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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on : 06.04.2015

\+ **ITA 57/2002**

KRISHAK BHARATI COOP. LTD. ..... Appellant
Through : Ms. Surekha Raman, Advocate.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through : Sh. P. Roychaudhuri, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Following questions of law arise for consideration:

"1. Whether the Tribunal erred in holding that the Assessing Officer was justified in invoking Section 154 of the Income Tax Act, 1961 and rectifying his order dated 12th May 1995?

2. Whether while calculating the eligible business profits for the purposes of deduction under Section 80I of the Income Tax Act, 1961 the assessee is entitled to include a sum of Rs.91,32,404, the amount actually contributed in the assessment year 1992-93 to the Cooperative Education Fund under Section 61(1)(b) of the Multi State Cooperative Societies Act, 1984?

3. Whether the Tribunal was justified in holding that the contribution to the Cooperative Education Fund was not a cess falling within the purview of Section 43B of the Income Tax Act, 1961?"

2. The appellant is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) dated 29.08.2001. The ITAT allowed the Revenue's appeal against an order of the CIT(A).

3. The brief facts are that the assessee had *inter alia* claimed business expenditure under Section 43B of the Income Tax Act, 1961 (hereafter referred to as "the Act") to the tune of ₹91,32,404/-. The Assessing Officer (AO), by his original order dated 31.01.1995 disallowed the claim. At that stage, the assessee had *inter alia* urged that the relief was to be given under Section 80-I after the benefit of a deduction under Section 43B of the Act. The effect of the order was to bring to tax the said amount. The assessee preferred an appeal. The CIT(A), by the order dated 29.03.1995 observed that since the claim for eligible profits would go up in computation under Section 80-I, which directed 20% of the sum claimed, in effect, the deduction would further go up by ₹18,26,481/-. The assessee had claimed the benefit and relied upon the ruling of the Supreme Court in *CIT v. Canara Workshops (P) Ltd.* 1986 (161) ITR 320. In the light of these, CIT(A) was of the opinion that the AO had to verify the details mentioned by the assessee before the claims could be considered and the benefit of Section 80-I given. This remand led to the AO considering the submissions of the appellant, who had provided the necessary details under cover of letter dated 24.04.1995. The order of the AO under Section 250 granted the relief in terms claimed, i.e. to the tune of ₹18,26,481/-; revised forms were apparently issued to the assessee. Whilst so, on 22.05.1995 – after the effect was given on 12.05.1995, the AO issued a Show Cause Notice stating that the relief given on 12.05.1995 was on account of an inadvertent mistake.

4. The assessee contends that this notice was received much later - on 30.05.1995 - and that before it could be taken into consideration, the order withdrawing/rectifying the previous order dated 12.05.1995 was passed on 31.05.1995. The rectification order under Sections 154/250 reads as follows:

"***Order u/s.154/250***

The Ld. CIT(A) has passed an order u/s 250 of the IT Act on 29.03.1995 in the case of the assessee for the Assessment Year 1992-1993 in Appeal No.694/94-95.

Amongst other points, the Ld. CIT(A) has directed in his order to verify the claim of the assessee regarding deduction u/s 80-I on Rs.91,32,404/- which was paid to Cooperative Education Fund u/s 61 (1)(b) of the Multi State Cooperative Education Fund Act, 1984 after giving an opportunity of being heard and thereafter to allow the same on merit. However, at the time of giving effect to the above order of the Ld. CIT(A) on other points, claim was also allowed on this point inadvertently through oversight whereas the issue is still to be decided and for which a letter dated 03.05.1995 has already been served on the assessee on 12.05.1995 requesting them to attend and explain the point in question. The mistake being apparent on records is rectified u/s 154 of the Income Tax Act.

Income of the assessee is computed as under:

Income computed as per order u/s 250 dated 12.05.1995	*Rs.1,50,98,00,960/-*
ADD: Further deduction u/s 80I still to be decided but inadvertently deducted from income in order u/s 250 dated 12.05.1995, as discussed	*Rs.18,26,481/-*
Revised Taxable Income	*Rs.1,51,16,27,441/-*

	Or ***Rs.1,51,16,27,440/-***

Issue revised forms.

Sd/-
(VIRENDRA SINGH)
Deputy Commissioner of Income Tax
Special Range-12, New Delhi.

Copy to the assessee

Date: 31st of May 1995"

5. The assessee again approached the CIT(A) which, after recapitulating the facts, reversed the rectification order on the basis of the following reasoning:

> *"4. After hearing the arguments of the AR, I feel that firstly, the assessing officer has gone wrong in rectifying this order. It was correctly argued by the AR that it is not a mistake apparent from record and involved debatable point. Therefore, it cannot be rectified. Secondly, even on merits the assessing officer was not right in not allowing full claim of deduction u/s 80 I on the total income of this year and excluding an amount of Rs.91,32,404/-. It must be noted that cess on education has been allowed this year but it pertains to A.Y. 1990-1991 and cannot go in reducing the total income. In view of this position, the assessing officer was wrong in passing the rectification order u/s 154, this order is hereby quashed and the assessee is entitled to deduction u/s 80I of an amount of Rs.18,26,481/-."*

6. The revenue's appeal was accepted by the impugned order. The ITAT was of the opinion that the AO correctly rectified the order of 12.05.1995 on 31.05.1995 since on the merits, the payments to the Cooperative Education Funds were not in the form of "cess" and benefit of Section 43B could not be given.

7. Learned counsel for the assessee relies upon the decision of this Court in its own case for the same assessment year in respect of some other income. In that instance too, for A.Y. 1992-93, when the assessment for subsequent year 1993-94 was taken-up, the AO felt that the order for 1992-93 required rectification and proceeded to do so. On that occasion too, the relief with respect to Section 80-I was in question. The matter eventually travelled to this Court by way of revenue's appeal in *CIT v. Krishak Bharti Cooperative Ltd.* 2004 (266) 208 (Del). Learned counsel relied upon the said order to say that once an appeal effect is given, it is open to the authorities – be it AO or the CIT(A) to seek recourse to the rectification proceedings if the issue or question of law is debatable. Learned counsel for the revenue urged that this Court should not interfere with the order of the ITAT. He submitted that given the language of Section 43B, the assessee could not have claimed that the payment to the Cooperative Education Funds were in the nature of a statutory impost or cess falling within the purview of Section 43B. Consequently, the AO, in the rectification order and the ITAT correctly deduced that the relief was wrongly granted.

8. In *Krishak (supra)* where for the subsequent year 1993-94, the revenue was of the opinion that the benefit of Section 80-I would not be given, the power of rectification was sought to be utilized. This Court affirmed the findings of the ITAT which had then held that in view of the decision of the Supreme Court in *T.S. Balaram, ITO v. Volcart Brothers* 1971 (82) ITR 50 (SC), it is only obvious and patent mistake and which cannot be established by long process of reasoning that fall within the jurisdiction to rectify. This Court had observed as follows:

> *"The only issue which arose for consideration before the Tribunal was whether a part of the relief granted to the respondent/assessee under section 80-I of the Act could be withdrawn by taking recourse of section 154 of the Act. The Tribunal, by placing reliance on various decisions of the apex court and of this court has come to the conclusion, and rightly so, that since the question whether an assessee is entitled to deduction under section 80-I or not, is debatable, the relief granted under the section could not be said to be a mistake apparent from the record, within the meaning of section154 of the Act.*
>
> *While interpreting the scope of Section 154 of the Act, the Supreme Court in T.S. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50, held that a mistake apparent on the record within the meaning of Section 154 of the Act must be an "obvious" and "patent" mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record. In the light of the settled legal position, no fault can be found with the impugned order. The appeal is accordingly dismissed."*

9. In the present case too, the view canvassed by the revenue is untenable. The CIT(A) had relied upon the Supreme Court's ruling in *Canara (supra)* to hold that the relief was, in the circumstances of the case,

admissible. Given that this issue as to the admissibility of relief either before the benefit of Section 80-I could be granted or thereafter, was a matter which required debate and some process of reasoning, the decision in *T.S. Balaram, ITO (supra)* clearly held the field. In other words, the revenue could not legitimately contend that the view expressed by the CIT(A) given effect to by the AO in his initial order of 12.05.1995, was utterly implausible. Such being the case, the issue was debatable. Therefore, recourse to the power of rectification under Section 154 was unwarranted in the given facts of this case. The first question of law is answered in favour of the assessee. Consequently, the other questions do not arise for consideration. The appeal is therefore, allowed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

APRIL06, 2015
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