

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

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

ITA No. 486/Coch/2022 : Asst. Year 2013-14

ITA No. 486/Coch/2022	Ambalavayal Branch	2013-2014	Q2
ITA No. 487/Coch/2022	Ambalavayal Branch	20103-2014	Q2
ITA No. 488/Coch/2022	Ambalavayal Branch	2013-2014	Q3
ITA No. 489/Coch/2022	Ambalavayal Branch	2013-2014	Q3
ITA No. 490/Coch/2022	Ambalavayal Branch	2013-2014	Q4
ITA No. 491/Coch/2022	Ambalavayal Branch	2013-2014	Q4
ITA No. 522/Coch/2022	Atholi Branch	2013-2014	Q4
ITA No. 523/Coch/2022	Atholi Branch	2013-2014	Q4
ITA No. 524/Coch/2022	Ayanchery Branch	2014-2015	Q2
ITA No. 525/Coch/2022	Ayanchery Branch	2014-2015	Q2
ITA No. 526/Coch/2022	Ayanchery Branch	20103-2014	Q3
ITA No. 527/Coch/2022	Ayanchery Branch	2013-2014	Q3
ITA No. 528/Coch/2022	Ayanchery Branch	2014-2015	Q4
ITA No. 529/Coch/2022	Ayanchery Branch	2013-2014	Q4
ITA No. 530/Coch/2022	Ayanchery Branch	2014-2015	Q1
ITA No. 531/Coch/2022	Ayanchery Branch	2013-2014	Q1
ITA No. 532/Coch/2022	Ayanchery Branch	2013-2014	Q2
ITA No. 533/Coch/2022	Ayanchery Branch	2013-2014	Q2
ITA No. 550/Coch/2022	Anamangad Branch	2013-2014	Q2
ITA No. 551/Coch/2022	Anamangad Branch	2013-2014	Q2
ITA No. 552/Coch/2022	Anamangad Branch	2013-2014	Q3
ITA No. 553/Coch/2022	Anamangad Branch	2013-2014	Q3
ITA No. 480/Coch/2022	Arikkulam Branch	2013-2014	Q2
ITA No. 481/Coch/2022	Arikkulam Branch	2013-2014	Q2
ITA No. 482/Coch/2022	Arikkulam Branch	2013-2014	Q3
ITA No. 483/Coch/2022	Arikkulam Branch	2013-2014	Q3
ITA No. 484/Coch/2022	Arikkulam Branch	2013-2014	Q4
ITA No. 485/Coch/2022	Arikkulam Branch	2013-2014	Q4
ITA No. 503/Coch/2022	Anakkampoyil Branch	2013-2014	Q2
ITA No. 504/Coch/2022	Anakkampoyil Branch	2015-2016	Q2
ITA No. 505/Coch/2022	Anakkampoyil Branch	2013-2014	Q3
ITA No. 506/Coch/2022	Anakkampoyil Branch	2013-2014	Q3
ITA No. 507/Coch/2022	Anakkampoyil Branch	2013-2014	Q4
ITA No. 508/Coch/2022	Anakkampoyil Branch	2013-2014	Q4
ITA No. 509/Coch/2022	Anakkampoyil Branch	2013-2014	Q2
ITA No. 545/Coch/2022	Areacode Branch	2013-2014	Q2
ITA No. 546/Coch/2022	Areacode Branch	2013-2014	Q2
ITA No. 547/Coch/2022	Areacode Branch	2013-2014	Q3
ITA No. 548/Coch/2022	Areacode Branch	2013-2014	Q3

ITA No. 513/Coch/2022	Ballussery Branch	20103-2014 Q2
ITA No. 514/Coch/2022	Ballussery Branch	20103-2014 Q2
ITA No. 515/Coch/2022	Ballussery Branch	2014-2015 Q3
ITA No. 516/Coch/2022	Ballussery Branch	2013-2014 Q3
ITA No. 517/Coch/2022	Ballussery Branch	2014-2015 Q4
ITA No. 518/Coch/2022	Ballussery Branch	2013-2014 Q4
ITA No. 519/Coch/2022	Ballussery Branch	2013-2014 Q1
ITA No. 520/Coch/2022	Ballussery Branch	2013-2014 Q1
ITA No. 493/Coch/2022	Achanambalam	2013-2014 Q3
ITA No. 494/Coch/2022	Achanambalam	2013-2014 Q4
ITA No. 495/Coch/2022	Achanambalam	2013-2014 Q4
ITA No. 475/Coch/2022	Alur Branch	2013-2014 Q4
ITA No. 535/Coch/2022	Ayiroor Branch	20103-2014 Q3
ITA No. 536/Coch/2022	Ayiroor Branch	2013-2014 Q3
ITA No. 537/Coch/2022	Ayiroor Branch	2013-2014 Q4
ITA No. 538/Coch/2022	Ayiroor Branch	2013-2014 Q4
ITA No. 540/Coch/2022	Attingal Branch	2013-2014 Q2
ITA No. 541/Coch/2022	Attingal Branch	2013-2014 Q2
ITA No. 542/Coch/2022	Attingal Branch	2013-2014 Q3
ITA No. 543/Coch/2022	Attingal Branch	2013-2014 Q3
ITA No. 496/Coch/2022	Balaramapuram Branch	2013-2014 Q2
ITA No. 497/Coch/2022	Balaramapuram Branch	2013-2014 Q2
ITA No. 498/Coch/2022	Balaramapuram Branch	2013-2014 Q3
ITA No. 499/Coch/2022	Balaramapuram Branch	2013-2014 Q3
ITA No. 500/Coch/2022	Balaramapuram Branch	2013-2014 Q4
ITA No. 501/Coch/2022	Balaramapuram Branch	2013-2014 Q4
ITA No. 511/Coch/2022	Adoor Branch	20103-2014 Q3
ITA No. 512/Coch/2022	Adoor Branch	2013-2014 Q3
ITA No. 479/Coch/2022	Aryanad Branch	2013-2014 Q3

M/s. Kerala Gramin Bank FM Wing, KGB Head Office AK Road, Malappuram 676505 PAN: AACAK 1498D	v.	The Income Tax Officer (TDS) Trivandrum/Kollam/Kottayam, Alappuzha/Kochi/Trissur, Kozhikode/Palakkad/Kannur
(Appellant)		(Respondent)

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 : 25.07.2022
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ORDER**Per Bench :**

These are group of 68 appeals at the instance of the assessee. The appeals are directed against separate orders of the CIT(A), all dated 16.12.2021. The relevant assessment years are 2013-2014 to 2015-2016. Common issues are raised in the appeals, hence, they 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 40 days). The orders of the CIT(A) are all dated 16.12.2021. 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 in the month of March and April 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) in principle, agreed that the matter is squarely covered in favour of the assessee. However, the CIT(A) rejected the plea of the assessee on the ground that since the appeal has filed u/s 154 of the I.T. Act, there must exist a mistake apparent from record. However, in the instant case there is no mistake apparent from record. Thus, the CIT(A) has not gone into the merits of the case.

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 18th 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 10th 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 It is to be mentioned that 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 392 ITR 457 (Ker.)* 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 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 in the case of *Rajesh Kourani v. Union of India reported in (2017) 83*

taxmann.com 137 (Gujarat). 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.

9.4 Before concluding, it is to be mentioned that the CIT(A) rejected the plea of the assessee on the ground that since there is no mistake apparent from record, the appeals filed by the assessee as against orders passed u/s 154 of the I.T.Act cannot be entertained and dismissed the appeals of the assessee, without going into the merits of the case. 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 of the assessee, *in limine*. It is ordered accordingly.

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

Order pronounced on this 25th day of July, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Kochi; Dated : 25th July, 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

Sr No	Name of Branch of Kerala Gramin Bank	TAN of Branch	FY	Qtr	Form Type	Actual Date of Filing of Original TDS Return
332	Ambalavayal Branch	CHNS02446D	2012-13	Q2	24Q	26-Nov-12
333	Ambalavayal Branch	CHNS02446D	2012-13	Q2	26Q	26-Nov-12
334	Ambalavayal Branch	CHNS02446D	2012-13	Q3	24Q	19-Feb-13
335	Ambalavayal Branch	CHNS02446D	2012-13	Q3	26Q	19-Feb-13
336	Ambalavayal Branch	CHNS02446D	2012-13	Q4	24Q	18-Jul-13
337	Ambalavayal Branch	CHNS02446D	2012-13	Q4	26Q	18-Jul-13
338	Atholi Branch	CHNS00117F	2012-13	Q4	24Q	3-Jun-13
339	Atholi Branch	CHNS00117F	2012-13	Q4	26Q	3-Jun-13
340	Ayanchery Branch	CHNS02294F	2012-13	Q2	24Q	4-Jan-13
341	Ayanchery Branch	CHNS02294F	2012-13	Q2	26Q	4-Jan-13
342	Ayanchery Branch	CHNS02294F	2012-13	Q3	24Q	19-Mar-13
343	Ayanchery Branch	CHNS02294F	2012-13	Q3	26Q	19-Mar-13
344	Ayanchery Branch	CHNS02294F	2012-13	Q4	24Q	7-Jun-13
345	Ayanchery Branch	CHNS02294F	2012-13	Q4	26Q	7-Jun-13
346	Ayanchery Branch	CHNS02294F	2013-14	Q1	24Q	31-Jul-13
347	Ayanchery Branch	CHNS02294F	2013-14	Q1	26Q	31-Jul-13
348	Ayanchery Branch	CHNS02294F	2013-14	Q2	24Q	4-Nov-13
349	Ayanchery Branch	CHNS02294F	2013-14	Q2	26Q	4-Nov-13
350	Anamangad Branch	CHNS02380A	2012-13	Q2	24Q	27-Nov-12
351	Anamangad Branch	CHNS02380A	2012-13	Q2	26Q	27-Nov-12
352	Anamangad Branch	CHNS02380A	2012-13	Q3	24Q	31-Jan-13
353	Anamangad Branch	CHNS02380A	2012-13	Q3	26Q	31-Jan-13
354	Arikkulam Branch	CHNS02216E	2012-13	Q2	24Q	11-Mar-13
355	Arikkulam Branch	CHNS02216E	2012-13	Q2	26Q	11-Mar-13
356	Arikkulam Branch	CHNS02216E	2012-13	Q3	24Q	26-Apr-13
357	Arikkulam Branch	CHNS02216E	2012-13	Q3	26Q	26-Apr-13
358	Arikkulam Branch	CHNS02216E	2012-13	Q4	24Q	3-Jun-13
359	Arikkulam Branch	CHNS02216E	2012-13	Q4	26Q	3-Jun-13
360	Anakkampoyil Branch	CHNS02424C	2012-13	Q2	24Q	16-Apr-13
361	Anakkampoyil Branch	CHNS02424C	2012-13	Q2	26Q	16-Apr-13
362	Anakkampoyil Branch	CHNS02424C	2012-13	Q3	24Q	16-Apr-13
363	Anakkampoyil Branch	CHNS02424C	2012-13	Q3	26Q	16-Apr-13
364	Anakkampoyil Branch	CHNS02424C	2012-13	Q4	24Q	20-Jun-13
365	Anakkampoyil Branch	CHNS02424C	2012-13	Q4	26Q	20-Jun-13

