

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

ITA Nos. 230& 463/Coch/2018
Assessment Year: 2014-15

The Income Tax Officer, Ward-3, Thiruvalla.	<b>Vs.</b>	Ranni Service Co-operative Bank Ltd., No. 65, Ranni P.O., Pathnamthitta-689 672. [PAN: AAAJR 0250R]
<b>(Revenue-Appellant)</b>		<b>(Assessee-Respondent)</b>

<b>Revenue by</b>	Smt. A.S. Bindhu, DR
<b>Assessee by</b>	Shri Amaljith P.J., CA

<b>Date of hearing</b>	10/12/2018
<b>Date of pronouncement</b>	13/12/2018

## **ORDER**

Per CHANDRA POOJARI, AM:

The appeals by the Revenue are directed against the different orders of the CIT(A), Kottayam for the assessment year 2014-15.

2. With reference to Revenue's appeal in ITA No. 463/Coch/2018, at the time of hearing, the Ld. DR filed a letter dated 11/10/2018 stating that since the tax effect involved in the present appeal was less than Rs. 20 lakhs, which is below the monetary limits prescribed for filing second appeal before ITAT and also, the conditions laid down as per para 10 of CBDT Circular No. 3/2018 were not

attracted in this case, it was requested that the appeal filed in the case of the above assessee may be treated as withdrawn.

3. In view of the above submission, we are inclined to dismiss the appeal of the Revenue in ITA No. 463/Coch/2018 as withdrawn.

4. In the Revenue's appeal in 230/Coch/2018, the Department has challenged the granting of deduction u/s. 80P(2)(a)(i) of the Act.

5. The facts of the case are that the assessee is a Co-operative Society engaged in banking business and filed its return of income for A.Y. 2014-15 on 13.06.2015. The gross total income for the year was shown at Rs. 4,38,740/- after claiming Rs. 34,01,154/- as deduction under section 80P of the I.T. Act. The assessing officer passed an order u/s 143(3) of the Act on 29.12.2016 and assessed the interest income received by the assessee from other Banks and Treasury under the head "Income from Other Sources" on the ground that deduction under section 80(P)(2)(d) was available only on the interest income received from any other co-operative society.

5.1 Subsequently, the Assessing Officer passed an order u/s. 154 of the Act on 18/07/2017 on the ground that certain items shown as Reserves were incorrectly taxed as well as allowed as expenditure and determined the total income at

Rs.2,77,30,210/-. Further, the Assessing Officer did not allow deduction u/s. 80P of the Act on this total income.

6. Before the CIT(A), the assessee submitted that any addition to the total income by way of disallowance was also eligible for deduction u/s. 80P of the Act as per CBDT Circular No.37/2016 dated 02/11/2016. It was also contested that the proposed rectification was not covered u/s. 154 of the Act. The CIT(A) noticed that for the assessment year 2014-15, the CIT(A), Kottayam vide order dated 22/03/2018 had held that interest income is eligible for deduction u/s. 80P of the Act. Therefore, the CIT(A) held that the assessee was eligible for deduction u/s. 80P of the Act on income from business including interest income earned by it. Consequently, it was held that the addition made u/s. 154 of the Act was also eligible 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 at Rs.2,77,30,210/- u/s. 154 of the Act.

7. Against this, the Revenue is in appeal before us.

8. After hearing both the parties, we find that a similar issue came up for consideration before this Tribunal in ITA Nos. 253 & 254/Coch/2018 for the assessment years 2012-13 and 2013-14 wherein vide order dated 24/09/2018 it was held as under:

"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."*

8.1 In view of the above order of the Tribunal, we are inclined to direct the Assessing Officer to ascertain the business income of the assessee for this assessment year and allow deduction u/s. 80P(2)(a)(i) of the Act as in AYs 2012-13 and 2013-14. Accordingly, the appeal of the Revenue in ITA No. 463/Coch/2018 is partly allowed for statistical purposes.

9. In the result, the appeals of the Revenue are partly allowed for statistical purposes.

Order pronounced in the open Court on this 13<sup>th</sup> December, 2018.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 13<sup>th</sup> December, 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.

I.T.A. Nos. 230 & 463/Coch/2018

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