

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOTBENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.55/Rjt/2023
(Assessment Year: 2019-20)

Shri Saurashtra Kalakendra Co-op. Housing Society Ltd., Ground Water Works Compound, Street No. 8A, Opp. Nirmala Convent School, Rajkot-360007	Vs.	The ADIT (CPC), Bangalore
[PAN No.AAEAS7530E]		
(Appellant)	..	(Respondent)

Appellantby :	Shri D. M. Rindani, A.R.
Respondentby:	Shri B. D. Gupta, Sr. DR

Date of Hearing	25.05.2023
Date of Pronouncement	31.05.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the assessee against the order passed by the Ld. CIT(Appeals), National Faceless Appeal Centre (in short "NFAC"), Delhi in Order No. ITBA/NFAC/S/250/2022-23/1048449061(1) vide order dated 04.01.2022 passed for Assessment Year 2019-20.

2. The assessee has taken the following grounds of appeals:-

"1. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi erred in upholding the rejection by the CPC of

the application for rectification of intimation u/s 143(1) made by the Appellant.

2. The learned Commissioner (Appeals), National Faceless Appeal Centre, Delhi failed to appreciate that the denial of claim for deduction u/s 80P by CPC u/s 143(1)(a) of the Act, being a mistake, it ought to have been rectified u/s 154 of the Act.

3. The Appellant craves leave to add, amend, alter and withdraw any ground of appeal at any time up to the hearing of this appeal.”

3. The brief facts of the case are that the assessee is a Co-operative Society and it filed its return of income claiming deduction under Section 80P(2)(d) amounting to Rs. 10,62,590/-. The assessee's claim for deduction was disallowed by CPC under Section 143(1) of the Act. In response to the adjustment made by CPC u/s 143(1), the assessee filed three separate rectification applications, which were all rejected by the CPC. Accordingly, the assessee filed appeal against the order passed by CPC under Section 154 of the Act, denying the 80P(2)(d) deduction claimed by the assessee.

4. In appeal, Ld. CIT(A) dismissed the appeal of the assessee on the ground that denial of deduction under Section 80P(2)(d) of the Act does not amount to a mistake apparent from the record. The Ld. CIT(Appeals) made the following observations while dismissing the appeal of the assessee:-

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“5.2 The denial of deduction under section 80P(2) does not amount to a mistake apparent from record. The ITAT Mumbai Bench had recently considered almost similar issue and the issue before it is :INCOMETAX : Provisions of section 254(2) have narrow application and envisage rectification of mistakes which are apparent from record and there is power to rectify but not to review order. [2021] 128 taxmann.com 314 (Mumbai - Trib.) ,IN THE ITAT MUMBAI BENCH 'G' --Gateway Terminals India Pvt. Ltd. v. Deputy Commissioner of Income Tax, Panvel Circle, Thane, in MA NO. 283 (MUM) OF 2020 [ASSESSMENT YEAR 2012-13], DATED APRIL 27, 2021. The gist of the judgment is:

Section 254, read with section 80-IA, of the Income-tax Act, 1961 - Appellate Tribunal -Power of rectification (Recall of order) - Assessment year 2012-13 - Whether provisions of section 254(2) have narrow application and envisage rectification of mistakes which are apparent from record and there is power to rectify but not to review order - Held, yes -Assessee sought to recall order of Tribunal whereby claim of deduction under section 80-IA on interest on income-tax refund and interest earned by assessee on Fixed Deposits (FDs) held with bank had been denied - Assessee claimed that it was engaged only in one business of developing, operating and maintaining port terminals and intent to park funds in FDs was to secure funds so that assessee could fulfil its future obligations under agreement - Thus, income earned therefrom was directly linked and/or incidental to core business of assessee and therefore, it

claimed that interest income was eligible for deduction under section 80-IA and since, this critical fact was not considered, order deserved to be recalled -However, arguments of assessee if accepted, would amount to review of order which was impermissible - Whether therefore, order passed by Tribunal could not have been interfered with - Held, yes [Paras 6 and 7] [In favour of revenue]

5.3 *The point of difference between computation of book profit made by the CPC and that by the appellant were such, which involved debatable issues, and thus was outside the purview of Sec. 154 of the Act. Pertinently, Sec. 154 of the Act permits the Assessing Officer to amend an order only with a view to rectify a mistake apparent from the record. It is judicially well-settled that the power to rectify a mistake apparent from record in Sec. 154 of the Act does not involve a wholesale review of the earlier order and rather, what is permissible is only to rectify an obvious and patent mistake. It is also well understood that even debatable points of law would not fall in the meaning of the expression "mistake apparent" for the purposes of Sec. 154 of the Act.*

5.4. *In the case reported in [1987] 22 ITD 548 (Hyderabad)/[1987] 29 TTJ 605 (Hyderabad), in the case of Income-tax Officer v. N. Saikrishna, in IT APPEAL NOS. 655 TO 658 (HYD.) OF 1985 [ASSESSMENT YEAR 1980-81] .dated 4t June, 1987, the ITAT, Hyderabad Bench 'A', observed asunder:*

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"Further in the case of assessments under section 143(1), it is not permissible for the assesses to plead for rectification under section 154 on grounds of mistake apparent from record. In view of the decision of the Tribunal in Sixth ITO v. Pithva Engg. Works [1983]6 ITD 413(Bom.), the provisions of section 143(1) and other provisions relevant thereto in section 143 constitute a complete code in themselves being special provisions relating to assessments made under section 143(1). These special provisions cannot be ignored by resorting to the general provisions of section 154 for the reason that the rule that the special excludes the general' is well settled. For this reason also, the AAC should not have entertained the appeals in the case of the assessee whose assessment was completed under section 143(1)."

6. *Considering the facts and also the grounds raised in the appeal which was instituted against the order passed by the CPC under section 154 of the Act, it has to be held that this issue is not permissible to convert its character as a mistake apparent from record. The appeal filed by the appellant deserves to be dismissed.*

7. *In the result the appeal of the appellant is dismissed."*

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals) dismissing the appeal of the assessee. At the outset, the Counsel for the assessee submitted that in the instant facts, the income (dividend / interest income) with respect to which deduction under Section 80P was claimed was received by the assessee from

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another Co-operative Society and hence, denial of deduction under Section 80P was a clear cut violation of the relevant provisions of law. There is no basis/ reason in the instant set of facts to deny the assessee's claim for deduction u/s 80P of the Act and therefore Ld. CIT(A) erred in facts and in law in holding that denial of deduction u/s 80P by CPC does not amount to a mistake apparent from record. The **second contention** of the Counsel for the assessee was that there was a complete variation between the communication sent by CPC regarding the proposed adjustment under Section 143(1) dated 03.01.2020 (against which the assessee had filed reply dated 09.01.2020 objecting to the proposed adjustment), and the rejection order issued by CPC dated 12.02.2020. The Counsel for the assessee submitted that in the intimation under Section 143(1) dated 12.02.2020, the claim of deduction under Section 80P of the Act was denied for the first time, while in the communication sent by CPC dated 03.01.2020, there was no mention of proposed adjustment with respect to denial of assessee's claim of deduction u/s 80-P of the Act. The assessee filed rectification application dated 14.02.2020 against the intimation under Section 143(1) dated 12.02.2020, however, the CPC issued rejection order dated 14.07.2020 in which the CPC give an altogether new basis for denial of claim under Section 80P of the Act. The reasons cited for denial of claim of deduction were as below:

The other reason for non-allowance of deduction under Section 80P is, the same is not allowable for "status" other than "Co-operative Society". Further, the said deduction is allowable only

on the balance income from business available, after set off of the current year and brought forward losses.

The assessee again filed rectification application dated 23.07.2020, which was again rejected by the CPC for the same reasons as the earlier rejection order. Finally, the assessee filed third request to reprocesses the return, in response to which the CPC issued order under Section 154 of the Act denying 80P deduction. Therefore, the contention of the Counsel for the assessee before us is that while the initial communication from CPC for proposed adjustment had given one basis for making the proposed adjustment, to which the assessee had also filed its objections, however, the order which was passed under Section 143(1) of the Act by CPC, contained on an altogether different basis, in which the claim of deduction under Section 80P of the Act was denied to the assessee. Therefore, since there was a complete variation between the communication for proposed adjustment and the order passed by the CPC under Section 143(1)(a) of the Act, therefore such order passed by CPC was itself bad in law, since the assessee was never given an opportunity to rebut the same. The **third contention** for the Counsel of the assessee is that Ld. CIT(Appeals) has erred in facts in law in summarily rejecting the claim of the assessee without even discussing the facts of the assessee's case and by simply holding that denial of claim of deduction under Section 80P(2) does not amount to a mistake apparent from record and in further holding that the point of difference between computation of book profit made by CPC and by the assessee were such which involved debatable issues and thus, was outside the purview of section

154 of the Act. Accordingly, the Counsel for the assessee requested that looking into the instant facts, the order passed by Ld. CIT(Appeals) may be set-aside and claim of deduction under Section 80P may be allowed to the assessee.

7. In response, Ld. D.R. placed reliance on the observations made by Ld. CIT(Appeals) in the appellate order.

8. We have heard the rival contention and perused the material on record. We observe that while on one hand the Ld. CIT(Appeals) has dismissed the appeal of the assessee on the ground that the point of difference between computation of book profit made by CPC by denying the claim of deduction under Section 80P of the Act as such **involved debatable issues** and thus was outside the purview of Section 154 of the Act, but on the other hand he has upheld the denial of claim of deduction under Section 80P by way of adjustments under Section 143(1) of the Act, which, in our view, covers within its scope correction of arithmetical mistakes and adjustment of incorrect claim under Section 143(1) of the Act through Centralized Processing of Returns. Therefore, if the issue involved is debatable, then in our considered view, the same cannot be subject matter of arithmetical mistakes / adjustment of incorrect claim under Section 143(1) of the Act. Secondly, we observe that while the communication of proposed adjustment under Section 143(1) dated 03.01.2020 has given one basis for proposed adjustment, however, in the order / intimation issued by under Section 143(1) of the Act, deduction of claim under Section 80P of the Act was denied to the assessee i.e. claim

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of deduction under Section 80P of the Act was denied to the assessee for the first time without any prior communication of proposed adjustment in respect of denial of claim under Section 80P of the Act to the assessee. Therefore, we observe that the assessee was denied any opportunity to file its objections to the adjustments made in the order / intimation issued by CPC with respect to denial of claim of deduction u/s 80P of the Act. Thirdly, we observe that in the instant facts it has not been disputed by the Department that the interest / dividend income was received by the assessee from other Co-operative Societies. Further, on perusal of the return of income filed by the assessee also shows that the said deduction under Section 80P has been claimed by the assessee on the balance income after set off of current year and brought forward losses (Refer Page 49 of the Paper Book). Accordingly, there seems to be no justifiable basis for denying assessee's claim for deduction under Section 80P of the Act, in the instant set of facts.

Accordingly, looking into facts of the instant case, we are of the considered view that Ld. CIT(A) has erred in dismissing the appeal of the assessee, looking into facts of assessee's case. Accordingly, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	31/05/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad; Dated 31/05/2023
TANMAY, Sr. PS

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, राजकोट / ITAT, Rajkot