

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)
& Shri Omkareshwar Chidara (AM)

ITA No. 1059/MUM/2025 (Assessment Year : 2020-21)

Harbour Heights A Cooperative Society Limited Ground Floor, N.A. Sawant Marg, Colaba, Mumbai 400 005.	Vs.	ITO Ward 17(3)(1) Mumbai
PAN : AAAJH0164N		
Appellant		Respondent

Assessee by	:	Shri Homiyar Madan
Revenue by	:	Shri Manoj Kumar Sinha
Date of Hearing	:	08/04/2025
Date of pronouncement	:	17/04/2025

ORDER

Per Omkareshwar Chidara (AM) :-

The appellant housing society took the following grounds of appeal against the denial of claim made under section 80P(2)(d) of the I.T. Act :-

1. The Commissioner of Income-tax (Appeals) - NFAC has erred in rejecting the appeal solely on the grounds that the appeal was filed late and there was not sufficient cause shown for condonation of delay.
2. The Commissioner of Income Tax (Appeals) - NFAC failed to take into account that the intimation u/s. 143(1)(a) was never communicated to the assessee and the first time the assessee came to know of the demand was when there was a communication of outstanding demand on June 23, 2023.
3. The Appellant submits that the Commissioner of Income Tax (Appeals) - NFAC failed to look at the facts of the case, the merits of its case and the law prevailing on the subject, and did not take into account the fact that deduction under section 80P(2)(d) was an allowable deduction to a cooperative society from its interest earned from a cooperative bank.
4. The Appellant submits that the Commissioner of Income Tax (Appeals)-NFAC failed to appreciate that the disallowance of the deduction under section 80P(2)(d) was beyond the scope of adjustments allowed to the CPC.

5. The Appellant submits that the Commissioner of Income Tax (Appeals)-NFAC failed to take into account the submissions of the appellant on merits and also failed to consider that in the assessee's own case the income tax department had accepted the position that deduction u/s. 80P(2)(d) was allowable to a cooperative society on account of interest earned from cooperative banks.
6. The Appellant submits that the Commissioner of Income Tax (Appeals)-NFAC failed to give an opportunity to present their case before him and without adequate opportunity to the appellant to explain himself either in writing or by way of personal hearing/video conferencing passed his order on the very next day of the submission.
7. The Appellant submits that it is entitled to the deduction under section 80P(2)(d) and the same cannot be disallowed and income brought to tax.
8. The appellant also submits that the claim and deduction u/s. 80P(2)(d) is a matter covered by various decisions of the Hon. ITAT.”

2. Before going into the merits of the case, it is observed that the appeal was filed before ITAT with a delay of 63 days. An application for condonation of delay was filed by the appellant society. The reason mentioned for filing the appeal with delay was that the Chartered Accountant missed out filing of appeal due to oversight. As the delay is not intentional and as they have a better case on merits, the Ld. AR of the appellant pleaded that the delay may be condoned and requested the Bench to consider their case based on the cases which were already decided. After hearing the matter on delay issue, the Bench decided to condone the delay and proceed the appeal on merits.

3. The only issue to be adjudicated in this case is whether the appellant is entitled to deduction under section 80P(2)(d) of the Act on the interest income earned from the deposits made in Cooperative Banks. During the appeal proceedings, the Ld. AR of the appellant filed a paper book and relied on the following cases-law to demonstrate that the appellant society is entitled for deduction claimed :-

- i) Solitaire Cooperative Housing Society Vs. PCIT (ITA No. 3155/Mum/2019 dated 29.11.2019)
- ii) M/s. Sea Green Cooperative Housing Society Ltd. Vs. ITO (ITA No. 1343/Mum/2017 dated 31.3.2017)

- iii) Marwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO (ITA No. 6139/Mum/2014 dated 27.09.2017)
- iv) Kaliandas Udyog Bhavan Remises Co-op. Society Ltd. Vs. ITO (ITA No. 6547/MUM/2017)
- v) Lady Ratan Tower Cooperative Housing Society v/s ITO (ITA No. 1152/MUM/2018 dated 09-08-2108)

4. The Ld. DR relied on the orders of Ld. AO and Ld. CIT(A) where the deduction was denied to the appellant.

5. After hearing both sides, it is decided that the appellant society is entitled for deduction under section 80P(2)(d) of the Act on the interest income received from the Cooperative Banks as decided in the plethora of decisions of the Coordinate Benches of the ITAT mentioned in para 3 relied on by the Ld. AR of the appellant. Following the judicial discipline, the case is decided in favour of the appellant and it is held that the appellant society is eligible for the claim made by it under section 80P(2)(d) of the Act.

6. The appellant of appellant is allowed.

Order pronounced in the open Court on 17/04/2025.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai; Dated: 17/04/2025

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai