

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
ITA No. 3339/MUM/2025 (AY: 2013-14)
(Physical hearing)

Marlow Co-op Housing Society Ltd. Plot No. 62B, Marlow CHS Ltd. Sir Pochkhanawala Road, Worli, Mumbai-400030. [PAN No. AAAAM5247J]	Vs	ITO, Ward-20(2)(1), Mumbai Room No. 216, 2 nd Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400020.
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Jitendra Singh, Advocate
Revenue by	Shri Mahesh Dattatraya Londhe, Sr. DR
Date of hearing	03.07.2025
Date of pronouncement	18.07.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Ld. CIT(A), Mumbai dated 13.03.2025 for assessment year (AY) 2013-14. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Appellant herein respectfully craves leave to prefer the present appeal against the order dated 13th March 2025 passed by Additional/Joint Commissioner of Income Tax (Appeals) - 4, Hyderabad (hereinafter referred to as 'Ld. CIT(A)') under section 250 of the Income Tax Act 1961 (hereinafter referred to as "the Act") upholding the intimation order dated 6th January 2015 passed under section 143(1) of the Act. The Appellant strongly objects to the impugned order passed by Ld. CIT(A) as the same is illegal, arbitrary and perverse on the following amongst other grounds which are urged without prejudice to one another: -

2. Rejecting the appeal on technical ground of limitation is against the well settled judicial precedents

- a. The Ld. CIT(A) fell in error of law in passing the impugned order dated 13th May 2025 rejecting the application for condonation of delay in filing the appeal and thereby dismissing the appeal of the Appellant on merely technical ground of limitation without appreciating that the Appellant was prevented by sufficient cause

in not filing the appeal within the prescribed period provided under the Act. Hence, impugned order passed by Ld. CIT(A) is bad in law and the same may be quashed.

b. The Ld. CIT(A) failed to appreciate that the Appellant being a residential Co-operative Housing Society was not having any permanent accountant and therefore, the impugned intimation skipped the attention of the Appellant. Hence, dismissing the appeal of the Appellant merely on technical ground of limitation is against the well settled principles of judicial precedents and therefore, impugned order passed by Ld. CIT(A) may be quashed and set aside.

3. Disallowing the claim of deduction made under section 80P(2)(d) of the Act is unjustified-Rs.9,73,567/-

a. The Ld. CIT(A) erred in upholding the action of Ld. A.O. in disallowing the claim of deduction amounting to Rs 9,73,567/- made under section 80P(2)(d) of the Act being interest received on saving bank accounts and fixed deposits maintained with the co-operative banks without appreciating the facts and circumstances of the case. Hence, the disallowance of Rs 9,73,567/- claimed under section 80P(2)(d) of the Act is unjustified and the same may be deleted.

b. The Ld. CIT(A) failed to appreciate that the co-operative banks are registered under Co-operative Societies Act and the same are governed by Co-operative Societies Rules. Thus, the interest income earned by the Appellant from the saving banks account and FD's maintained with the Co-operative Banks are eligible for deduction under section 80P(2)(d) of the Act. Hence, the disallowance of claim of Rs 9,73,567/- made under section 80P(2)(d) of the Act are not at all justified and the same may be deleted.

c. Without prejudice to the above the Ld. CIT(A) further erred in upholding the action of Ld. A.O. without providing the Appellant an opportunity to substantiate its claim of deduction made under section 80P(2)(d) of the Act. Hence, the disallowance of deduction claimed under section 80P(2)(d) of the Act is against the principles of natural justice and the same may be deleted.

d. Without prejudice to the above, the interest received by the Appellant from the savings bank account and FD's made with the Co-operative Banks are exempt from tax under the principles of mutuality. Hence, disallowing the claim of deduction amounting to Rs.9,73,567/-made under section 80P(2)(d) of the Act is against the provisions of law and the same may be deleted.

e The Ld. CIT(A) further erred in upholding the action of the Ld. A. O in disallowing the deduction claimed under section 80P(2)(d) of the Act by passing the intimation under section 143(1) of the Act without appreciating that impugned disallowance does not come under the purview of adjustment prescribed under the provisions of section 143(1) of the Act. Hence, the disallowance of deduction claimed under

section 80P(2)(d) of the Act against the well settled provisions of law and the same may be deleted.

The Appellant denies any liability to pay interest under section 234B and 234C of the Act. Hence, the same are not leviable.

