

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.121/Coch/2021 : Asst.Year 2014-2015 (Q3)
ITA No.122/Coch/2021 : Asst.Year 2014-2015 (Q4)
ITA No.123/Coch/2021 : Asst.Year 2014-2015 (Q2)
ITA No.124/Coch/2021 : Asst.Year 2015-2016 (Q2)

M/s.Kuncharavila Educational Trust, Aiswarya Public School Kalakkode, Paravur – 691 302 Kollam – 691 302 PAN : AABTK0610P.	v.	The Assistant Commissioner of Income-tax, CPC-TDS.
(Appellant)		(Respondent)

Appellant by : Sri.K.Jawaharlal, CA
Respondent by : Smt.J.M.Jamunna Devi, Sr.DR

Date of Hearing : 19.05.2022	Date of Pronouncement : 20.05.2022
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ORDER

Per George George K, JM :

These appeals at the instance of the assessee are directed against four orders of the CIT(A), all dated 28.05.2021 (except for ITA No.123/Coch/2021, wherein the impugned CIT(A)'s order is dated 25.05.2021). The relevant assessment years are 2014-2015 and 2015-2016.

2. There is a delay of 47 days in filing these appeals. The assessee has filed a petition for condonation of delay accompanied by an affidavit of the Chairman of the assessee-trust, wherein the reasons are given for belated filing of these appeals. On perusal of the reasons stated in the affidavit, we are of the view that there is sufficient cause for the belated

filing of the appeals and no latches can be attributed to the assessee-trust. Therefore, we condone the delay of 47 days and proceed to dispose of these appeals on merits.

3. The solitary issue that is raised in all the appeals is whether the CIT(A) has erred in confirming the Assessing Officer's orders passed u/s 200A of the I.T.Act, wherein he had levied late fees u/s 234E of the I.T.Act for various quarters.

4. The brief facts of the case are as follows:

The assessee is a trust. For the assessment years 2014-2015 and 2015-2016, the assessee filed TDS returns in Form No.26Q for various quarters belatedly. The Assessing Officer levied fees and interest u/s 234E r.w.s. 200A of the I.T.Act for filing late the TDS returns.

5. Aggrieved by the orders of the Assessing Officer, the assessee filed appeals before the first appellate authority. There was a delay in filing appeal before the first appellate authority. The CIT(A) condoned the delay of filing the appeals before him. However, the CIT(A) confirmed the A.O.'s orders for levying fees u/s 234E of the I.T.Act. The CIT(A) relied on the judgment of the Hon'ble Kerala High Court in the case of *Sree Narayana Guru Smaraka Sangam Upper Primary School v. Union of India and Others reported in (2017) 392 ITR 457 (Ker.)* and the judgment of the Hon'ble Gujarat High Court in the case of *Shri Rajesh Kourani v. Union of India reported in (2017) 83 taxmann.com 137 (Gujarat)*.

6. Aggrieved by the order of the CIT(A), the assessee has filed these appeals before the Tribunal. The learned AR submitted that the issue raised is squarely covered in favour of the assessee by the following judicial pronouncements:-

- (i) The Hon'ble Kerala High Court judgment in the case of M/s.Sarala Memorial Hospital v. Union of India & The Income Tax Officer (TDS) [WP(C) No.37775 of 2018 of 18th December, 2018]
- (ii) The Hon'ble Kerala High Court judgment in the case of Olari Little Flower Kuries (P.) Ltd. v. Union of India reported in 440 ITR 26 (Ker.)
- (iii) The order of the Cochin Bench of the Tribunal in the case of The Head Mistress, A.V.High School, Ponnani v. The ACIT [ITA Nos.236-242/Coch/2017 dated 05 July 2018]
- (iv) The order of Cochin Bench of the Tribunal in the case of Little Servants of Divine Providence, Pathanamthitta v. The ITO (TDS), Alappuzha [ITA No.258/Coch/2016 dated 09 September 2016]

7. The learned Departmental Representative relied on the order of the CIT(A).

8. We have heard rival submissions and perused the material on record. The assessee has filed belatedly TDS returns for certain quarters. The relevant financial year, the date of order u/s 200A of the I.T.Act, late fees levied u/s 234E of the I.T.Act, are detailed below:-

Sl. No.	ITA No.	F.Y.	Quarter	Date of order u/s 200A	Late fee levied u/s 234E
1.	121/C/21	2013-14	Q3	23.12.2014	28,400
2.	122/C/21	2013-14	Q4	23.12.2014	43,600
3.	123/C/21	2013-14	Q2	23.12.2014	16,350
4.	124/C/21	2014-15	Q2	23.12.2014	13,000

8.1 The Assessing Officer cannot make any adjustment other than one prescribed in section 200A of the Act. Prior to 01.06.2015, there was no enabling provision in section 200A of the Act for making adjustment in respect of statement filed by the assessee with regard to tax deducted at source by levying fees u/s 234E of the Act. The Parliament for the first time enabled the Assessing Officer to make adjustment by levying fees u/s 234E of the Act with effect from 01.06.2015. The Hon'ble jurisdictional High Court in the case of *Olari Little Flower Kuries (P.) Ltd. v. Union of India* reported in (2022) 440 ITR 26 (Ker.), has held that since provision of section 200A of the I.T.Act was amended to enable computation of fee payable u/s 234E of the I.T.Act at the time of processing of return and said amendment came into effect from 01.06.2015 (in view of CBDT Circular No.19 of 2015 dated 17.11.2015) intimations issued u/s 200A of the I.T.Act dealing with fee for belated filing of TDS returns for the period prior to 01.06.2015 were invalid and were to be set aside. Therefore, going by the dictum laid down by the Hon'ble jurisdictional High Court judgment in the case of *Olari Little Flower Kuries (P.) Ltd. v. Union of India (supra)*, the levy of late fee for the various quarters for financial years 2013-2014 and 2014-2015 cannot

be sustained in order passed u/s 200A of the I.T.Act, prior to 01.06.2015.

8.2 Before concluding, it is to be mentioned that the CIT(A) had relied on the judgment of the Hon'ble Kerala High Court in the case of *Sree Narayana Guru Smaraka Sangam Upper Primary School v. Union of India and Others (supra)*. The judgment of the Hon'ble High Court was primarily concerned with the constitutional validity of section 234E of the I.T.Act. The Hon'ble Kerala Court was not adjudicating the issue whether the amendment to section 200A of the I.T.Act with effect from 01.06.2015 has retrospective effect or not. As mentioned earlier, the amendment to section 200A of the I.T.Act whether it applicable from 01.06.2015 has been decided in favour of the assessee by the judgment of the Hon'ble Kerala High Court in the case of *Olari Little Flower Kuries (P.) Ltd. v. Union of India (supra)*.

8.3 As regards the CIT(A) placing reliance on the judgment of the Hon'ble Gujarat High Court in the case of *Rajesh Kourani v. Union of India (supra)*, we notice that the Hon'ble Kerala High Court in the case of *M/s.Sarala Memorial Hospital v. Union of India (supra)* has distinguished the Hon'ble Gujarat High Court judgment. The Hon'ble Kerala High Court had disposed of the Writ Petition in favour of the assessee, stating that there is cleavage in judicial opinion and the judgment in the case of *Shri Rajesh Kourani v. Union of India (supra)* has not considered CBDT Circular No.19 of 2015, which has clearly emphasized that the amendment would take effect

only from 01.06.2016. Therefore, it was concluded by the Hon'ble Kerala High Court that the amendment relating to section 200A of the I.T.Act is prospective with effect from 01.06.2016. In view of the aforesaid reasoning and the judgments of the Hon'ble jurisdictional High Court, cited supra, we allow the claim of the assessee. It is ordered accordingly.

9. In the result, the appeals filed by the assessee are allowed.

Order pronounced on this 20th day of May, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 20th May, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), NFAC, Delhi.
4. The CIT Cochin.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin