

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 2397 /KOL/ 2013
Assessment Year: 2010-2011**

***Singur Thana Large Sized Primary Agriculture
Co-Operative Marketing Society Limited,.....Appellant
C/o. V.N. Purohit & Co.,
Chartered Accountants,
Diamond Chambers, Unit-III, 4th Floor, Suit No. 4G,
4, Chowringhee Lane,
Kolkata-700 016
[PAN : AABAS 0029 B]***

-Vs.-

***Assistant Commissioner of Income Tax,.....Respondent
CPC, Bangalore,
P.B. No. 2, Electronic City,
Bangalore-560 100***

Appearances by:

*Shtri V.N. Purohit, FCA, for the assessee
Shri Ashok Kumar, JCIT, D.R., for the Department*

Date of concluding the hearing : April 29, 2016

Date of pronouncing the order : May 27, 2016

O R D E R

Per Shri P.M. Jagtap :-

This appeal is filed by the assessee against the order of Id. Commissioner of Income Tax (Appeals)-XXXVI, Kolkata dated 28.08.2013 for the assessment year 2010-11, whereby he upheld the order passed by the Assessing Officer under section 154 declining to rectify the intimation issued under section 143(1) on the issue of assessee's claim for deduction under section 80P.

2. The assessee in the present case is a Farmers' Cooperative Society registered and governed under the provisions of West Bengal Cooperative

Societies Act, 1983. Its objects are to provide number of facilities like loan to Member farmers, supply of agricultural equipments, seeds, fertilizers, etc. to farmers and other materials needed by them at reasonable rate. The return of income for the year under consideration was e-filed by it and while feeding the relevant details in the computer, a mistake was committed by the Office Staff/Tax Advisor of the assessee-Society in claiming the deduction under Chapter-VI-A at 'nil' instead of Rs.48,31,301/-. Consequently the figure of total income in the return filed on-line appeared at Rs.48,31,301/- instead of 'nil'. After noticing this mistake in the e-return filed on 29.03.2001, hard copy of the return of income was filed by the assessee in the Office of the Assessing Officer on 31.03.2011 claiming deduction under Chapter-VI-A and showing total income at 'nil'. The return filed by the assessee online, however, was processed by CPC, Bangalore and in the intimation issued under section 143(1) on 10.05.2011, total income of the assessee was shown at Rs.48,31,301/- as wrongly made in the return filed online and consequently a demand of Rs.18,11,841/- was raised. The assessee, therefore, filed a petition under section 154 for rectification of the intimation issued under section 143(1). The said petition, however, was dismissed by the Assessing Officer on the ground that there being no mistake committed while processing the return filed by the assessee online, the intimation issued under section 143(1) could not be rectified.

3. Against the order passed by the Assessing Officer under section 154 rejecting its application for rectification of the intimation under section 143(1), an appeal was preferred by the assessee before the Id. CIT(Appeals) and after considering the submissions made by the assessee and the material available on record, the Id. CIT(Appeals) upheld the order passed by the Assessing Officer under section 154 observing that there being no mistake committed while processing the return filed by the assessee electronically, there was no question of any rectification of the intimation issued under section 143(1). Aggrieved by the order of the

ld. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is not in dispute that the assessee being a Cooperative Society is entitled to deduction under section 80P in respect of its total income amounting to Rs.48,31,301/-. The dispute is whether the clerical mistake committed by the Office Staff of the Tax Advisor of the assessee in not claiming such deduction while filing the return online can be corrected by rectifying the intimation issued under section 143(1). In this regard, it is observed that a similar issue was involved in the case of Shrikant Real Estates (P) limited -vs.- ITO (ITA No. 4304/MUM/2012 dated 19.10.2012) before the Mumbai Bench of this Tribunal and the same was decided by the Tribunal in favour of the assessee for the following reasons given in paragraphs no. 7 & 8 of its order:-

"7. We have heard the rival submissions and perused the orders of the lower authorities and the copy of the revised e-return filed by the assessee. In the present system of e-filing of return which is totally depended upon the usage of software, It is possible that some clerical errors may occur at the time of entering the data in the electronic form. The return is prepared electronically which is converted into an XML file either through the free down loaded software provided by the CBDT or by the softwares available in the market. In either of the case, there is every possibility of entering incorrect data without having the expert knowledge of preparing an XML file. XML file so created is uploaded to the official Website i.e. www.incometaxindiaefiling.gov.in. Once the return is up loaded ITR- V, which is the acknowledgement of the return so filed, is generated by the system itself and if, the return is not signed digitally, then ITR- V so generated has to be signed and sent to Central Processing Centre, Bangluru within 120 days.

8. Keeping in mind this system of e-filing of the returns, coming back to the facts of the case. we find that the assessee has claimed Short Term Capital Gains and has shown it in the revised e-return but the same figure did not appear under the item where the short term capital gain is to be taxed at special rate u/s. IIIA of the Act i.e. internal page-19 of the return under Schedule CG - Capital gains under item No. 7. However, at the same time we find that under Schedule SI-income chargeable to income tax at special rates IB which is at internal P-24 of the return, the assessee has shown Short Term Capital Gains (iiia) special rate 10% income Rs.

2,65,853/- tax thereon Rs.26585/- which clearly establishes that the assessee has shown Short Term Capital Gains liable to be taxed at special rate of 10%. Accordingly, reversing the finding of the Ld. CIT(A), we direct the AO to allow credit of the Short Term Capital gains subject to special rate of tax as per provisions of Sec. III A of the Act and rectify the intimation u/s, 143(I) accordingly”.

5. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of M/s. Shrikant Real Estates (P.) Limited (supra), we respectfully follow the decision of the Coordinate Bench of this Tribunal rendered in the said case and direct the Assessing Officer to rectify the intimation issued under section 143(1) as sought by the assessee thereby allowing its claim for deduction under section 80P.

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

Order pronounced in the open Court on May 27, 2016.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 27th day of May, 2016

Copies to : (1) **Singur Thana Large Sized Primary Agriculture
Co-Operative Marketing Society Limited,
C/o. V.N. Purohit & Co.,
Chartered Accountants,
Diamond Chambers, Unit-III, 4th Floor, Suit No. 4G,
4, Chowringhee Lane,
Kolkata-700 016**

(2) **Assistant Commissioner of Income Tax,
CPC, Bangalore,
P.B. No. 2, Electronic City,
Bangalore-560 100**

(3) **Commissioner of Income Tax (Appeals)-XXXVI, Kolkata,**

(4) **Commissioner of Income Tax, Kolkata**

(5) **The Departmental Representative**

(6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.