

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 2304/MUM/2025 (AY: 2013-14)
ITA No. 2305/MUM/2025 (AY: 2015-16)
ITA No. 2306/MUM/2025 (AY: 2016-17)
(Physical hearing)

Mahim United Industrial Premises Co-op Society Limited Plot No 370, Mogal Lane, Mahim-W, Mumbai-400016. [PAN No. AAABM0440L]	Vs	ITO-21(2)(2), Mumbai Piramal Chambers, Lalbaug, Mumbai – 400012.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Stefan Moraes, CA
Revenue by	Sh. Surendra Mohan, Sr. DR
Date of institution of appeal	01.04.2025
Date of hearing	15.07.2025
Date of pronouncement	17.07.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These three appeals by same assessee are directed against the separate orders of Id. CIT(A) all dated 22.11.2021. Facts on all three years are similar, the assessee has raised similar grounds of appeal, thus, with the consent of parties all the appeals were clubbed, heard together and are decided by common order to avoid conflicting decisions. For appreciating of facts, the appeal for A.Y. 2013-14 in ITA No. No. 2304/Mum/2025 is treated as lead case. The assessee has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld. National Faceless Appeal Centre (NFAC) has erred in dismissing the appellant's appeal in limine without deciding it on merit.

2. On the facts and circumstances of the case and in law, the Learned NFAC ought to have deleted the disallowance of the deduction of Rs. 1,31,900/- under section 80P(2)(d) of the Income Tax Act, 1961 (Act) in

respect of interest received from deposits kept in co-operative banks, without appreciating that, the co-operatives banks are registered under the Co-operative Societies Act, 1912 with a license to undertake banking activities.

3. The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal."

2. Rival submissions of both the parties have been heard at length and record perused. The learned Authorised Representative (Id. AR) of the assessee straightway submits that the assessee claimed deduction under section 80P(2)(d) and such issue/ grounds of appeal raised in all the years are covered in favour of assessee by the series of decisions of Tribunal. The Id. AR of the assessee was appraised about the fact that there was a substantial delay in filing appeal before this Tribunal and was substantial delay in filing appeal before Id. CIT(A) in all three years. There was a delay of 1533 days, 1169 days in A.Y. 2015-16 and 813 days in A.Y. 2016-17 in filing appeal before Id. CIT(A). Further, in all three appeals there is delay of 1156 days in filing appeal before Tribunal. The Id. AR of the assessee was appraised of the fact that first he has to explain the facts that there was/ is reasonable cause for delay in filing appeal before Id. CIT(A) and again reasonable cause for condoning further delay of 1156 days in all three years in filing appeal before Tribunal and only on explaining the reasonable and sufficient cause, he will get liberty to argue merits of the case.
3. The Id. AR of the assessee submits that he has filed an application for condonation of delay in filing appeal before Tribunal. The assessee has also filed affidavit of Santosh Harichand Jagtap and Stefan Richard Moraes. It was argued that in all three years, return was processed under section 143(1)

and disallowing deduction under section 80P. In all three years, appeal was filed before Id. CIT(A) on 26.03.2019. All the appeals were dismissed on 22.11.2021 in not condoning the delay in filing appeal. The Id. AR of the assessee by reading the application of condonation of delay would submit that from A.Y. 2013-14 till 2018-19, the Society accounts and Income Tax filings were handled by S. Nagwekar & Co., Chartered Accountants. From F.Y. 2019-20 till now the accounts of return are handled by C.A. Jalpa Jain advised the society to file appeal against outstanding demand in March, 2019. After dismissal of appeal, the order was not communicated to Managing Director. In A.Y. 2024-25, Stefan Moraes, CA when appointed as an auditor of the society, on finding outstanding demand, he intimated the society for filing appeal before Tribunal. It was submitted that dismissal of appeal was not communicated to Managing Committee. The Id. AR of the assessee submits that delay is unintentional and for bona fide reasons. The assessee is not gaining anything by filing appeal belatedly. In support of his submission, the Id. AR of the assessee relied upon the decision of Hon'ble Apex Court in Collector, Land Acquisition vs. Katiji 167 ITR 471 (SC) and N. Balakrishnan Vs M. Krishnamurthy (1998) 7 SCC 123.

4. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue strongly opposed plea of Id. AR of the assessee in seeking the condonation of delay. The Id. Sr. DR for the revenue submits that the assessee is a co-operative society of entrepreneurs as suggested by its name itself. The CPC processed the return of income for A.Y. 2013-14 in December, 2014, for A.Y. 2014-15 in December, 2015 and for A.Y. 2016-17 in December,

2016. In all three years, the demands were generated immediately and demand notices were served immediately. The assessee filed first appeal before CIT(A) after gap of five years, four years and three years as the case may be. No reasonable cause was explained except on relying self-serving statement that their CA has not advised to file appeal. The assessee is regularly filing return of income year after years. Again, after dismissal of first appeal by Id. CIT(A), the assessee again filed appeal belatedly before Tribunal after a gap of 1156 days. No reasonable or plausible explanation is given. Affidavits filed by assessee do not show or discloses reasonable or acceptable cause. The Id. Sr. DR for the revenue submits that delay is not liable to be condoned either for filing appeal before Id. CIT(A) or again before Tribunal. Application for condonation of delay may be rejected and all the appeals may be dismissed.

5. I have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. I find that return of A.Y. 2013-14 was processed on 15.12.2014. Appeal against adjustment made by CPC was filed on 26.03.2019 that is after a delay of 1533 days. Perusal of contents of Form 35 reveals that assessee have mentioned date of service of order / notice of demand on 28.02.2019. However, no evidence to substantiate such facts is placed on record. It is practice of Income Tax Department that demand is created immediately on passing the assessment order or on process of return of income by CPC. Even otherwise, the demand is available on the portal of Income Tax Department. The Id. CIT(A) not condoned the delay by taking view that for a long delay that there is no explanation. The

reasons explained do not carry any factual basis for allowing condonation of delay.

6. I find that once the appeal of assessee was dismissed in November, 2021, the assessee again not filed appeal in time before Tribunal. All the appeals are filed after a gap of about four years that is 1156 days from date of dismissal of appeal by CIT(A). The perusal of application for condonation of delay, I find that there is no specific explanation in support of such huge delay. On perusal of contents of application of condonation of delay, i could not find reference as to who has filed the present application for condonation of delay. The application merely mentioned authorised representative without specifying any name or designation of person or whether he is authorised by society by way of resolution or otherwise or he is competent to sign or file such application. Moreover, the person who have signed Form 36 has not signed the application for condonation delay. The appeal is filed by some Manoj Arora, Secretary of society, however, the application for condonation of delay bears the quite different signature that too initials. In my view, the approach of assessee is casual. No reasonable and plausible cause is explained for seeking indulgence for condoning the huge delay. Neither the affidavit of person who is responsible for filing return of income or making audit or any competent person of society is filed knowingly or unknowingly for the reasons best known to the office bearers of the society. The case law relied by Id. AR of the society and mentioned in the application is not helpful to the assessee. The ratio of such decision is applicable only when the assessee shows the explanation of delay which is not only reasonable but

acceptable. The submissions of the AR of the assessee and contents of application do not inspire confidence. Thus, I do not find any sufficient cause or reasonable cause for condoning the delay either in filing appeal before Id. CIT(A) or again before Tribunal. It seems that all risk of filing these appeals belatedly by creating a grounds of condonation of delay is taken by assessee when the issue regarding allowability of deduction under section 80P(2)(d) is held by Tribunal in favour of different cooperative societies. Thus, the assessee is trying to misuse the process of law by creating a ground for seeking condonation of delay. In the result, application for condonation of delay is dismissed. Resultantly, appeal is not admitted.

7. In the result, the appeal of the assessee is dismissed.

ITA No. 2305/M/2025 (A.Y. 2015-16) & ITA No. 2306/M/2025 (A.Y. 2016-17)

8. As recorded above, the assessee has raised similar plea for condoning delay before Id. CIT(A) as well as before Tribunal as raised in ITA 2304/M/2025 which I have already dismissed. Therefore, following the principal of consistency, the delay in filing appeal in these two appeals is also not condoned. Resultantly, both the appeals are also dismissed with similar observation.

9. In the result, all the appeals of the assessee are dismissed.

Order was pronounced in the open Court on 17/07/2025.

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated 17/07/2025
Biswajit

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai