

IN THE INCOME TAX APPELLATE TRIBUNAL "H (SMC)"BENCH  
MUMBAI

BEFORE SMT RENU JAUHRI, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2711 & 2712/MUM/2024  
(A.Y.2021-22 & 2022-23)

Usha Sunder Premises Co-Operative Society Ltd 30-D, Ground Floor, Juhu Tara Road, Juhu SO, Mumbai – 400049.	Vs.	ITO, Ward – 34(3)(5) Kautilya Bhavan, Mumbai.
PAN/GIR No. AAAAU8143K		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Shri Rajeshkumar Gandhi, CA
Respondent by	Ms.Jancy Elizabeth Rani. Sr.DR

सुनवाई की तारीख/Date of Hearing	24.07.2024
घोषणा की तारीख/Date of Pronouncement	25.07.2024

**ORDER**

**PER RENU JAUHRI, AM:**

These two appeals are filed by the assessee against the separate orders of the Add. Commissioner of Income Tax (Appeals) – 1, Vadodara (in short "CIT(A)") passed u/s 143(1) of the Income Tax Act, 1961 (in short "the Act").

2. Since issues involved in these two appeals are identical, hence they are clubbed, and a consolidated order is passed. For the sake of convenience, ITA No.

2712/Mum/2024, A.Y 2020-21 is taken up as lead case.

The assessee has raised the following grounds of appeal.

1. *On the facts and in the circumstances of the case and in law, the order of the Ld. ADDL/JCIT(A)-1, erroneously dismissed the appeal on the ground of rejection of petition for the condonation of delay, without going into the merits of the case, despite there being sufficient causes with the assessee for not filing the appeal in time as per section 249(2) of the Income Tax Act, 1961, which obstructed its action to file the appeal within the time limit.*

2. *On the facts and in the circumstances of the case and in law, the order of the Ld. ADDL/JCIT(A)-1, erroneously rejected the petition for condonation of delay, attributing it to negligence or inaction rather than to the constraints faced by the assessee preventing the timely filing of the appeal within the 30-day limit.*

3 *On the facts and in the circumstances of the case and in law, the order of the Ld. ADDL/JCIT(A)-1, erroneously disallowed the condonation of delay, failing to recognize that the term "sufficient cause" for condonation of delay should be interpreted liberally to advance substantial justice.*

4. *On the facts and in the circumstances of the case and in law, the order of the Ld. ADDL/JCIT(A)-1, erroneously disallowed the condonation of delay, not appreciating that the term "sufficient cause" should be interpreted pragmatically in a justice-oriented approach rather than a technical detection of sufficient cause for explaining every day's delay, as illustrated in the case of Collector of Land Acquisition vs Mst. Kati Ji AIR 1987 SC 1353. A pedantic approach should be avoided while dealing with an explanation of the delay, applying the doctrine in a rational and pragmatic manner.*

5. *The learned ADDL/JCIT(A)-1 erred in observing that the Appellant has not mentioned specific ground for delay in filing the appeal nor furnished anything to prove that it had acted diligently and was not guilty of negligence, though the circumstances for delay was explained in detail.*

2. The brief facts are that the assessee is a cooperative housing society which filed its return declaring income of Rs. 3,240/- for the A.Y 2020-21 on 30.09.2020. The Centralized Processing Centre (in short "CPC") issued intimation u/s 143(1) of the Act, computing the income at Rs. 1,34,480/- on account of disallowance of deduction of the Act of Rs. 1,31,41,535/-, u/s 80P(2)(d). Aggrieved with the order, the assessee filed an appeal before the National Faceless Appeal Centre, Delhi. However, vide order dated 21.03.2024 the assessee's appeal was dismissed on account of delay of 685 days which was not condoned by the Ld. Addl.CIT(A).

3. Before us, the Ld. AR contended that the delay was on account of the fact that the assessee had no qualified staff / employees and the society affairs are being managed by honorary officer bearers. The office bearers of the society are mostly senior citizens. During and after Covid period, they could not cope up with the requirement to file appeal within time due to lack of knowledge and lack of proper professional advice. As such there was a reasonable cause for the delay in filing the appeal which should have been condoned by the Ld. Addl. CIT(A).

4. We have considered the rival submissions. It is seen that the assessment has been finalized u/s 143(1) by making disallowance u/s 80P(2)(d) of the Act, for which no opportunity appears to have been given to the assessee. It is clearly provided in the Section that before making any

adjustment an intimation has to be given to the assessee. Moreover, disallowance of claim of deduction u/s 80P(2)(d) of the Act is beyond the scope of adjustments allowed to be made u/s 143(1) of the Act. Accordingly, we hold that the order of the CPC u/s 143(1) was erroneous. Even otherwise, on merits, the assessee being cooperative housing society is entitled to claim deduction u/s 80P(2)(d) of the Act in respect of interest on investments, received from cooperative banks. Accordingly, we direct the AO to allow the deduction u/s 80P(2)(d) of the Act.

**ITA No. 2711/Mum/2024.A.Y 2021-22.**

5. As the facts and circumstances in this appeal are identical to ITA No 2712/Mum/2024, for the A.Y 2020-21 (except variance in figures), the decision rendered in above paragraphs would apply mutatis mutandis to this appeal also. Accordingly, we allow the appeal of the assessee and direct the AO to grant the claim of deduction u/s 80P(2)(d) of the Act.

6. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 25.07.2024.

Sd/-  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Sd/-  
**(RENU JAUHRI)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 25/07/2024

KRK

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,  
Mumbai