

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE MS SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.354 to 355/SRT/2025

AYs: (2017-18 & 2018-19)

(Hybrid Hearing)

The Puna Kumbharia Groud Co-op. Fruits and Vege Grow Society Limited, Kela Yard Dumbhai, Puna Kumbhariya Road, Surat - 395003	Vs.	ACIT, Circle – 3(2), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAP1147N		
(Appellant)		(Respondent)

Appellant by	Shri Sapnesh Sheth, Advocate
Respondent by	Ms Namita Patel, Sr. DR
Date of Hearing	27/08/2025
Date of Pronouncement	29/08/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These two appeals by the assessee emanate from the separate orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 30.11.2023 and 29.02.2024 by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the assessment years (AYs) 2017-18 and 2018-19. Since the facts are common and grounds of appeal are almost identical except variance of amounts, with the consent of both parties, these two appeals were clubbed and heard together and are decided by this common order for sake of convenience and brevity. ITA No.354/SRT/2025 has taken as 'lead' case.

2. The grounds of appeal raised by the assessee in ITA No.354/SRT/2025 are as under:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in disallowance of deduction of Rs. 30,05,803/- as interest received u/s 80P(2)(d) of the I.T. Act., 1961.

2. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals), NFAC may please be deleted.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

3. The grounds of appeal raised by the assessee in ITA No.355/SRT/2025 are as under:

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of assessing officer in disallowance of deduction of Rs.23,87,143/- as interest received u/s 80P(2)(d) of the I.T. Act.

2. It is therefore prayed that above addition made by assessing officer and confirmed by Commissioner of Income-tax (Appeals), NFAC may please be deleted.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

4. These two appeals filed by assessee are delayed by 328 and 418 days in terms of provisions of section 253(3) of the Act. The assessee has filed affidavits of the President of the assessee-society, giving reason for delays in filing of appeals before the Tribunal. In the affidavit for AY 2017-18, it has been stated that the appeal should have been filed on or before 28.04.2024 but it was filed on 18.03.2025 after a delay of 328 days. It is submitted that the physical copy of the order passed by the CIT, NFAC was not received by him. The appellate order was sent on the e-mail Id mentioned in Form 35 belonging to the past Counsel.

Hence, he was unaware about the order being passed. He came to know about the impugned order when he received the physical show cause notice of penalty proceedings dated 10.02.2025. Thereafter, his Counsel changed the e-mail Id and filed the appeal immediately with request to condone the delay. It is submitted that delay was due to bona fide reasons and was not intentional. He requested to admit the appeal in the interests of natural justice, equity and fair play. The learned Authorized Representative (Id. AR) submitted that the delay was due to circumstances beyond its control. He requested to condone the delay in the interests of justice and decide the appeal on merit.

5. On the other hand, learned Senior Departmental Representative (Id. Sr. DR) for the revenue submitted that the Bench may decide the matter as it thinks fit.

6. We have heard both the parties on this preliminary issue of delay in filing appeal. In the affidavit, it is submitted that the appellant did not receive the order, which was sent in the e-mail Id of the earlier consultant. It came to knowledge of the appellant after receipt of the physical copy of the subsequent penalty proceedings. Though the appellant was not alert, the delay in filing appeal was not deliberate and intentional. Moreover, the assessee is not going to be benefitted by filling appeal belatedly. It is fairly settled that when technical consideration and cause of substantial justice are pitted against each other, the cause of substantial justice may be preferred. Hence, in the interests of justice, the delay in filing appeal is condoned subject to the payment of cost of Rs.10,000/- (Rupees Ten Thousand only) by the appellant to the credit of the

'Prime Minister's National Relief Fund' within 3 weeks from receipt of this order.

