

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH "SMC" SURAT**

**BEFORE SHRI SANDEEP GOSAIN (JUDICIAL MEMBER)
AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 838/SRT/2023
Assessment Year: 2010-2011**

Vapi Merchant Saving and Credit
Co-op Society Ltd.,
Office No. 130, First Floor, Varun
Complex, Opp. Reliance Super
Market GIDC,
Vapi-396195.

PAN NO. AAAAV 3925 E

Appellant

ITO Ward-9,
Income Tax Office, Nr. Vaishali
Char Rasta, NH-8, GIDC,
Vapi-396191.

Vs.

Respondent

Assessee by : Mr. Hem Chhajed, AR
Revenue by : Mr. J.K. Chandnani, Sr. DR

Date of Hearing : 09/10/2025
Date of pronouncement : 30/10/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 30/09/2023, passed by the learned commissioner of Income-tax(appeals)-National Faceless Appeal Centre, Delhi [in short the Ld. CIT(A)] for assessment year 2010-11, raising following grounds:

- 1. The order passed by the Ld. CIT (A) is against law, equity & justice.*



2. The Ld. CIT(A) has erred in law and on facts in upholding rejection of decution claimed by appellant U/S 80P of the Act.
3. The Ld. CIT(A) has erred in law and on facts by not allowing deduction of Rs. 14,61,780/- claimed U/S 80P(2)(a)(i) of the Act.

2. Briefly stated facts of the case that the assessee a cooperative society, did not file its regular return of income for the year under consideration before the due date prescribed under section 139(1) of the Income-tax Act, 1961 (in short 'the Act'). The assessee also did not file the return of income within the extended period available within the provision of section 139 of the act.

2.1 Subsequently, the Assessing Officer recorded reasons to believe that income escaped assessment and issued notice under section 148 of the act, on 31/03/2017. In response, the assessee filed return of income for the first time declaring Nil income after claiming deduction of ₹14,61,780/- under section 80P(2)(a)(i) of the Act. The bifurcations of interest income reported by the assessee in the return of income is reproduced as under:

| Sr. No. | Particulars | Interest Income |
|---------|---|-----------------|
| 1. | Interest income from bank F.Ds | Rs.3,25,542/- |
| 2. | Interest income from bank saving accounts | Rs.29,443/- |
| 3. | Interest received from members | Rs.25,25,308/- |

2.2 During reassessment proceeding, the Assessing Officer brought to the knowledge of the assessee that in view of provision of section 80A(5) of the Act, the assessee was not eligible for the deduction otherwise than by return of income filed under the due



date prescribed under section 139(1) of the Act. But the learned counsel for the assessee submitted that while claiming deduction under section 80P(2)(a)(i) of the Act, there was no requirement of filing return under section 139 (1) of the Act once the two conditions are fulfilled, firstly, credit cooperative society is established for credit facility to its members and secondly all the members are shareholders of the society. The Assessing Officer rejected the contention of the assessee and referred to the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works P Ltd (1992) 198 ITR 297 ,320(SC) wherein it is held that proceeding under section 147 are for the benefit of the Revenue and not for the assessee. The Assessing Officer rejected claim of the assessee on the merit relying on the decision of Hon'ble Gujarat High Court dated 25/04/2016 in the case of state bank of India in ITA 486 of 2015 and 47 of 2015, wherein it is held that in case of a society engaged in providing credit facility to its members, it is the interest income derived from credit provided to its members, which is deductible under section 80P(2)(a)(i) of the Act and interest derived by depositing surplus funds to a bank is not attributable to business income and cannot be claimed deduction under section 80P(2)(a)(i) of the act.

3. On further appeal, the Ld. CIT(A) also upheld the finding of the learned Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.



4. Before us learned counsel for the assessee referred to delay in filing the appeal. The learned counsel referred to the affidavit filed on behalf of the society and submitted that delay of five days was due to non service of the order and the assessee came to know from the Income-tax portal, only in thereafter immediately appeal was filed.

4.1 In view of the explanation filed by the assessee for the delay supported by way of an affidavit, we are of the opinion that assessee was prevented by sufficient cause for delayed filing of the appeal, accordingly we condone the delay and admit the appeal for adjudication.

5. We have heard rival submission of the parties and perused the relevant material record. The sole issue in dispute is whether the assessee is eligible for deduction of the claim made for the first time in the return of income filed in response to notice under section 148 of the Act. The Assessing Officer has denied the claim in view of section 80A(5) of the Act and decision of the Hon'ble Supreme Court in the case of Sun engineering Private Limited(supra).

5.1 In this regard, we may like to refer to the decision of the Hon'ble Supreme court in Sun Engineering p Ltd (supra), where Hon'ble Supreme Court held that *Keeping in view the object and purpose of the proceedings under section 147 which are for the benefit of the revenue and not an assessee, an assessee cannot be*



permitted to convert the reassessment proceedings as his appeal or revision, in disguise, and seek relief in respect of items earlier rejected or claim relief in respect of items not claimed in the original assessment proceedings, unless relatable to 'escaped income', and reagitate the concluded matters. Even in cases where the claims of the assessee during the course of reassessment proceedings related to the escaped assessment are accepted, still the allowance of such claims has to be limited to the extent to which they reduce the income to that originally assessed. The income for purposes of 'reassessment' cannot be reduced beyond the income originally assessed.

5.2 In the instant case before us, the assessee even did not file its regular return of income for the year under consideration either in the due date prescribed under section 139(1) of the Act or even belatedly. The deduction under the provisions of the Act is to be allowed subject to fulfilling the conditions prescribed in the relevant provisions of the Act and the assessee cannot assume that return of income was not filed because in view of deduction available total income would be below threshold income, although total income of the assessee is more than the prescribed minimum income limit for tax without deduction. The assessee filed return of income and claimed deduction only, when the revenue noticed non-filing of return of income leading to escapement of income. In such a situation, it may be presumed that the assessee was totally neither



aware nor interested for claiming the deduction provided under chapter VI of the Act. Further, the section 80A(5) of the Act specifically restrict the eligibility of claim of deduction under chapter VI of the Act in the return filed within the time period prescribed under section 139(1) of the Act.

5.3 The Hon'ble Rajasthan High court in the case of Jai Steel India) Income-tax Appeal No. 53/A2011 held that it is not open for the assessee to seek deduction or claim expenditure which has not been claimed in the original assessment, which assessment already stands completed, only because a assessment under Section 153A of the Act in pursuance of search or requisition is required to be made.

5.4 As far as the issue raised in the merit is concerned, the assessee failed to substantiate that the interest income was earned from its business activity of extending credit facility to its members which is one of the condition provided under section 80P(2)(a) of the Act.

5.5 Since the lower authorities have decided the issue keeping in view binding precedent on the issue in dispute, we do not find any error in the order of the Ld. CIT(A). The grounds of appeal of the assessee accordingly dismissed.



6. In the result, the appeal filed by the assessee is dismissed.

**Order pronounced by way display of result on notice board
on 30/10/2025 under Rule 34(4) of ITAT Rules, 1963.**

**Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Surat;
Dated: 30/10/2025
Rahul Sharma, Sr. P.S. (on Tour)

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Surat