservices v. Union of India (supra), this petition also deserves to be allowed."

11. No contrary decision has been brought to our notice by the learned Departmental Representative. Therefore, considering the principle laid down by the Hon'ble Supreme Court in the decisions as well as the ratio laid down by the Hon'ble Gujarat High Court in the decisions referred to above which are directly on the issue, we hold that the order passed under section 201(1) and 201(1A) having been passed after expiry of two years from the financial year wherein the TDS statements were filed by the assessee under section 200 of the Act, is barred by limitation, hence, has to be declared as null and void."

14. In view of the above facts and circumstances of the case as discussed above and the Tribunal decision in assessee' own case, respectfully following the same, we hold that the proceedings initiated and consequent order under section 201(1)/201(1A) of the Act is barred by limitation.

15. As we have adjudicated the issue of jurisdiction being order barred by limitation, we need not go into the merits of the case.

16. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 06.03.2019.

Sd/-	sd/-
(M BALAGANESH)	(MAHAVIR SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 6 03-2019
Bkp/sR.ps

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

Assistant Registrar
ITAT, MUMBAI