

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH MUMBAI,
'SMC' BENCH,
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI GIRISH AGARWAL, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No. 508/Mum/2025 (AY 2023-24)
(Physical hearing)

Raj Coop Housing Society, CTS Raj Palace 11 th Road, Khar West, Mumbai-400052 PAN : AAAAR 6493 H]	बनाम Vs	ITO, Ward 30(1)(5) Mumbai
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Sh Purram Tejwani, AR
राजस्व की ओर से /Revenue by	Sh. Nihar Ranjan Samal Sr DR
Date of filing appeal	24.01.2025
सुनवाई की तारीख/Date of hearing	17.03.2025
उद्घोषणा की तारीख/Date of pronouncement	17.03.2025

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of Id. CIT(A)/ NFAC (in short, the Id. CIT(A)) dated 25.11.2025 for the Assessment Year 2023-24. Though, the assessee has raised multiple grounds of appeal, however, the substantial grounds of appeal relate to deduction under section 80P of Income Tax Act (Act) of Rs. 4,44,233/-.
2. Rival submissions of both the parties have been heard and record perused. The learned Authorised Representative (Id. AR) of the assessee submits that the assessee is a cooperative society registered Gujarat Societies Act. The assessee filed its return of income for AY 2023-24 on 25.10.2023 declaring total income of Rs. 4,44,233/-. The assessee filed its revised return of income under section 139(4) and claimed deduction under section 80P, however, it was filed after the

deadline prescribed in the Act. The Central Processing Centre (CPC) processed the return of income vide intimation dated 02.02.2024 and not allowed deduction under section 80P. Aggrieved the action of CPC, the assessee filed appeal before CIT(A). The assessee in its statement of facts prayed for condonation of delay in filing revised return of income. The Id CIT(A) dismissed the appeal of assessee by holding that as per provision of section 80AC, for claiming such deduction, the assessee was required to file return of income within due date specified under section 139(1). The Id CIT(A) has not followed the decision of Rajkot Bench in Aliudepur Seva Sahakari Mandli Ltd Vs ADIT in ITA No. 269/Rjt/2022 dated 24.02.2023. The Id AR of the assessee submits that delay in filing revised return of income under section 139(4) is also allowed by Id. Principal Commissioner of Income Tax-20 (PCIT), Mumbai. The delay was condoned on the basis of report of Assessing Officer (AO). The Id CIT(A) has disregarded the order of Id PCIT, therefore, the order passed by Id CIT(A) may be quashed and appeal of assessee be allowed.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue submits that admittedly the revised return of income is filed belatedly and the assessee is not eligible for deduction under section 80P, if return of income is not filed within the time prescribed under the Act. Even, condonation of delay in filing revised return of income is not helpful to the assessee. The assessee is eligible for any deduction, if it is not in accordance with the provisions of the Act. The order of Id CIT(A) is in accordance with law. The appeal of the assessee is liable to be dismissed.

4. We have considered the rival submissions of both the parties and have gone through the order of lower authorities carefully. It is an admitted fact that in the original return of income the assessee has not claimed deduction under section 80P. Such claim was made in revised return of income. Revised return of income was filed beyond the time limit prescribed under section 139(4), resultantly, such claim was not allowed by CPC. The Id CIT(A) also confirmed the adjustment made by CPC by taking view that as per provision of section 80AC, for claiming such deduction, the assessee was required to file return of income within due date specified under section 139(1) which was 31.10.2023. We find that delay in filing revised return of income has now been allowed by Id PCIT vide his order dated 29.01.2025. Such delay is condoned on recommendation of AO, sent through Range head vide report date 24.12.2024. Admittedly, the Id CIT(A) was not having benefit of order of Id PCIT. Before us, the Id AR of the assessee neither has filed copy of revised return nor computation of total income or the bifurcation of such claim, under which clause or sub-clause such relief is claimed. The Id AR of the assessee still claimed that the order of Id CIT(A) be quashed.
5. We are conscious of the fact that the AO has no power to accept and entertain revised claimed in absence of revised return of income, as has been held by Hon'ble Supreme Court in Goetz (India) Limited Vs CIT (2008) 284 ITR 383-SC. In the present case the assessee failed to file revised return in time. We find that Hon'ble Jurisdictional High Court in CIT Vs. Prithivi Brokers & Share Holders (P) Ltd. 349 ITR 336/208 Taxman 498 (Bom) and Gujarat High Court in CIT Vs. Mitesh Impex (2014) 367 ITR 85 (Guj) held that Tribunal have jurisdiction to consider the additional claim and discretion to permit additional ground by way of

additional claims. Such claims need not to be those which became available on account of change of circumstances of law but which was even available when return was filed. Thus, considering the specific facts of the case and the facts that delay in filing revised return of income has already been condoned by Id PCIT, therefore, the revised claim of assessee under section 80P is admitted and grounds of appeal raised by the assessee is restored back to the file of Jurisdictional AO to consider the claim of assessee and pass order in accordance with law. Needless to direct that before passing the order afresh, the AO shall allow reasonable opportunity of hearing to the assessee. The assessee is also allowed liberty to file additional evidence in support of its claim. The assessee is also directed to provide all required details to the AO. In the result, the grounds of appeal raised by the assessee are allowed for statistical purpose.

6. In the result, this appeal of the assessee is allowed for statistical purpose.

Order announced in open Court on 17/03/2025.

Sd/-
(GIRISH AGARWAL)
Accountant Member

Mumbai / Dated: 17 /03/2025

Divya Nandgaonkar
(stenographer)

Sd/-
(PAWAN SINGH)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय आधिकरण, सूरत