

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

**BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.795/Coch/2022
Assessment Year :2013-14

M/s.Poyanil Hospital, Poyanil, Kozhencherry. PAN :AACFM 7322 F	Vs.	ITO, TDS, Alappuzha.
ASSESSEE		RESPONDENT

Assessee by	:	Shri. M. S. Rajagopal, Advocate
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR.

Date of hearing	:	28.02.2023
Date of Pronouncement	:	08.03.2023

ORDER

Per Padmavathy S, Accountant Member

This appeal by the assessee is against the order passed by the CIT(A), NFAC, Delhi, dated 13.05.2022 for Assessment Year 2013-14.

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 assessee is a partnership firm. The assessee in the 3rd quarter for the Financial Year 2012-13 filed the e-TDS returns on

25.04.2013. The PCIT, CPC(TDS) passed intimation under section 154 r.w.s. 200A of the Income Tax Act, 1961 (hereinafter called 'the Act'), levying a late fee under section 234E of the Act amounting to Rs.20,000/- for the delay in filing Form 26Q for the 3rd quarter of the Financial Year 2012-13. Aggrieved by the levy of late fee under section 234E of the Act, the assessee preferred an appeal before the CIT(A) and confirmed the same.

4. Aggrieved, the assessee is in appeal before the Tribunal. There is a delay of 10 days in filing the appeal before the Tribunal. The assessee filed a condonation petition in this regard. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST. Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 10 days in filing the appeal and admit the appeal for adjudication

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 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)

6. 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 3rd quarter for financial years 2012-2013 cannot be sustained in order passed u/s 200A of the I.T.Act, prior to 01.06.2015.

7. 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).

8. 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.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(GEORGE GEORGE K)
Judicial Member

Sd/-

(PADMAVATHY S)
Accountant Member

Bangalore,

Dated: 08.03.2023.

/NS*/f:Desai S Murthy /

Copy to:

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| 1. Assessee | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore/Cochin.