

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE**

BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.1089/Bang/2023
Assessment year : 2014-15

Town Vividodesha Sahakari Bhandara Niyamitha, 1, Sira, Tumkuru – 572 130. PAN: AAAAT 9844N	Vs.	The Income Tax Officer, Ward 1 & TPS, Tumkur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep Chalapathy, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel

Date of hearing	:	16.01.2024
Date of Pronouncement	:	17.01.2024

ORDER

Per George George K., Vice President

This appeal is filed by the assessee against the order of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] dated 18.10.2023 for the assessment year 2014-15.

2. The solitary issue that is raised is whether the CIT(Appeals) is justified in confirming the order of the AO passed u/s. 154 of the Act denying deduction 80P of the Act amounting to Rs.27,16,210.

3. The brief facts of the case are that the assessee is a credit co-operative society engaged in the business of providing credit facilities to its members. For the AY 2014-15, return of income was filed on 6.3.2015 declaring a net income of Rs.3,700, after claiming deduction u/s.80P of the Act amounting to Rs.27,16,210. The case was selected for scrutiny and notices u/s. 143(2) & 142(1) were issued. After hearing the assessee, the AO passed an order u/s. 143(3) dated 14.12.2016 accepting the returned income. Subsequently the assessee was issued notice by the AO dated 22.7.2021 informing his intention to rectify the assessment order dated 14.12.2016. Since there was no reply to the notice issued, the AO passed an order u/s. 154 of the Act on 30.3.2022 denying the claim of deduction u/s. 80P.

4. Aggrieved by the order of the AO passed u/s. 154 of the Act, the assessee filed appeal before the first appellate authority. The CIT(Appeals) dismissed the appeal of the assessee and confirmed the view taken by the AO in his order passed u/s. 154 rejecting the claim of deduction u/s. 80P of the Act. The relevant finding of the CIT(Appeals) reads as follows:-

“Section 154(3) of the Act clearly specifies that an opportunity is to be granted to the assessee before enhancing an assessment or increasing the liability.

It is not understood how the appellant has denied any communication with him, when there has been a letter from the AO to the appellant dated 22.07.2021 bearing DIN and letter no. ITBA/COM/F/17/2021-22/103436999(1), informing the appellant of the intention of the AO to rectify the order dated 14.12.2016, and giving time till 30.07.2021 to furnish a reply to the same.

The appellant has chosen not only to reply to this letter, but also to mention in his grounds of appeal that no opportunity was given to him prior to rectification, to which I take a serious view, since this amounts to misleading the appellate authority.

Lastly the appellant says that that disallowance of 80P is a debatable issue, and not a mistake apparent from records.

The said letter dated 22.07.2021 informs the appellant of the intention of the AO to rectify the assessment order in view of the decision of the Hon'ble SC in the case of Citizen Co-operative Society Ltd. and in the case of Saurashtra Kutch Stock Exchange Ltd.

The appellant on the other hand has not gone into the merits of the case at all.

Relying on the decisions of the Hon'ble SC, I refuse to interfere with the order of the AO.”

5. Aggrieved by the order of the CIT(Appeals), the assessee has filed the present appeal before the Tribunal. The assessee has filed a paperbook comprising of 19 pages enclosing therein notice u/s. 154, assessment order u/s. 143(3), the case law relied on, written submissions filed before the CIT(A), etc. The ld. AR reiterated the submissions made before the CIT(A) and submitted that there is no mistake apparent on record warranting interference u/s. 154 of the Act. It is submitted that the issue involved is highly debatable and not amenable to rectification u/s. 154 of the Act. He relied on the judgment of the Hon'ble Apex Court in the case of *T.S. Balaram v. Volkart Brothers*, 82 ITR 50 (SC).

6. The ld. standing counsel supported the order passed u/s. 154 of the Act and the order of the CIT(Appeals). He relied on the judgment

of Hon'ble Apex Court in the case of *ACIT v. Saurashtra Kutch Stock Exchange Ltd. (2008) 305 ITR 227 (SC)*.

