

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

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.589/Coch/2022 : Asst.Year 2014-2015 Q-1  
ITA No.590/Coch/2022 : Asst.Year 2014-2015 Q-2  
ITA No.591/Coch/2022 : Asst.Year 2014-2015 Q-3  
ITA No.592/Coch/2022 : Asst.Year 2014-2015 Q-4  
ITA No.593/Coch/2022 : Asst.Year 2015-2016 Q-1  
ITA No.594/Coch/2022 : Asst.Year 2015-2016 Q-2  
ITA No.595/Coch/2022 : Asst.Year 2015-2016 Q-3  
ITA No.596/Coch/2022 : Asst.Year 2015-2016 Q-4  
ITA No.597/Coch/2022 : Asst.Year 2016-2017 Q-1

M/s.Roshan Foods Private Limited 16/1738A Jetty Road, Edakochi Ernakulam – 682 010. <b>PAN : AABCR6222R</b>	v.	The Assistant/Deputy Commissioner of Income-tax Circle 2(1) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri. A Gopalakrishnan, CA  
Respondent by : Smt.J.M.Jammuna Devi, Sr.DR

<b>Date of Hearing : 04.08.2022</b>	<b>Date of Pronouncement : 10.08.2022</b>
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**ORDER**

**Per Bench :**

These appeals at the instance of the assessee are directed against different orders of the CIT(A), all dated 10-03.2022. The relevant assessment years are 2014-2015 to 2016-2017. Since identical issues are involved in these appeals, they were heard together and are being disposed of by this consolidated order.

2. 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.

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

For the assessment years under consideration the assessee has filed TDS returns in Form No.26Q, belatedly. The Assessing Officer levied fee and interest u/s 234E r.w.s. 200A of the I.T.Act for late filing of TDS returns in Form No.26Q. The details of the same are as follows:-

Sl. No.	Financial year	Period	Due date of filing the TDS return	Actual date of filing the return	No.of days delay in filing TDS return	Amount of fee levied u/s 234E
1.	2013-14	Q1	15.07.2013	06.12.2014	509	59,645
2.	2013-14	Q2	15.10.2013	06.12.2014	417	44,179
3.	2013-14	Q3	15.01.2014	06.12.2014	325	65,000
4.	2013-14	Q4	15.05.2014	12.12.2014	211	42,200
5.	2014-15	Q1	15.07.2014	17.12.2015	520	77,468
6.	2014-15	Q2	15.10.2014	17.12.2015	428	25,008
7.	2014-15	Q3	15.01.2015	17.12.2015	336	67,200
8.	2014-15	Q4	15.05.2015	17.12.2015	216	26,238
9.	2015-16	Q1	15.07.2015	16.03.2016	245	49,000
						4,55,938

4. 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 Gujarat High Court in the case of *Rajesh Kourani v. Union of India reported in (2017) 83 taxmann.com 137 (Gujarat)*.

5. 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 Karnataka High Court in the case of Fatheraj Singhvi & Ors. v. Union of India & Ors. (2016) 289 CTR 0602 (Kar.)
- (ii) The judgment of the Hon'ble Kerala High Court in the case of Jiji Varghese v. ITO (2022) 443 ITR 267.
- (iii) 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]
- (iv) 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.)
- (v) The judgment of the Hon'ble Kerala High Court in the case of Sanjeev Mathew & Co. v. ITO (TDS) (judgment dated 30.11.2021)
- (vi) 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)
- (vii) 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]
- (viii) 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)

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

7. We have heard rival submissions and perused the material on record. 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 to 2014-2015 cannot be sustained in order passed u/s 200A of the I.T.Act, prior to 01.06.2015.

8. 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 01.06.2015. 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 01.06.2015. 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 and hold that levy of fees u/s 234E of the I.T.Act for the period prior to 01.06.2015 is invalid / illegal. It is ordered accordingly.

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

Order pronounced on this 10<sup>th</sup> day of August, 2022.

**Sd/-**  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

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

Kochi; Dated : 10<sup>th</sup> August, 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