

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No.1962/MUM/2025  
Assessment Year: 2012-13**

**&**

**ITA No.1963/MUM/2025  
Assessment Year: 2016-17**

<b>Stella Maris Co-operative Housing Society Ltd.</b> Sitaladevi Temple Road, Mahim west, Mumbai 400016  <b>PAN: AADAS1717Q</b>	Vs.	<b>Income Tax Officer, Ward 11(3)(6), Mumbai</b> Piramal Chambers, Lalbaug, Mumbai 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri. Ajay Wadke, CA  
 Revenue by : Smt. Smitha V. Nair (CIT DR)  
 Date of Hearing : 15.05.2025  
 Date of Pronouncement : 15.05.2025

**O R D E R**

**Per: Narender Kumar Choudhry, Judicial Member:**

These appeals have been preferred by the Assessee against the order even dated 30.06.2025, impugned herein, passed by the Commissioner of Income Tax, Appeal ADDL./JCIT (A) -7 Kolkata / u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

**2.** First this Court will decide ITA No.1962/MUM/2025.

In this case, the Assessee by filing its original return of income on dated 15.09.2012 declaring total income at "NIL", also claimed the deduction of Rs.99,533/- u/s.80P(2)(d) of the Act. The said original return of income was processed by the Ld.CPC vide intimation/order u/s. 143(1)

of the Act, dated 26.02.2013, whereby, the deduction claimed u/s. 80P(2)(d) of the Act, has been disallowed.

**3.** The Assessee therefore being aggrieved challenged, the said intimation/order of the Ld. CPC, by filing first appeal before the Ld. Commissioner (appeals), however, with a delay of 3699 days and therefore Ld. ADDL. Commissioner dismissed the appeal filed by the Assessee in limine and for want of limitation mainly considering the reason of in-ordinate delay, as un-verifiable and un-justifiable.

**4.** The Assessee being aggrieved challenged, the impugned order mainly on the reason that after receiving the intimation, it has filed rectification application u/s.154 of the Act, on dated 25.06.2013, somehow, the same remained to be adjudicated and/or the Assessee never received any order passed on the said rectification application. However, the demand was raised while processing the return of income for AY 2022-23 and adjusting the said amount of disallowance vide adjustment order dated 03.05.2023 and thereafter only, the Assessee came to know that its application filed u/s.154 of the Act, has not been disposed of so far, in its favour. Consequently, the Assessee filed its appeal on 17.05.2023 before the Ld. Commissioner.

**5.** The Assessee claimed that case of the Assessee is identical to the case dealt with by the Hon'ble Coordinate Bench of the Tribunal in that particular case Datta Sadan Co-operative Housing Society Limited Vs. ITO (ITA NO. 86/Mum/2025) decided on 24.02.2025, wherein also the Assessee instead of filling appropriate appeal has filed rectification application u/s. 154 of the Act, which resulted into in-ordinate delay of 3000 days and therefore the Tribunal by considering the peculiar facts and circumstances, as involved in the instant case and analysing various judgments passed by the Hon'ble Co-ordinate Bench ultimately, condoned the delay of 3000 days, by observing and holding as under:

"6. Heard both sides. It is an undisputed fact that there was huge delay of more than 3000 days but this delay is attributable to the bonafide belief of the appellant-society that the CPC would rectify the application under section 154 of the Act and they waited for a very long time. Secondly, from the affidavit filed by the appellant-society it is observed that the office bearers of the cooperative societies are working on an honorary capacity and are not conversant with the Income Tax Laws coupled with the fact that they do not have full time manager or accountant to look after the affairs of the society. Being a housing society, it works on contribution made by the members for common expenses and is not profit a making organisation. It was also mentioned in the affidavit that the present management committee of the society which is also not conversant with income tax laws, approached the Chartered Accountant Shri Ajay Wadke and took a decision to file the appeal. The Ld. AR of the appellant has filed a copy of two decisions of the Coordinate Bench mentioned above and it is observed that in similar and identical circumstances, delay in filing the appeal was condoned. In view of the same, the delay is condoned by this Bench also. Coming to the merits of the case, it is observed that the appellant-society claimed deduction under section 80P(2)(d) of the Act on the interest income derived by the appellant society from its investment held with the Cooperative Bank to the extent of Rs. 45,990/-. Ld. AR of the appellant filed written submission in which it was stated that Hon'ble ITAT Mumbai has examined this issue in a catena of cases and held that interest income earned by the Cooperative Society is eligible for deduction u/s. 80P(2)(d) of the Act. Some of the cases where the Coordinate Benches of Mumbai held that the deduction was allowed as follows:-

- (i) *M/s Solitaire CHS Ltd. Vs. Pr.CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT "G" Bench, Mumbai);*
- (ii) *M/s Petit Towers Co-op. Housing Society Ltd. Vs. Income Tax Officer, ITA No. 549/Mum/2021 dated 01.09.2021 (ITAT "C" Bench, Mumbai)*
- (iii) *Land's End Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.)*
- (iv) *M/s Sea Green Cooperative Housing and Society Ltd. Vs. ITO, Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017.*
- (v) *Merwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO, (ITA NO. 6139/Mum/2014, dated 27.09.2017.)*
- (vi) *Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, Mumbai (ITA No. 6547/Mum/2017).*
- (vii) *Palm Court M Premises Co-op Society Ltd. Vs Principal Commissioner of Income Tax, Mumbai (ITA No. 561/Mum/2021)*
- (viii) *Amore Commercial Premises Co-op Society Ltd Vs Central Processing Centre Bangalore Karnataka.*

**6.** Thus, considering the peculiar facts and circumstance totality, as the assessee instead of filing 1st appeal before the Ld. Commissioner, preferred application u/s 154 of the Act and kept waiting for disposal of such application, which resulted into inordinate delay thus, in view of the decision of the Hon'ble Co-ordinate Bench in the aforesaid case, this Court

is inclined to condone the delay in filling of 1st appeal before the Ld. Commissioner, however, subject to deposit of Rs. 11,000/- in the revenue department in the "other hands" within 15 days from today without claiming any deduction/disallowance on that particular amount. Thus, the delay is accordingly condoned.

**7.** As the issue qua deduction claimed u/s. 84P(2d) of the Act is covered by various judgments of the Hon'ble Courts including by the Co-ordinate Bench of the Tribunal in the case of Pathare Prabhu Co-operative Housing Society Ltd. vs. ITO (ITA No.1346 & 1347/M/2023 decided on 27.07.2023) (2023) 153 taxmann.com 714 (Mum. Trib.), wherein the Hon'ble Bench by considering the relevant provisions of the law and judgments concerning the issue, ultimately allowed identical deduction claimed u/s 80P(2)(d) of the Act, by observing and holding as under:

*"8. We have considered the submissions of both sides and perused the material available on record. The only dispute raised by the Assessee is against the disallowance of deduction under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The Assessee is a registered Co-operative Housing Society and during the assessment year 2018-19 earned interest income of Rs. 50,39,861 from the investments made in various Co-operative Banks.*

*9. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the Assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an Assessee being a Co-operative Society. Further, section 80P(2)(d) of the Act, reads as under:*

*"80P. Deduction in respect of income of co-operative societies.*

*(1) .....*

*(2) The sums referred to in sub-section (1) shall be the following, namely:-*

*(a) .....*

*(b) .....*

*(c) .....*

*(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;"*

10. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the Co-operative Society from the investments, and (ii) such investments should be with any other Co-operative Society. Further, the term "co-operative society" is defined under section 2(19) of the Act as under:

"(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;

11. In the present case, there is no dispute that the Assessee is a Co-operative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the Assessee, the same shall be allowed as a deduction. It is pertinent to note that since the Assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Cooperative Bank. Accordingly, the Assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The AO denied the deduction under section 80P(2)(d) of the Act on the basis that the Co-operative Bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon'ble Supreme Court in *Mavilayi Service Cooperative Bank Ltd. vs CIT, Calicut*, [2021] 431 ITR 1 (SC) while analyzing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Cooperative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the Assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act which is not the facts of the present case. Therefore, we find no merits in the aforesaid reasoning adopted by the AO and upheld by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the Assessee.

12. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the Assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. In *Kaliandas Udyog Bhavan Premises Coop Society Ltd vs ITO*, in ITA No. 6547/

*Mum./2017, vide order dated 25/04/2018, while dealing with the provisions of section 80P(2)(d) vis-à-vis section 80P(4) of the Act, the coordinate bench of the Tribunal observed as under:*

*“7. Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an Assessee cooperative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the Assessee. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the Assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of Sub-section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardize the claim of deduction of a cooperative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a cooperative society from its investments made with any other cooperative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term 'co-operative society' had been defined under Sec. 2(19) of the Act, as under:*

*'(19) "Co-operative society" means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;'*

*We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec. 80P(2)(d) of the Act."*

*13. We find that the learned CIT(A) has placed reliance upon the decision of the Hon'ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative*

*Sales Society, [2017] 395 ITR 611 (Karn.), wherein it was held that interest earned by the Assessee, a Co-operative Society, from surplus deposits kept with a Cooperative Bank, was not eligible for deduction under section 80P(2)(d) of the Act. We find that in an earlier decision the Hon'ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative Sales Society, (2017) 392 ITR 74 (Karn.) held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd., [1972] 88 ITR 192. In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the Assessee must be adopted".*

*14. Therefore, in view of the above, we uphold the plea of the Assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the Assessee in respect of interest income earned from investment with Cooperative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the Assessee are allowed."*

**8.** As the issue involved qua deduction claimed u/s 80P(2)(d) of the Act is squarely covered in favour of the Assessee, in view of aforesaid judgment and thus the claim lodged by the Assessee u/s. 80P(2)(d) of the Act is allowed.

**9. Resultantly** appeal i.e. ITA No.1962/MUM/2025 under consideration stands allowed.

**10.** Coming to **ITA No.1963/MUM/2025**, the assessee seeks liberty to withdraw this appeal, as it is ready to deposit the requisite tax amount. The Ld. DR raised no objection. Thus, the same is dismissed as withdrawn.

**11. In the result,** ITA No.1962/MUM/2025 stands allowed, whereas ITA No.1963/MUM/2025 stands dismissed as withdrawn.

**Order pronounced in the open court on 15.05.2025.**

**Sd/-**

**(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Divya R. Nandgaonkar,  
Stenographer

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.