ITA No.354/SRT/2025 (AY 2017-18):

7. The facts of the case in brief are that the assessee filed its return of income on 30.10.2017, declaring total income of Rs.84,42,880/- and claimed deduction of Rs.2,65,23,665/- u/s 80P of the Act. The case was selected for scrutiny under CASS. Various notices u/s 143(2), 142(1) and 142(1) r.w.s. 129 of the Act were issued to the assessee. The Assessing Officer (in short, 'AO') observed that the assessee had claimed deductions of Rs.30,27,982/- u/s 80P of the Act in respect of interest of Rs.30,05,803/- earned on fixed deposits with Surat District Co-operatives Bank. The assessee is a co-operative credit society registered under The Gujarat Co-operative Society Act and engaged in the business activities of providing credit facilities to its members. The AO observed that deduction u/s 80P(2)(d) of the Act is allowed if interest and dividend are earned from investment in other co-operative society but not from investment in any co-operative bank. The AO has discussed provisions of section 80P(2)(d) of the Act and after relying on the decision in case of Totagars' Co-operative Sale Society Ltd. vs. ITO, 322 ITR 253 (SC), State Bak of India (SC) vs. CIT, (2016) 72 taxmann.com 64 (Guj.) and PCIT, Hubballi vs. Totgars Co-operative Sale Soeity, (2017) 83 taxmann.com 140 (Kar.), held that interests and dividend income earned by the assessee from its investment in Surat District Co-operative Bank Ltd. amounting to Rs.30,05,803/-, which was claimed as deduction u/s 80P(2)(d) of the Act, was not allowable. The AO observed that a

co-operative and nationalized bank is an urban commercial bank and does not fall under the purview of a 'Co-operative Society' u/s 80P(2)(d) of the Act. The assessee has earned interest income from such co-operative bank of Rs.30,05,803/- and the same had been wrongly claimed as deduction u/s 80P(2)(d) of the Act. The AO assessed the total income of Rs.1,13,98,683/- against the returned income of Rs.84,42,880/-.

8. Aggrieved by the order of AO, the assessee filed the appeal before the CIT(A). The appellant raised a ground regarding disallowance of claim of Rs.30,05,803/- u/s 80P(2)(d) of the Act in respect of interest received by the appellant from co-operative bank. The CIT(A) reproduced the submission of the appellant at pages 3 to 14 of the appellate order. The finding of the CIT(A) is at pages 14 to 18 of the appellate order. The CIT(A) observed that the appellant society had earned interest income of Rs.30,05,803/- from Surat District Co-op. Bank. Ltd. The assessee claimed that income as deduction u/s 80P(2)(d) of the Act by considering the co-operative bank as co-operative society. The CIT(A) referred to the decisions in cases of SBI vs. CIT, (2016) 72 taxmann.com 64 (Guj.) and CIT vs. The Totagars Co-op. Sales Society (supra) and held that the income by way of interest earned by the assessee co-operative society during the AY 2017-18 on the investments made in the co-operative bank, i.e., The Surat District Co-operative Bank Ltd., is not eligible for deductions u/s 80P(2)(d) of the Act. After considering the various decisions, he upheld the disallowance of the deduction of Rs.30,05,803/- u/s 80P(2)(d) of the Act. Accordingly, the appeal was dismissed by the CIT(A).

9. Aggrieved by the order of CIT(A), the assessee filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book and relied on the decisions in cases of (i) PCIT vs. Ashwinkumar Arban Co-operative Society Ltd., (2024) 168 taxmann.com 314 (Guj.), (ii) PCIT vs. Lodhika Sahakari Kharid Vechan Sangh Ltd., (2025) 176 taxmann.com 71 (Guj.), (ii) PCIT vs. Shree Aradhana Urban Co-op. Credit Society Ltd., (2025) 172 taxmann.com 537 (Guj.), (iv) Bardoli Vibhag Gram Vikas Co-op. Credit Society Ltd vs. PCIT, 189 ITD 601 (Surat – Trib.) and (v) Surat Vankar Sahakari Sangh Ltd. vs. ACIT, (2016) 72 taxmann.com 169 (Guj.). He submitted that the Hon'ble Gujarat High Court in case of Ashwanikumar Arban Co-operative Society Ltd. (supra) has considered and distinguished the order passed by the Hon'ble Supreme Court in case of Totagars Co-operative Sales Society Ltd. (supra) and held that deduction u/s 80P(2)(d) is available to Co-operative Societies on income earned as interest on investment made with co-operative bank, which in turn is a co-operative society itself.

10. On the other hand, the learned Senior Departmental Representative (Id. CIT-DR) relied on the orders of the lower authorities and the decision of Hon'ble Supreme Court in case of Totagars Co-operative Sale Society Ltd. (supra).

11. We have heard both the parties and perused the material available on record. We have also deliberated upon the decisions relied upon by both sides. The ground raised by the appellant pertains to the deduction of Rs.30,05,803/- claimed u/s 80P(2)(d) of the Act on account of interest on investment made with Surat District Co-operative Bank Ltd. There is no dispute that the Surat

District Co-operative Bank Ltd. is a co-operative society duly registered under Gujarat Co-operative Societies Act, 1961. The Id. AR has relied on the decisions of the Hon'ble jurisdictional High Court in case of Ashwinkumar Arban Co-operative Society Ltd. (supra) and Rajkot Lodhika Sahakari Kharid Vechan Sangh Ltd. (supra), wherein the Hon'ble jurisdictional High Court held that deduction u/s 80P(2)(d) is available to co-operative societies on income earned as interest on investment made with co-operative bank, which in turn is a co-operative society. In case of Ashwanikumar Arban Co-op. Society Ltd. (supra), the Hon'ble Gujarat High Court held as under:

“28. Having heard learned advocates for the respective parties and considering the controversy arising in these tax appeals, we are of the opinion that the controversy sought to be canvassed with regard to deduction under section 80P(2)(d) of the Act is no more res integra in view of the decision of this Court in case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. (supra) as well as in case of State Bank of India (supra) wherein it was held that the deduction of under section 80P(2)(d) of the Act is available to the cooperative societies on the income earned as interest on the investment made with the cooperative bank which in turn, is a cooperative society itself.

.....

33. In view of the above dictum of law as well as the provisions of the Act which are considered we are of the opinion that the provisions of section 80P(2)(d) would be applicable in the facts of the case and the PCIT was not justified in invoking revisional powers under section 263 of the Act which is rightly reversed by the Tribunal holding that the cooperative bank is a cooperative society registered under the Gujarat State Cooperative Societies Act and in view of the various decisions of the Court, the Tribunal after following the same has come to the conclusion that the assessment was not erroneous allowing deduction of section 80P(2)(d) of the Act which is in consonance with the various decisions of the Court as a twin condition invoking section 263 as to the assessment being erroneous and prejudicial to the interest of the revenue are not being fulfilled.”

12. In the subsequent decision in case of Rajkot Lodhika Sahakari Kharid Vechan Sangh Ltd. (supra), the Hon'ble jurisdictional High Court followed the above decision in case of Ashwinikumar Arban Co-operative Society Ltd. (supra)

and held that where assessee society earned interest income on fixed deposit kept with co-operative bank, assessee was eligible for deduction u/s 80P(2)(d) on the said interest income. The facts of the instant case are similar to the facts of the case discussed above. Hence, respectfully following the decisions cited supra, the grounds raised by the assessee are allowed.

13. In the result, the appeal of the assessee is allowed.

ITA No.355/SRT/2025 (AY 2018-19):

14. Facts of the case and the grounds of appeal in this appeal are similar. The decision of the CIT(A) is also on the same ground. Hence, following the reasons given in ITA No. 354/SRT/2025 (supra), this appeal is also allowed.

15. In the result, the appeal of the assessee is allowed.

16. In the combined result, appeals of the assessee are allowed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 29/08/2025.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Surat

दिनांक/ Date: 29/08/2024

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat