IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "C" BENCH : BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

| ITA No.1189/Bang/2015 |
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| Assessment year : 2007-08 |

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| M/s. Arya Vysya Co-operative Society Ltd., Sainath Road, Arasikere,<br>**C/o. Balu & Anand,**<br>Chartered Accountants,<br>46/2, 4th Cross, Malleswaram,<br>Bangalore – 560 003.<br>**PAN: AABFA 9108N** | Vs. | The Deputy Commissioner of Income Tax,<br>Circle 1,<br>Hassan. |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri R.E. Balasubramanyam, CA |
| Respondent by | : | Shri Sunil Kumar Agarwala, Jt. CIT(DR) |

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| Date of hearing | : | 23.12.2015 |
| Date of Pronouncement | : | 14.01.2016 |

## O R D E R

This appeal by the assessee is directed against the order dated 08.11.2013 of the CIT(Appeals), Mysore relating to assessment year 2007-08.

2. The assessee is a co-operative society engaged in providing financial services like accepting deposits and lending money to its members.

3. There is a delay of about 578 days in filing the appeal by the assessee. The assessee has filed petition for condonation of delay in filing the appeals wherein it is stated that the return for AY 2007-08 filed by the assessee was processed u/s. 143(1). The assessee, however, inadvertently failed to claim deduction u/s. 80P in the return of income. Accordingly application u/s. 154 was filed before the AO claiming deduction u/s. 80P(2)(a)(i) of the Act which was rejected by the AO on the ground that the claim was not made in the original return.

4. The assessee further preferred an appeal before the CIT(Appeals) against the order of the AO rejecting the assessee's application u/s. 154. The CIT(A) relying on the decisions of *Kerala Co-operative Consumers' Federation Ltd. v. CIT, 170 ITR 455 (Ker)* and *Addl. CIT v. UP Co-operative Cane Union, 114 ITR 70,* held that providing credit facilities to the members was part of banking business. The CIT(A) was of the further view that the issue was highly debatable and cannot be a subject matter of rectification u/s. 154 and he therefore upheld the order of AO and dismissed the appeal of the assessee.

5. The order of the CIT(A) was received by the assessee on 08.11.2013 and an appeal before the ITAT ought to have been filed on or

before 6.1.2014. It is stated that the assessee is located in a rural area and does not have access to advice of professionals, the Board Members were at different places and were of the bonafide belief that there was no scope for further appeal. This fact has also been sworn to by Shri S.C. Navalgund, CA of the assessee, that he had advised the assessee that in view of the decision of the Hon'ble Supreme Court in the case of *Goetze India Ltd.* the claim of section 80P may not be maintainable at that stage and a second opinion in the matter may be obtained. It was only on basis of a second opinion that appeal ought to have been filed before the ITAT, that the assessee forthwith filed an appeal on 27.08.2015 which resulted in delay of 578 days. In the above circumstances, it is stated that the delay in filing the appeal before the ITAT was due to a *bonafide* belief and not deliberate. On the above facts, an affidavit sworn to by the Manager of the assessee society has also been filed along with the petition for condonation for delay. Placing reliance on the decisions of the Hon'ble Supreme Court in *Mst. Katiji & Ors.* reported in 167 ITR 471; Hon'ble jurisdictional High Court decision in *ISRO Satellite Centre in ITA No.532/208* and the decision of the Tribunal in *Savayava Krushi Parivara Krishinivasa in ITA No.1055(BNG)2013 dated 4.4.2014*, it is prayed that the delay may be condoned and appeal admitted for adjudication.

6. Heard both the parties and perused the material on record. This Tribunal dealt with an identical issue in the case of *Savayava Krushi Parivara Krishinivasa* in ITA No.1055(BNG)2013 dated 4.4.2014, wherein

the assessee was under a bonafide belief that appeal against denial of registration u/s. 12AA by the CIT has to be filed only after the Assessing Officer's order. Later on receipt of proper advice that appeal against the order of CIT ought to be filed before the ITAT, the assessee accordingly filed appeal before the ITAT which led to a delay of 980 days in filing the appeal. The Tribunal following the decisions of *Mst. Katiji & Ors. (supra)* and CIT v. ISRO Satellite Centre (supra) came to the conclusion that in the facts of the case there was no wilful delay on the part of the assessee and condoned the delay of 980 days in filing the appeal.

7. In the present case, the delay of 578 days has occasioned due to *bonafide belief* on the basis of the advice of first tax consultant that there was no scope for further appeal and on receipt of a second opinion that appeal was maintainable for the claim of deduction u/s. 80P, the appeal came to be filed by the assessee before the Tribunal. I am satisfied that the delay is due to a reasonable cause and therefore the delay of 578 days in filing the appeal before the Tribunal is condoned and the appeal is admitted for adjudication.

