

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

Before Shri Sanjay Arora, AM & Shri Sandeep Gosain, JM

ITA No. 797/COCH/2022	Onchiyam Branch	2013-2014	Q2
ITA No.798/COCH/2022	Onchiyam Branch	2013-2014	Q2
ITA No.799/COCH/2022	Onchiyam Branch	2013-2014	Q3
ITA No.800/COCH/2022	Onchiyam Branch	2013-2014	Q3
ITA No. 801/COCH/2022	Onchiyam Branch	2013-2014	Q4
ITA No. 802/COCH/2022	Onchiyam Branch	2013-2014	Q4
ITA No. 803/COCH/2022	Omasseri Branch	2013-2014	Q2
ITA No. 804/COCH/2022	Omasseri Branch	2013-2014	Q2
ITA No. 805/COCH/2022	Omasseri Branch	2013-2014	Q4
ITA No. 806/COCH/2022	Omasseri Branch	2013-2014	Q4
ITA No. 807/COCH/2022	Ottapalam Branch	2013-2014	Q2
ITA No. 808/COCH/2022	Ottapalam Branch	2013-2014	Q2
ITA No. 809/COCH/2022	Ottapalam Branch	2013-2014	Q3
ITA No. 810/COCH/2022	Unnikulam Branch	2013-2014	Q2
ITA No. 811/COCH/2022	Unnikulam Branch	2013-2014	Q2
ITA No. 812/COCH/2022	Unnikulam Branch	2013-2014	Q3
ITA No. 813/COCH/2022	Unnikulam Branch	2013-2014	Q3
ITA No. 814/COCH/2022	Unnikulam Branch	2013-2014	Q4
ITA No. 815/COCH/2022	Unnikulam Branch	2013-2014	Q4
ITA No. 816/COCH/2022	Irumbuzhi Branch	2013-2014	Q2
ITA No. 817/COCH/2022	Irumbuzhi Branch	2013-2014	Q2
ITA No. 818/COCH/2022	Irumbuzhi Branch	2013-2014	Q3
ITA No. 819/COCH/2022	Irumbuzhi Branch	2013-2014	Q3
ITA No. 820/COCH/2022	Othukkungal Branch	2013-2014	Q3
ITA No. 821/COCH/2022	Othukkungal Branch	2013-2014	Q3
ITA No. 822/COCH/2022	Ulliyeri Branch	2013-2014	Q2
ITA No. 823/COCH/2022	Ulliyeri Branch	2013-2014	Q2
ITA No. 824/COCH/2022	Ulliyeri Branch	2013-2014	Q3
ITA No. 825/COCH/2022	Ulliyeri Branch	2013-2014	Q3
ITA No. 826/COCH/2022	Ulliyeri Branch	2013-2014	Q4
ITA No. 827/COCH/2022	Ulliyeri Branch	2013-2014	Q4
ITA No. 828/COCH/2022	Ulliyeri Branch	2013-2014	Q4
ITA No. 829/COCH/2022	Irulam Branch	2013-2014	Q2
ITA No. 830/COCH/2022	Irulam Branch	2013-2014	Q3
ITA No. 831/COCH/2022	Irulam Branch	2013-2014	Q4
ITA No. 832/COCH/2022	Irulam Branch	2013-2014	Q4
ITA No. 833/COCH/2022	Omallee Branch	2013-2014	Q3

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ITA No. 834/COCH/2022	Omalloor Branch	2014-2015	Q1
ITA No. 835/COCH/2022	Udiyankulangara Br.	2013-2014	Q3

Kerala Gramin Bank FM Wing, KGB Head Office AK Road, Malappuram 676505 [PAN: AACAK1498D]	v.	The Income Tax Officer (TDS), Kozhikode/Palakkad
(Appellant)		(Respondent)

Appellant by : Written Submissions (through S/Sh. Pratik Sadrani, Hardik Chordia, CAs)

Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing : 01.02.2023	Date of Pronouncement : 03.03.2023
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ORDER

Per Bench:

This is a set of 39 Appeals by the Assessee, a Regional Rural Bank (RRB), with branches spread across Kerala. The issue in these appeals is the applicability or otherwise of the levy of interest under section 234E of the Income Tax Act ('the Act' hereinafter) in respect of different Quarters of the financial year 2013-14 (and Qtr.1 of fy 2014-15), in view of the amendment to section 200A(1) of the Act by insertion of clause (c) thereto by Finance Act, 2015 w.e.f. 01.06.2015, enabling processing of levy of fees under section 234E(1) of the Act (brought on statute w.e.f. 01.07.2012), reading as under: -

Processing of statements of tax deducted at source.

200A. (1) Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, such statement shall be processed in the following manner, namely:-

(a)

(b)

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

(d)

(e)

Provided that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the statement is filed.

Explanation.— For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement—

(i) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

(2) For the purposes of processing of statements under sub-section (1), the Board may make a scheme for centralized processing of statements of tax deducted at source to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.”

The levy u/s. 234E(1) seeks to subject the delayed filing of a tax deduction at source (TDS) return, to be filed by every deductor quarterly, i.e., within prescribed time of the end of each quarter, as required by sec. 200(3), to a late filing fee, reckoned on a per day basis, albeit subject to a cap at the TDS under reference. The processing u/s. 200A(1) in all appeals in the instant case is after 01/6/2015, with the TDS returns themselves being furnished much thereafter.

2. The Hon’ble Kerala High Court has per the decision in *Sarala Memorial Hospital v. UoI* (in WP No.37775/2018, dated 18/12/2018/copy on record), referred to in the assessee’s written submissions, clarified in no uncertain terms that the said amendment to section 200A(1) of the Act is prospective in nature, so that the said power was not available to the assessing authority prior to 01.6.2015. We are conscious that section 200A is procedural in nature, so that amendment thereto would have effect from the date of amendment. Accordingly, processing u/s. 200A(1) could thus validly be made *qua* fee u/s. 234E w.e.f. 01/6/2015. It is

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trite law that there is no vested right in procedure (*CWT v. Sharvan Kumar Swarup & Sons* [1994] 210 ITR 886 (SC)), which would therefore apply to pending matters, i.e., outstanding as on the date of amendment, even if it relates to a period prior thereto. It is trite law that the statute is to be read as a whole and, further, in interpreting the (machinery) provision, the rule is that a construction which makes the machinery workable should be preferred (*Gursahai Saigal v. CIT* [1963] 48 ITR 1 (SC)). Legislative intention is the foundation of any interpretation (*CIT v. Baby Marine Exports* [2007] 290 ITR 323 (SC)). Why, the Board Circular 19 of 2015, dated 27/11/2015, relied upon by the Hon'ble Court, reproducing the relevant para (47.3) thereof, itself states of non-provision for determination of fee payable u/s. 234E *at the time of processing of TDS statements*. As such, the levy of fee u/s. 234E vide Intimation u/s. 200A(1) would be valid where the said processing is after 31/5/2015. This would be irrespective of the financial year to which it relates, which of course cannot extend to any period prior to 01/7/2012, i.e., the date with effect from which s. 234E stands inserted on the statute.

So, however, the Hon'ble jurisdictional High Court has further clarified that the said amendment, though prospective, would apply even to the Intimations issued under section 200A(1)(c) of the Act on or after 01.06.2015 where the same relate to any period prior to the said date, i.e., would not have a retroactive effect. Reference in this context be made to the decision in *Olari Little Flower Kuries (P.) Ltd. v. UoI* [2022] 440 ITR 26 (Ker) affirming the single bench decision in *Sarala Memorial Hospital* (supra). After reproducing paras 20 to 23 of the decision in *Fatheraj Singhvi* (infra), the last, as under, concluding it's findings, at para 6.1 of the Judgment, it expresses it's agreement therewith at para 6.2:

'23. In view of the aforesaid observation and discussion, since the impugned intimation given by the respondent-Department against all the appellants under section 200A are so far as they are for the period prior to 1.6.2015 can be said as without any authority under law. Hence, the same can be said as illegal and invalid.

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Paras 21 & 22 of the decision in *Fatheraj Singhvi* (infra) specifically hold that the amendment vide Finance Act, 2015, w.e.f. 01/6/2015 would not have a retroactive effect as it confers a substantive power on the AO and is not merely a regulatory mechanism, as held by the Hon'ble Gujarat High Court in *Rajesh Kourani* (infra). We also extract the afore-referred para 6.2, as follows, for ready reference:

'6.2 Firstly, we are convinced with the reasoning and basis for the view taken by the learned single judge in the judgment under appeal, and secondly, the view taken by the Karnataka High Court in the judgment referred to above is to the same effect. Keeping in view the grounds of challenge and the view taken by this court as well as the Karnataka High Court in the judgment referred to above, we are of the view that the appeal at the instance of second respondent is without merit and is liable to be dismissed. Accordingly dismissed.'

Further, again, at para 9.1 of the Judgment, with reference to WP(C) No. 23205/2017 in the case of *Orion Holiday Resorts Ltd.*, it holds as under:

'9.1 Stated briefly, the writ petitioner challenged the intimation received under section 200A from the respondent-Revenue calling upon the writ petitioner to pay late fee for delayed filing of quarterly statements of tax deducted at source. *The periods for which the notices are issued are stated as prior to June 1, 2015.* By following the judgment in W.P. (C) No. 37775 of 2018, as confirmed in W.A.No. 722 of 2019, the writ petition stands allowed and the intimations dealing with filing of belated statements prior to June 1, 2015 are set aside. *A return filed subsequent to June 1, 2015 is present*, the respondents are given liberty to issue notice, hear the writ petitioner, and pass orders in accordance with law.

The writ petition is allowed as indicated above.'

It thus stands sufficiently clarified by it that no late filing fee could be levied per a processing u/s. 200A(1) for any period prior to 01.6.2015. The TDS returns in the instant case are themselves filed after 01/6/2015; rather, being so only in view of the law, w.e.f 01/10/2014, enabling so by providing for filing of a correction statement. And, therefore, could be processed only subsequent to 31/5/2015, after which date the power of determining the levy u/s. 234E while processing the return is available. That would however not impact the ratio of the decision by the Hon'ble jurisdictional High Court, more so as the amendment w.e.f. 01/10/2014 is prior to that w.e.f. 01/6/2015, so that even though not specifically referred to by it,

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could only be regarded as considered by the Hon'ble Court. Yes, we do observe reference to a return filed after 01/6/2015 by the Hon'ble Court WP(C) No. 23205/2017 (para 9.1). The same could however be meaningfully only read as in respect of a return relating to a period subsequent to 01/6/2015.

3. We are also conscious that the appeals in the instant case arise not out of Intimations under section 200A(1) r/w s. 234E of the Act, but u/s. 154 of the Act, denying the assessee's claim for cancelling such levy. As also the fact that there is a conflict of judicial opinion in the matter, with contrary decisions as in *Fatheraj Singhvi v. UoI* [2016] 142 DTR 0281 (Kar) and *Rajesh Kourani v. UoI* [2017] 99 CCH 098 (Guj), so that the matter cannot be regarded as a mistake of law *per se*, justifying rectification u/s. 154 of the Act.

So, however, the Hon'ble Apex Court in *Asst. CIT v. Saurashtra Kutch Stock Exchange Ltd.* [2008] 305 ITR 277 (SC) clarified that a decision by the Hon'ble jurisdictional High Court shall be binding and lead to rectification where an order inconsistent therewith has been passed; rather, even where the same is prior to the binding decision by the Hon'ble High Court inasmuch as it would relate back to the period to which it pertains to. Though rendered in the context of rectification of a mistake u/s.254(2), i.e., in relation to orders u/s. 254(1) of the Act by the Appellate Tribunal, the same being a statement of law, would apply equally to rectification of a mistake u/s. 154, which is well-settled could be of fact or law or both. Reference in this context may also be made to the decision in *CIT v. Aruna Luthra* [2001] 252 ITR 76 (P&H)(FB). We are, therefore, not in agreement with the Id. CIT(A), who has distinguished the former decision as well as in *Laxmndas Bhatia Hingwala Pvt. Ltd. v. Asst. CIT* [2011] 330 ITR 243 (Del)(FB), cited before him by the assessee, as being in respect of the power u/s. 254(2) of the Act. His reliance for the purpose on the decision in the case of *CIT v. South Indian Bank Ltd.* [2001] 249 ITR 304 (SC) and *CIT v. Hero Cycles Ltd.* [1997] 228 ITR 463

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(SC), is misplaced. The same stand pursued to find as ousting debatable issues from the purview of s. 154. The decision by the Hon'ble jurisdictional High Court is binding within its territorial jurisdiction, settling the issue for that jurisdiction. Any order inconsistent therewith is thus to be necessarily regarded as mistaken. It would have been a different matter if only the decisions by the Hon'ble Karnataka and Gujarat High Courts were available. Rather, in such a case, the latter having considered the former, it is the latter that would prevail.

4. We, therefore, find the orders by the Revenue authorities as not sustainable in law, i.e., for the State of Kerala. We, accordingly, have no hesitation in allowing assessee's appeals inasmuch the processing is for a period prior to 01/6/2015.

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

*Order pronounced under Rule 34(4) of The Income Tax (Appellate Tribunal)
Rules, 1963*

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Kochi; dated March 03, 2023

Np/vr

Copy to:

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