5. The penalty proceedings initiated is against the provision of law. Hence, the Appellant strongly objects to the same and therefore, penalty proceedings must be quashed

6. The Appellant craves leave to add, alter, amend, delete or rescind any of the grounds mentioned hereinabove."

2. Brief facts of the case are that assessee is a co-operative housing society filed its return of income for A.Y. 2013-14 on 26.11.2013. The return was processed under section 143(1). The Central Processing Centre (CPC) while processing the return not allowed deduction under section 80P(2)(d) of Rs. 9,73,567/-. Application under section 154 filed on 18.11.2015 was also rejected by CPC in its order dated 17.02.2016. Aggrieved by the order of CPC dated 17.02.2016, the assessee filed appeal before Id. CIT(A) on 03.02.2025, thus, there was delay of about nine (9) years in filing first appeal. While explaining delay, the assessee in the statement of fact before Id. CIT(A) stated that "*Pursuing the matter with ITO for a long period of time. No permanent accountant in office. Managing Committee Members working on honorary basis were unaware of the demand raised. Legal position is settled by High Court judgments and ITAT orders. There is unintentional delay. Appeal may be decided on merits.*" The Id. CIT(A) after considering the submission of assessee not condoned the delay in filing appeal, resultantly appeal was not admitted for hearing and dismiss in limine. Further, aggrieved the assessee has filed present appeal before Tribunal.

3. I have heard the submissions of both the parties and perused the record carefully. The learned Authorised Representative (Id. AR) of the assessee submits that assessee was pursuing alternative remedy by filing application under section 154 before assessing officer. The assessee sent various reminders including application dated 31.12.2024. The Id. CIT(A) dismissed the appeal of assessee without condoning the delay. Once, the delay was not condoned, Id. CIT(A) not adjudicated the issue of appeal on merit. The Id CIT(A) was required to condoned the delay in filing appeal. The assessee has good case on merit and is likely to succeed if case of assessee is adjudicated on merit. The assessee is seeking deduction under section 80P(2)(d). The assessee received interest from Co-operative Bank. Co-operative Bank is primarily a co-operative society and it has been consistently held show by a series of decision. The Id. AR of the assessee submits that delay in filing appeal before CIT(A) may be condoned and appeal may be decide on merit.
4. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue strongly opposed the plea of Id. AR of the assessee for seeking condonation of delay. The Id. Sr. DR for the revenue submits that there is huge delay of 3245 days in almost 8 years and 11 months. The assessee has not provided any reasonable or convincing reason on which delay can be condoned. The assessee has provided a vague reason before Id CIT(A) that there is no permanent accountant in their office. The Id. CIT(A) in para 3.3 of his order has categorically mentioned that assessee has also filed appeal for other years either in time or with delay of very few periods except in case of

A.Y. 2018-19. The Id. Sr. DR for the revenue prayed for rejection of plea for condoning in filing delay before Id. CIT(A).

5. I have considered the rival submissions of both the parties and perused the orders of lower authorities carefully. Careful perusal of record shows that assessee filed return of income for A.Y. 2013-14 on 26.11.2013. The return of processed under section 143(1) (date of initial process of return is not available on record). However, the assessee filed application for rectification under section 154 on 18.11.2015. The said application was rejected vide order dated 17.02.2016. No appeal was filed by assessee against said order within statutory time prescribed under Income Tax Act. The assessee challenged the order dated 17.02.2016 before this Tribunal only on 24.04.2025. In Form-35, the assessee specifically mentioned the date of service of order impugned on 17.02.2016, as reflected in column No. 17. The assessee also furnished the details of other appeals for A.Y. 2014-15, 2017-18 and 2018-19. During the hearing before Id. CIT(A), the assessee also filed copy of application dated 31.12.2024, which is scanned by Id. CIT(A) in para 3.6 of his order. In the said application, the assessee stated that rectification application was filed on 24.11.2014, and again on 18.11.2015 and filed a rectification order was passed on 17.02.2016 and the assessee requested to allow deduction under section 80P. On the basis of such application, the assessee sought condonation of delay after a gap of nine (9) years. Before Tribunal, the assessee has neither filed a formal application in explaining the cause of delay before Id. CIT(A) nor filed affidavit of office bearer of assessee society except relying upon statement in Form 35 that the assessee was pursuing the matter with ITO for

a long period. Even on careful consideration of such contention, I do find any convincing force to condone such delay. Once the application under section 154 was rejected by CPC / Assessing Officer on 17.02.2016, as to why no further appeal was filed before Id. CIT(A), particularly when the assessee has filed appeal against the adjustment in A.Y. 2014-15, 2017-18 and 2018-19. Thus, plea raised by Id. AR of the assessee for condonation of delay before Id. CIT(A) does not inspire confidence. The delay is long and huge. The assessee failed to explain the cause of delay which may be considered as reasonable and/ or plausible. Hence, I do not find any reason to interfere with the order of Id. CIT(A) in not condoning the delay in filing first appeal. Thus, the order of Id. CIT(A) is confirmed. Resultantly, appeal is not admitted for adjudication on merit. In the result, ground of appeal of assessee is dismissed.

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

Order was pronounced in the open Court on 18/07/2025.

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

MUMBAI, Dated 18/07/2025
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