8. On merits, the ld. counsel for the assessee reiterated the submissions made before the CIT(Appeals) and submitted that the assessee society is rightly eligible for deduction u/s. 80P(2)(a)(i) of the Act and the same had been claimed under rectification application which was wrongly rejected by the AO. He relied on the decisions in the case of

*Devinder Prakash Kalra v. ACIT (2006) B(II)ITCL 106 Del Trib, ( 2005) 97 TTJ Del Trib 372* and *Ramco Cement Distribution Co. Pvt. Ltd. v. Dy. CTO (1974) 33 STC 180 (Madras)* wherein it was held that any beneficial legislation applicable to the assessee can be considered under section 154, though not done under the original return. He further contended that the CIT(A) had decided on the issue of eligibility u/s. 80P(2)(a)(i) based on case laws which are against the assessee, without considering those decisions in favour of the assessee. He stated that the CIT(A) erred in stating that it is a debatable issue and cannot be rectified u/s. 154.

9. The ld. DR, on the other hand, placed reliance on two decisions viz., *Pawan Kumar Aggrawal v. ACIT, 50 taxmann.com 489 (Delhi Trib.)* and Agra Bench of the Tribunal's decision in *Jhansi Development Authority v. DCIT in ITA No.73/Agra/2013*, order dated *24.05.2013* wherein it was held that the mistake, if any, was in the return of income filed by the assessee and section 154 cannot be utilized for rectifying the assessee's mistake in filling of the return.

10. *Per contra*, the ld. counsel for the assessee relied on the decision of the ITAT Pune Bench in the case of *ITO v. MSEB Employees Co-op. Credit Society Ltd.,* 50 taxmann.com 210 (Pune Trib.).

11. Heard both the parties and the perused the material on record. The ld. CIT(A) has merely stated that section 154 will not lie in the case of a debatable issue as there is no error apparent on record. The CIT(A) has

failed to consider the decisions of the jurisdictional Tribunal in a plethora of cases wherein deduction u/s. section 80P(2)(a)(i) of the Act has been claimed by the co-operative societies and deduction has been allowed following the judgment of the Hon'ble High Court of Karnataka in *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot*, *369 ITR 86 (Karn)*. Hence, the CIT(A) erred in not following the judicial discipline.

12. The Pune Bench of the Tribunal in *ITO v. MSEB Employees Co-op. Credit Society Ltd.,* 50 taxmann.com 210 (Pune Trib.) had considered similar issue. In that case, the assessee was a credit co-operative society, registered under the Maharashtra Co-operative Societies Act, 1960. The assessee filed its return of income without claiming deduction u/s. 80P(2)(a)(i). The return was processed and accepted. Subsequently, the assessee filed an application u/s. 154 claiming deduction u/s. 80P(2)(a)(i). The AO rejected the assessee's claim by order u/s. 154. On appeal, the CIT(A) on the point of rectification, observed that the tax base software had been recently developed and usage of the same required lot of expertise and any small clerical mistake in the data entry would result into incorrect filing of e-return. Further, the CIT(A) observed that as the software was recently developed, there were bound to be some technical errors in programming of the same and though the deduction was not allowed in the e-return filed resulting into tax demand, in the acknowledgment of e-return generated by the software resulted into NIL demand as the deduction had

been allowed. Accordingly, the CIT(Appeals) held that such mistakes are to be rectified u/s. 154 and even on merit, the assessee society was eligible for deduction u/s. 80P(2)(a)(i) of the Act.

13. On further appeal, the Tribunal held that he CIT(Appeals) was justified in holding that assessee is entitled for deduction u/s. 80P(2)(a)(i), though the same has not been claimed by the assessee in return of income. The Tribunal observed that it is settled law that correct income of the assessee is to be assessed as per provisions of the Act, in spite of higher income incorrectly declared by the assessee in the return of income. If an assessee, under a mistake, misconceptions or on being not properly instructed is over assessed, the concerned authority is obliged, required to assist such an assessee by ensuring that only legitimate taxes are determined as collectible.

14. Following the decision of the Pune Bench of the Tribunal in the case of *MSEB Employees Co-op. Credit Society Ltd. (supra)*, the order of the CIT(Appeals) is set aside and it is held that assessee's claim for deduction u/s. 80P(2)(a)(i) ought to have been considered by the lower authorities in the rectification proceedings u/s. 154, though such claim was omitted to be claimed in the original return of income.

15. On merits, I find that the assessee is a co-operative society engaged in collecting deposits and providing credit facilities to its members. The coordinate Bench of this Tribunal in the case of *ACIT, Circle 3(1),*

*Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010 dt. 8.4.2011*, held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. In coming to the aforesaid conclusion, the Tribunal also followed the decision of the Hon'ble jurisdictional High Court in *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot*, *369 ITR 86 (Karn)* and other decisions. Following the aforesaid decision of the Tribunal, it is held that the assessee society is eligible to deduction u/s. 80(P)(2)(a)(i) of the Act and allow the appeal of the assessee.

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

Pronounced in the open court on this 14th day of January, 2016.

Sd/-

(ASHA VIJAYARAGHAVAN )
Judicial Member

Bangalore,
Dated, the 14th January, 2016.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.