366	Anakkampoyil Branch	CHNS02424C	2014-15	Q2	26Q	29-Nov-14
367	Areacode Branch	CHNS02566E	2012-13	Q2	24Q	11-Mar-13
368	Areacode Branch	CHNS02566E	2012-13	Q2	26Q	11-Mar-13
369	Areacode Branch	CHNS02566E	2012-13	Q3	24Q	16-May-13
370	Areacode Branch	CHNS02566E	2012-13	Q3	26Q	16-May-13
371	Balusserly Branch	CHNS02293E	2012-13	Q2	24Q	4-Jan-13
372	Balusserly Branch	CHNS02293E	2012-13	Q2	26Q	4-Jan-13
373	Balusserly Branch	CHNS02293E	2012-13	Q3	24Q	19-Feb-13
374	Balusserly Branch	CHNS02293E	2012-13	Q3	26Q	19-Feb-13
375	Balusserly Branch	CHNS02293E	2012-13	Q4	24Q	4-Jun-13
376	Balusserly Branch	CHNS02293E	2012-13	Q4	26Q	4-Jun-13
377	Balusserly Branch	CHNS02293E	2013-14	Q1	24Q	31-Jul-13
378	Balusserly Branch	CHNS02293E	2013-14	Q1	26Q	31-Jul-13
379	Achanambalam Branch	CHNS02621D	2012-13	Q3	26Q	1-Feb-13
380	Achanambalam Branch	CHNS02621D	2012-13	Q4	26Q	10-Jun-13
381	Achanambalam Branch	CHNS02621D	2012-13	Q4	27Q	10-Jun-13
382	Alur Branch	CHNS02708G	2012-13	Q4	24Q	10-Jun-13
383	Ayiroor Branch	TVDS01661C	2012-13	Q3	24Q	7-Feb-13
384	Ayiroor Branch	TVDS01661C	2012-13	Q3	26Q	7-Feb-13
385	Ayiroor Branch	TVDS01661C	2012-13	Q4	24Q	5-Jun-13
386	Ayiroor Branch	TVDS01661C	2012-13	Q4	26Q	5-Jun-13
387	Attingal Branch	TVDS03300D	2012-13	Q2	24Q	31-Oct-12
388	Attingal Branch	TVDS03300D	2012-13	Q2	26Q	31-Oct-12
389	Attingal Branch	TVDS03300D	2012-13	Q3	24Q	8-Feb-13
390	Attingal Branch	TVDS03300D	2012-13	Q3	26Q	8-Feb-13
391	Balaramapuram Branch	TVDS03435F	2012-13	Q2	24Q	3-Nov-12
392	Balaramapuram Branch	TVDS03435F	2012-13	Q2	26Q	3-Nov-12
393	Balaramapuram Branch	TVDS03435F	2012-13	Q3	24Q	7-Feb-13
394	Balaramapuram Branch	TVDS03435F	2012-13	Q3	26Q	7-Feb-13
395	Balaramapuram Branch	TVDS03435F	2012-13	Q4	24Q	12-Jun-13
396	Balaramapuram Branch	TVDS03435F	2012-13	Q4	26Q	12-Jun-13
397	Adoor Branch	TVDS04032A	2012-13	Q3	24Q	7-Feb-13
398	Adoor Branch	TVDS04032A	2012-13	Q3	26Q	7-Feb-13
399	Aryanadu Branch	TVDS04331F	2012-13	Q3	24Q	7-Feb-13