

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN  
Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM**

ITA No. 370/COCH/2022	Kattimoola Branch	2015-2016	Q2
ITA No.197/COCH/2022	Hosangadi Branch	2013-2014	Q4
ITA No.180/COCH/2022	Panamaram Branch	2013-2014	Q2
ITA No.181/COCH/2022	Panamaram Branch	2013-2014	Q3
ITA No. 182/COCH/2022	Panamaram Branch	2013-2014	Q3
ITA No. 371/COCH/2022	Koothattukulam	2013-2014	Q2
ITA No. 329/COCH/2022	Mundakkayam Branch	2015-2016	Q4
ITA No. 187/COCH/2022	Mannar Branch	2013-2014	Q3
ITA No. 195/COCH/2022	Cherthala Branch	2013-2014	Q2
ITA No. 204/COCH/2022	Thiruvandoor Branch	2013-2014	Q2
ITA No. 299/COCH/2022	Kottiyam Branch	2013-2014	Q2
ITA No. 396/COCH/2022	Manimala Branch	2013-2014	Q2
ITA No. 539/COCH/2022	Kidangoor Branch	2015-2016	Q2
ITA No. 230/COCH/2022	Peruvayal Branch	2013-2014	Q2
ITA No. 231/COCH/2022	Peruvayal Branch	2013-2014	Q2
ITA No. 214/COCH/2022	Kaniyambetta Branch	2013-2014	Q4
ITA No. 215/COCH/2022	Kaniyambetta Branch	2014-2015	Q2
ITA No. 221/COCH/2022	Azhinhilam Branch	2013-2014	Q4
ITA No. 222/COCH/2022	Azhinhilam Branch	2015-2016	Q1
ITA No. 390/COCH/2022	Karulai Branch	2013-2014	Q2
ITA No. 391/COCH/2022	Karulai Branch	2013-2014	Q2
ITA No. 209/COCH/2022	Kakkur Branch	2014-2015	Q3
ITA No. 301/COCH/2022	Karuvatoor Branch	2013-2014	Q3
ITA No. 403/COCH/2022	Thavanur Branch	2013-2014	Q4
ITA No. 362/COCH/2022	Puthanathani Branch	2013-2014	Q4
ITA No. 363/COCH/2022	Puthanathani Branch	2013-2014	Q4
ITA No. 238/COCH/2022	Thirurkad Branch	2013-2014	Q2
ITA No. 239/COCH/2022	Thirurkad Branch	2013-2014	Q2
ITA No. 240/COCH/2022	Thirurkad Branch	2013-2014	Q3
ITA No. 400/COCH/2022	Chelari Branch	2013-2014	Q4
ITA No. 290/COCH/2022	Vaduvanchal Branch	2014-2015	Q2
ITA No. 292/COCH/2022	Vaduvanchal Branch	2013-2014	Q3
ITA No. 471/COCH/2022	Vaduvanchal Branch	2013-2014	Q4
ITA No. 314/COCH/2022	Vatakara Branch	2013-2014	Q2
ITA No. 315/COCH/2022	Vatakara Branch	2013-2014	Q2
ITA No. 344/COCH/2022	Mannarkkad Branch	2013-2014	Q2
ITA No. 345/COCH/2022	Mannarkkad Branch	2013-2014	Q3
ITA No. 364/COCH/2022	Pattambi Branch	2014-2015	Q2
ITA No. 280/COCH/2022	Periya Branch	2013-2014	Q2
ITA No. 281/COCH/2022	Periya Branch	2013-2014	Q2
ITA No. 282/COCH/2022	Periya Branch	2013-2014	Q3
ITA No. 283/COCH/2022	Periya Branch	2013-2014	Q4
ITA No. 401/COCH/2022	Vellamunda Branch	2013-2014	Q2
ITA No. 420/COCH/2022	Payyavoor Branch	2013-2014	Q3

ITA No. 251/COCH/2022	Thayyil Branch	2013-2014	Q2
ITA No. 252/COCH/2022	Thayyil Branch	2013-2014	Q3

M/s. Kerala Gramin Bank FM Wing, KGB Head Office AK Road, Malappuram 676505 PAN: AACAK 1498D (Appellant)	v.	The Income Tax Officer (TDS) Trivandrum/Kollam/Kottayam, Alappuzha/Kochi/Trissur, Kozhikode/Palakkad/Kannur (Respondent)
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Appellant by : Sri.Hardik Chordia & Sri.Pratik Sadrani, CAs  
Respondent by : Smt.J.M.Jamunna Devi, Sr.DR

Date of Hearing : 20.06.2022	Date of Pronouncement : 30.06.2022
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## O R D E R

### Per Bench :

These are group of 46 appeals at the instance of the assessee. The appeals are directed against separate orders of the CIT(A), all dated 28.05.2021. The relevant assessment years are 2013-2014 to 2015-2016. Common issues are raised in the appeals, hence, there were heard together and are being disposed of by this consolidated order.

