

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

**Before Shri Chandra Poojari, Accountant Member
and
Shri Soundararajan K., Judicial Member
(Through virtual hearing)**

ITA Nos. 204 to 210/Coch/2023 (Assessment Years:2013-14& 2014-15)		
Elma Pharmaceuticals P. Ltd. Laloor Road, El Thuruth Thrissur 680611 PAN – AABCE6221B (Appellant)	vs.	The Income Tax Officer (TDS) Aayakar Bhavan Sakthan Thampuram Nagar Thrissur 680001 (Respondent)
Assessee by:	Smt. Preetha Shenoy, CA	
Revenue by:	Shri Ilaiyaraja K.S., Sr. DR	
Date of hearing:	01.07.2024	
Date of pronouncement:	05.07.2024	

ORDER

Per: Soundararajan K., J.M.

These appeals filed by the assessee challenges the separate orders of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 23.01.2023 in respect of Assessment Years (AY) 2013-14 &2014-15.

2. Since in all the appeals the assessee has raised identical issue, we proceed to dispose of these appeals by a common order taken the appeal for AY 2013-14 as the lead case. The findings for this assessment year will mutatis mutandis apply to other assessment years.

3. The brief facts of the case are that the assessee filed the TDS statement for the quarter ending 31.03.2013 on 13.06.2013. The CPC, Bangalore had levied fees u/s. 234E of the Income Tax Act, 1961 (the Act) but not served on the assessee. Thereafter the TDS officer issued the notice demanding the fees

and the assessee came to know about the fees and appeared before the TDS Officer on 27.02.2018 and explained that prior to 01.06.2015 there is no enabling provision u/s. 200A of the Act to levy the fees u/s. 234E of the Act. The TDS Officer not accepted the contention of the assessee but gave the copy of the order and granted time to file appeal before the CIT(A). The assessee filed appeal before the Id. CIT(A) and contended that there is no provision in the Act to levy late fee before 01.06.2015 and prayed to allow the appeal. The CIT(A) had alleged that the appeal was filed with a delay of 666 days and on that basis the CIT(A) has dismissed the appeal. Against the above said order of the CIT(A), the assessee preferred this appeal before the Tribunal.

4. At the time of hearing the Id. AR submitted that there is no delay in filing the appeal as alleged by the Id. CIT(A) and the same is against the facts of the case. The Id. AR further submitted that the assessee had not received the demand notice dated 27.09.2016 and the assessee came to know about the demand notice only when the jurisdictional TDS Officer served the notice on 24.05.2018 and thereafter the TDS officer served the copy of the order on 27.07.2018 and granted time upto 16.08.2018 for filing the appeal. The learned A.R. contended that, therefore, there is no delay in filing the appeal as alleged by the CIT(A) and the Id. CIT(A) without considering the facts had dismissed the appeal on the ground of limitation. The learned A.R. further stated that there is no evidence available with the Revenue to show that the demand notice dated 27.09.2016 was served on the assessee and also no such evidence was placed before the Id. CIT(A) and submitted that there is no delay in filing the appeal. The learned A.R. on merits, relied on the order of the ITAT Cochin Bench in the case of Agio Stocks and Shares Pvt. Ltd. in ITA Nos. 422 to 442/Coch/2022 dated 11.11.2022 and prayed to allow the appeal.

5. The learned D.R., on the other hand, relied on the orders of the lower authorities and prayed to dismiss the appeal of the assessee.

6. We have heard the rival contentions and perused the materials on record. First we will take up the delay issue. It is seen from the demand notice dated 24.05.2018 the ITO, TDS had made an endorsement as follows:-

“Time allowed upto 16.8.18 for filing compliance report after remitting the late payment interest and filing of appeal of late filing fee”

7. We also found that there is no evidence to show that the same was served on the assessee on the date of the order, i.e., on 27.09.2016 and no materials were also placed before us. The endorsement made by the ITO also supports the stand of the assessee. The contention raised by the assessee has not been doubted by the authorities and the Revenue has not placed any contra evidence. Therefore we are of the view that the order has been served on the assessee on 27.07.2018 and the appeal was filed on 22.08.2018 before the CIT(A), with in the period of limitation and, therefore, we set aside the order of the CIT(A) and held that the appeal filed before the CIT(A) was in time.

8. Now coming to the merits of the case, we have gone through section 200A of the Act and found that the amendment to Sec 200A was made on 01.06.2015 in which the new provision has been inserted, i.e.:

“(c) the fee, if any, shall be computed in accordance with the provisions of section 234E”.

In the present case the statements for various quarters in the assessment years 2013-14 and 2014-15 were filed on various dates and at that time there was no enabling provision u/s. 200A of the Act to charge late fee u/s. 234E of the Act.

9. We have also perused the order of the ITAT, Cochin Bench relied upon by the learned A.R. in support of her arguments, in the case of Agio Stocks and Shares Pvt. Ltd. (supra) which had considered similar issue and observed as under: -

“7. The assessee have filed belatedly TDS returns for various quarters. 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. 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. 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 01.06.2015. 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."

10. We are respectfully following the above order of the coordinate bench, allow all the appeals filed by the assessee. Since the facts are identical in all other cases the above findings will apply to all the other cases.

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

Order pronounced in the open Court on 05th July, 2024.

Sd/-
(Chandra Poojari)
Accountant Member

Sd/-
(Soundararajan K.)
Judicial Member

Bengaluru, Dated: 05th July, 2024
n.p.

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT, concerned*
4. *The DR, ITAT, Cochin*
5. *Guard File*

By Order

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Assistant Registrar
ITAT, Cochin