7. We have heard the rival submissions and perused the material on record. The case was selected for scrutiny to examine deduction claimed under Chapter VIA of the Act [referred to in para 2 of the assessment order u/s. 143(3) dated 14.12.2016]. The AO after examining the assessee's contention allowed deduction u/s. 80P of the Act amounting to Rs.27,16,210. Subsequently, notice u/s. 154 of the Act dated 22.7.2021 was issued to the assessee proposing to rectify the assessment order disallowing the deduction u/s 80P of the Act. The said notice u/s. 154 reads as follows:-

“On perusal of the assessment record for the A.Y. 2014-15 in your case, it is seen that deduction u/s 80P was wrongly granted in the order u/s 143(3) dated 14/12/2016.

As the mistake is apparent from record, it is proposed to rectify the same in view of the decision of Hon'ble SC in the case of Citizen Co-operative society Ltd and The decision of Hon'ble SC in the case of Sourashtra Kutch Stock Exchange Ltd 173 Taxman 322 (SC).

Your objection if any, may be furnished by 30/07/2021.”

8. Since there was no response to the same, 154 order was passed on 30.3.2022 denying benefit of deduction u/s. 80P of the Act. The rectification order dated 30.3.2022 reads as follows:-

“On perusal of the assessment record for the AY 2014-15, it is seen that deduction u/s 80P was wrongly granted in the order u/s 143(3) dated 14/12/2016. As the mistake is apparent from record, The same is rectified.”

From the above rectification order, it is seen that the AO has merely stated that the assessee has been wrongly granted deduction u/s. 80P of the Act and therefore the same has been rectified. The AO has not passed a speaking order stating that deduction u/s. 80P allowed is a mistake apparent from the record. The mistake apparent from the record is which *prima facie* it is visible to the naked eye that the claim is not allowable and without any verification of document. In the instant case, the AO has not brought out single material on record to show that the deduction granted in the assessment order completed is a mistake apparent from the record. The rectification order does not provide for any reason. The AO in the show cause notice had referred to the Hon'ble Apex Court judgment in the case of *Citizen Co-operative society Ltd. reported in 397 ITR 1 (SC)* where benefit of deduction u/s. 80P was denied since in the facts of that case assessee was dealing with non-members and had violated the principles of mutuality. The AO has also referred to the judgment of Hon'ble Supreme Court in the case of *Sourashtra Kutch Stock Exchange Ltd. [2008] 305 ITR 227 / 173 Taxman 322 (SC)* for the limited proposition that a rectification order can be passed on the basis of subsequent judgment. It is interesting to note that the AO has not referred to the subsequent judgment dated 12.1.2021 of the Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 431 ITR 1 (SC)* which was already available when he had issued show cause notice to the assessee. The Hon'ble Apex Court in *Mavilayi Service Co-operative Bank Ltd. (supra)* has clearly held that to the extent of

dealing with non-members, proportionate deduction for the same can be denied. As mentioned earlier, in the instant case the AO while issuing show cause notice for rectification had not mentioned that the assessee had violated the principles of mutuality by dealing with non-members. Therefore, the issue is highly debatable and by no stretch of imagination can be termed as a mistake apparent on the record. Only an obvious and patent mistake which can be established not by a long drawn process of reasoning alone can be subjected to rectification proceedings u/s. 154 of the Act. In this case, there is nothing on record to suggest that the assessee had violated the principles of mutuality and has been dealing with non-members. Therefore, we are of the view that the issue raised in this appeal is not a mistake apparent on record which is amenable to rectification u/s. 154 of the Act. In this context, we rely on the judgment of the Hon'ble Apex Court in the case of *T.S. Balaram v. Volkart Brothers*, 82 ITR 50 (SC). It is ordered accordingly.

9. In the result, the assessee's appeal is allowed.

Pronounced in the open court on this 17th day of January, 2024.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(GEORGE GEORGE K.)
VICE PRESIDENT

Bangalore,
Dated, the 17th January, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.