2. The Registry had noted delay in filing these appeals (delay of around 120 days). The orders of the CIT(A) are all dated 28.05.2021 and appeals before ITAT has been filed in the month of January and February 2022. The Hon'ble Apex Court (in Miscellaneous Application No.21 of 2022 dated 10.01.2022), due to the pandemic situation had excluded the period from 15.03.2020 to 28.02.2022 in computing the period of limitation for any suit, appeal, application or proceedings.

Further, as per judgment of the Hon'ble Apex Court, notwithstanding the actual balance period of limitation, all persons shall have a limitation period of 90 days from 01.03.2022. Further, the Hon'ble Supreme Court held that in the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that larger period shall apply. In these cases, the appeals have been filed before ITAT between January 2022 and March 2022 (i.e. well within the period of limitation contemplated by the Hon'ble Apex Court). Therefore, in view of the above judgment of the Hon'ble Apex Court, there is no delay in filing these appeals and we proceed to dispose of the same on merits.

3. The solitary issue raised in all these appeals is whether the CIT(A) has erred in confirming the Assessing Officer's order u/s 200A of the I.T.Act, wherein he 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 Regional Rural Bank, having its branches in different parts in Kerala, formed with an object of serving rural people, in particular their banking needs. For the assessment years under consideration the assessee's branches filed TDS returns in Form No.26Q and Form No.24Q for various quarters belatedly. The Assessing Officer levied fees and interest u/s 234E r.w.s. 200A of the I.T.Act for late filing of Form 26Q and 24Q of the said quarters.

5. Aggrieved by the orders of the Assessing Officer, the assessee filed appeals before the first appellate authority. 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)*. Further, the CIT(A) noted that to file appeal u/s 154 of the I.T.Act, there is no mistake apparent from record.

6. Aggrieved by the orders 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 judgment of the Hon'ble Kerala High Court in the case of *Olari Little Flower Kuries (P.) Ltd. v. UOI reported in (2022) 440 ITR 26 (Ker.)*
- (ii) 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 18<sup>th</sup> December, 2018]*
- (iii) The judgment of the Hon'ble Kerala High Court in the case of *Sanjeev Mathew & Co. v. ITO (TDS) (judgment dated 30.11.2021)*
- (iv) The judgment of the Hon'ble Kerala High Court in the case of *Headmaster, Government Upper Primary School v. ITO (TDS) (judgment dated 18.05.2022)*

- (v) The order of the Cochin Bench of the Tribunal in the case of Travels Trails India Pvt. Ltd. V. ACIT TDS, Trivandrum, [ITA No168/Coch/2020 dated 10<sup>th</sup> June, 2020]
- (vi) The order of the Cochin Bench of the Tribunal in the case of Sri.Sabir Ali v. ACIT in ITA No.200/Coch/2021 & Ors (order dated 20.05.2022)

7. Apart from the above submission, as regards the contention of the CIT(A) that there is no mistake apparent from record, the learned AR contended that non-consideration of decision of Hon'ble jurisdictional High Court in itself is a mistake apparent from record as held by the Hon'ble Apex Court in the case of ACIT v. Saurashtra Kutch Stock Exchange Ltd. Reported in (2008) 305 ITR 227 (SC).

8. The learned Departmental Representative relied on the orders of the CIT(A).

9. We have heard rival submissions and perused the material on record. The assessee-branches have filed belatedly TDS returns for various quarters. The details of branch of the assessee, TAN No. of branch, financial year, the quarters, date of filing of TDS returns, due date of filing of original TDS, late fee levied u/s 234E of the I.T.Act, Intimation dates, date of CIT(A)'s orders etc., are enclosed as Annexure-A to this order.

9.1 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.

9.2 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)*.

9.3 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.

9.4 Before concluding, it is to be mentioned that the CIT(A) held that there is no mistake apparent from record, hence, the appeals filed by the assessee as against orders passed u/s 154 of the I.T.Act cannot be entertained. The judgment of the

Hon'ble jurisdictional High Court in the case of *M/s.Sarala Memorial Hospital v. Union of India & The Income Tax Officer (TDS) (supra)* was rendered on 18.12.2018. The intimation u/s 200A of the I.T.Act and the orders of the CIT(A) were passed much subsequent to 18.12.2018. Non-consideration of judgment of the Hon'ble jurisdictional High Court in itself is a mistake apparent from record as held by the Hon'ble Apex Court in the case of *ACIT v. Saurashtra Kutch Stock Exchange Ltd. (supra)*. Therefore, we hold that the CIT(A) was not legally correct in dismissing the appeals stating that there is no mistake apparent from record. It is ordered accordingly.

10. In the result, the appeals filed by the assesseees are allowed.

Order pronounced on this 30<sup>th</sup> day of June, 2022.

**Sd/-**  
**(Laxmi Prasad Sahu)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Kochi; Dated : 30<sup>th</sup> June, 2022.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Cochin



**Annexure – A**

<b>Sr No</b>	<b>Name of Branch of Kerala Gramin Bank</b>	<b>TAN of Branch</b>	<b>FY</b>	<b>Qtr</b>	<b>Form Type</b>	<b>Actual Date of Filing of Original TDS Return</b>
286	Kattimoola Branch	CHNN00358B	2014-15	Q2	24Q	10-Nov-14
287	Hosangadi Branch	CHNN00663F	2012-13	Q4	26Q	10-Jun-13
288	Panamaram Branch	CHNN00619D	2012-13	Q2	26Q	22-Nov-12
289	Panamaram Branch	CHNN00619D	2012-13	Q3	24Q	1-Feb-13
290	Panamaram Branch	CHNN00619D	2012-13	Q3	26Q	7-Feb-13
291	Koothattukulam Branch	CHNN00814C	2012-13	Q2	26Q	29-Nov-12
292	Mundakkayam Branch	TVDN00240C	2012-13	Q4	24Q	5-Jun-13
293	Mannar Branch	TVDN00355F	2012-13	Q3	24Q	1-Feb-13
294	Cherthala Branch	TVDN00354E	2012-13	Q2	26Q	29-Nov-12
295	Thiruvanvandoor Branch	TVDN00378A	2012-13	Q2	26Q	29-Nov-12
296	Kottiyam Branch	TVDN00629G	2012-13	Q2	26Q	29-Nov-12
297	Manimala Branch	TVDN00678G	2012-13	Q2	26Q	29-Nov-12
298	Kidangoor Branch	TVDN00709C	2012-13	Q2	24Q	1-Nov-12
299	Peruvayal Branch	CHNS02243D	2012-13	Q2	24Q	28-Nov-12
300	Peruvayal Branch	CHNS02243D	2012-13	Q2	26Q	28-Nov-12
301	Kaniyambetta Branch	CHNS02544D	2012-13	Q4	24Q	24-Jul-13
302	Kaniyambetta Branch	CHNS02544D	2013-14	Q2	26Q	12-Nov-13
303	Azhinhilam Branch	CHNS00121C	2012-13	Q4	26Q	17-Jun-13
304	Azhinhilam Branch	CHNS00121C	2014-15	Q1	26Q	14-Oct-14
305	Karulai Branch	CHNS02557C	2012-13	Q2	24Q	27-Nov-12
306	Karulai Branch	CHNS02557C	2012-13	Q2	26Q	27-Nov-12
307	Kakkur Branch	CHNS02233A	2013-14	Q3	26Q	14-May-14
308	Kuruvattur Branch	CHNS00149C	2012-13	Q3	26Q	10-Jun-13
309	Thavanur Branch	CHNS02569A	2012-13	Q4	26Q	3-Jun-13
310	Puthanathani Branch	CHNS00201F	2012-13	Q4	24Q	10-Jun-13
311	Puthanathani Branch	CHNS00201F	2012-13	Q4	26Q	10-Jun-13
312	Thirurkkad Branch	CHNS00701B	2012-13	Q2	24Q	1-Jan-13
313	Thirurkkad Branch	CHNS00701B	2012-13	Q2	26Q	1-Jan-13
314	Thirurkkad Branch	CHNS00701B	2012-13	Q3	26Q	31-Jan-13
315	Chelari Branch	CHNS00128C	2012-13	Q4	24Q	18-Jun-13
316	Vaduvanchal Branch	CHNV00607F	2012-13	Q2	26Q	4-Jan-13
317	Vaduvanchal Branch	CHNV00607F	2012-13	Q3	24Q	26-Apr-13
318	Vaduvanchal Branch	CHNV00607F	2012-13	Q4	26Q	7-Jun-13
319	Vadakara Branch	CHNS02522C	2012-13	Q2	24Q	26-Nov-12
320	Vadakara Branch	CHNS02522C	2012-13	Q2	26Q	26-Nov-12

321	Mannarkkad Branch	CHNS02115B	2012-13	Q2	24Q	1-Jan-13
322	Mannarkkad Branch	CHNS02115B	2012-13	Q3	24Q	14-Feb-13
323	Pattambi Branch	CHNS02549B	2012-13	Q2	24Q	1-Jan-13
324	Periya Branch	CHNN00882A	2012-13	Q2	24Q	22-Nov-12
325	Periya Branch	CHNN00882A	2012-13	Q2	26Q	22-Nov-12
326	Periya Branch	CHNN00882A	2012-13	Q3	26Q	18-Mar-13
327	Periya Branch	CHNN00882A	2012-13	Q4	24Q	31-May-13
328	Vellamunda Branch	CHNN00371A	2012-13	Q2	26Q	22-Nov-12
329	Payyavoor Branch	CHNN00376F	2012-13	Q3	26Q	13-Feb-13
330	Thayyil Branch	CHNN00367D	2012-13	Q2	27Q	2-Jan-13
331	Thayyil Branch	CHNN00367D	2012-13	Q3	26Q	26-Feb-13