

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA Nos.253 & 254/Coch/2018
Assessment Years: 2012-13 & 2013-14

The Income Tax Officer, Ward-3, Thiruvalla.	Vs.	Ranni Service Co-operative Bank Ltd., No. 65, Ranni P.O., Pathnamthitta-689 672. [PAN:
(Revenue-Appellant)		(Assessee-Respondent)

C.O. Nos. 58 & 59/Coch/2018 (Arsg. out of ITA No. 58 & 59/coch/2018)
Assessment Years : 2012-13 & 2013-14

Ranni Service Co-operative Bank Ltd., No. 65, Ranni P.O., Pathnamthitta-689 672. [PAN:	Vs.	The Income Tax Officer, Ward-3, Thiruvalla.
(Assessee-Appellant)		(Revenue-Respondent)

Revenue by	Smt. A.S. Bindhu, DR
Assessee by	Shri Amaljith P.J., CA

Date of hearing	17/09/2018
Date of pronouncement	24/09/2018

ORDER

Per CHANDRA POOJARI, AM:

The appeals by the Revenue and the Cross Objections by the assessee are directed against the different orders of the CIT(A), Kottayam for the assessment years 2012-13 and 2013-14.

2. The first common ground is that the CIT(A) ought to have considered the fact that the CBDT Circular No. 37/2016 dated 02/11/2016 does not exactly refer to the question of claim of deduction u/s. 80P on enhanced profits. Rather the circular discussed about the admissibility of Chapter VIA on the profits enhanced by disallowance u/s. 32, 40(a)(ia), 43B etc. of I.T. Act.

3. The facts of the case as narrated in ITA No. 253/Coch/2018 are that assessment in this case was completed u/s. 143(3) of the Act on 05/02/2015 assessing the total income at Rs.26,23,810/-. It was noticed that the assessee's net profit as per profit and loss account amounted to Rs.24,29,027/- and this amount was arrived at after taking into account the following items.

Debits	Amounts	Credits	Amount
Reserve for overdue interest	20377410	Reserve for MMBF Arrear	964000
Reserve for GRD Installment overdue	12570325	Reserve for overdue interest	18533429
Reserve for overdue to items	407710	Reserve for AKCC Limits exceeds	804
Provision for terminal surrender	1276264	Reserve for GRD Instalment OD	7419000
Reserve for MMBF Arrear	1011750	Reserve for overdue to items	423587
Reserve for recoupment Fund	627363	Reserve for bad and doubtful loan	3691067
Reserve for bad and doubtful loan	2772411	Provision for terminal surrender	943570
Total	39053233	Total	31975457

Since debit items above are not allowable deductions and credit items were not taxable income as per Income-tax Act, the Assessing Officer did not consider these items while computing the total income. However, during the assessment proceedings,, no adjustments on account of the above were made to the net profit for arriving correct total income, which resulted in short assessment of income to the tune of Rs.70,77,776 i.e (3,90,53,233 - 3,19,75,457). Therefore, amount of Rs.70,77,776/- was assessed to tax. Hence, a notice under section 154 of the Act proposing to assess the same was issued to the assessee on 25.04.2017.

3.1 In response to the above notice, the assessee submitted that the CIT, Kottayam had issued notice proposing to revise the assessment u/s. 263 for the relevant assessment year which included the mistake proposed to be rectified. It

was submitted that the Authorised Representative had appeared before the CIT, Kottayam and the order is yet to be communicated. It was also submitted that the proposed disallowance of any sum referred in the notice may result in enhancement of profit which is deductible u/s 80P of the Act and therefore, will not affect the taxable income. The assessee relied on Circular No.37/2016 dated 02.11.2016 of CBDT and submitted that the disallowance or any other additions made to the declared profit will also be eligible for deduction u/s 80P. Hence, it was submitted that if the reserves are added back to the total income it does not have any impact as the increased amount is eligible for deduction.

3.2 Further, it was submitted that the mistake proposed to be rectified is not covered u/s. 154 which is evident from the notice issued for revision of assessment u/s. 263 by the CIT, Kottayam. Hence it was submitted that the proposal u/s 154 may be dropped.

3.3 Since the mistake was apparent from record, the Assessing Officer rejected the assessee's explanation in the matter. According to the Assessing Officer, the CIT has not passed any order u/s 263 of the I.T. Act so far. Accordingly, he recomputed the deduction u/s. 80P of the I.T. Act.

4. On appeal, the CIT(A) held that the CIT(A), Kottayam vide order dated 31/01/2018 for the assessment year 2012-13 and 28/02/2018 for the

assessment year 2013-14 allowed deduction u/s. 80P by holding that the assessee is entitled for deduction u/s. 80P of the I.T. Act. Consequently, the addition made u/s. 154 of the Act is also liable for deduction u/s. 80P of the Act. Accordingly, the CIT(A) directed the Assessing Officer to allow deduction u/s. 80P of the Act on the total income determined u/s. 154 of the Act.

5. Against this, the Revenue is in appeal before us. The Ld. AR has filed Cross Objections stating that debatable issue cannot be taken up under the provisions of section 154 of the Act.

6. We have heard the rival submissions and perused the record. The assessee had enhanced the profit by transferring the provisions to the P&L account during the relevant assessment year. Thereafter, the assessee transferred various reserves from the P&L account to the balance sheet. The assessee instead of claiming deduction u/s. 80P of the Act on the profit earned during the relevant assessment year, claimed the same after transfer and re-transfer of various reserves from the P&L account to the balance sheet. The assessee was entitled to deduction u/s. 80P only on the eligible income of the assessee in the assessment year under consideration and not after the net result of transfer or retransfer of various reserves from the P&L account to the balance sheet. The method followed by the assessee to claim deduction u/s. 80P is having no legal sanction under the Act. The mistake apparent from record is merely not clerical

or arithmetical mistake, of course, clerical or arithmetical mistake would be one apparent from record and as such, would be liable to be rectified in exercise of power conferred by section 154 of the Act. However, clerical or arithmetical mistake is not the only category of mistake which is liable to be rectified under this section. Mistakes other than clerical or arithmetical mistakes are also liable to be rectified under this section, provided they come under the category of mistake apparent from record. A mistake which could be rectified in exercise of power u/s. 154 could be a mistake either of law or of fact. If all the facts were on record and no further enquiry was necessary, and if on those facts, it was clear that the Assessing Officer had made an error of law, that error could be rectified. A error of law may consist of deciding a particular point contrary to the clear provisions of statute; it may equally be due to ignorance or overlooking the clear provisions of the statute. In the present case, the incorrect computation of allowable deduction u/s. 80P of the Act can be corrected by exercising power u/s. 154 of the Act. It was obligatory on the part of the Assessing Officer to consider the current year's eligible business income of the assessee for the purpose of computing deduction u/s. 80P of the Act. In other words, the assessee is entitled for deduction u/s. 80P only on the eligible current year's business income of the assessee. The assessee cannot increase or decrease the current year's income by artificially transferring earlier reserves in the balance sheet to the P&L account so as to increase the business income of the assessee which is having no legal sanction for application of any provisions of

the I.T. Act. Hence, the Assessing Officer is justified in recomputing the correct eligible business income of the assessee for the purpose of granting deduction u/s. 80P of the I.T. Act. The CIT(A) is not justified in holding that the earlier CIT(A), Kottayam had approved granting of deduction u/s. 80P of the Act and therefore, he was following the order of the CIT(A), Kottayam. In our opinion, the orders dated 31/01/2018 for the assessment year 2012-13 and 28/02/2018 for the assessment year 2013-14 is only with regard to granting of deduction u/s. 80P in principle to the assessee and the quantum or commutation of deduction u/s. 80P of the Act was not at all an issue before him. Being so, the CIT(A) is not justified in holding that the provisions of section 154 is bad in law. However, we direct the Assessing Officer to ascertain the correct business income eligible for deduction u/s. 80P of the Act after giving an opportunity of hearing to the assessee. Accordingly, this ground of appeal of the Revenue is partly allowed for statistical purposes for both the assessment years.

7. Coming to the Cross Objections in C.O. Nos.58 & 59/Coch/2018, since we have confirmed that the rectification made by the Assessing Officer vide his order u/s. 154 as it is not a debatable issue for both the assessment years, the Assessing Officer is justified in invoking the provisions of section 154 on the disputed issue. Accordingly, the Cross Objections filed by the assessee are dismissed.

8. In the result, the appeals filed by the Revenue are partly allowed for statistical purposes and Cross Objections filed by the assessee are dismissed.

Order pronounced in the open Court on this 24th September, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 24th September, 2018

GJ

Copy to:

1. Ranni Service Co-operative Bank Ltd., No. 65, Ranni P.O., Pathnamthitta-689 672.
2. The Income Tax Officer, Ward-3, Thiruvalla.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin