

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI**

BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**I.T.A. No. 5627/Mum/2025
A.Y: 2011-12**

Sonmarg Co-operative Housing Society Ltd., 67/B, Sonmarg CHS, Nepeansea Road, Malabar Hill, S.O, Mumbai PAN – AAAAS8163M (Appellant)	Vs	ITO – 19(3)(1) Piramal Chamber, Parel Mumbai - 400012 (Respondent)
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Assessee by	Shri Prakash Pandit
Revenue by	Smt. Smitha V. Nair, Sr. DR

Date of Hearing	04.11.2025
Date of Pronouncement	11.12.2025

ORDER

Per: SHRI. SANDEEP GOSAIN, J.M.:

The present appeal has been filed by the assessee challenging the impugned order dt. 18.07.2025 passed under section 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC) / CIT(A) for the assessment year 2011-12. The assessee has raised the following grounds of appeal:

1. In the facts and circumstances of the case and in law the learned CIT(A) erred in not condoning delay in filing of the appeal against the order passed in gross violation of the provisions of section 143(1)/154 of the Act, thereby denying substantial justice to the assessee.

2. In the facts and circumstances of the case and in law the learned CIT(A) ought to have condoned the delay in filing of

the appeal and ought to have adjudicated the appeal on merit in order to do substantial justice to the assessee.

3. In the facts and circumstances of the case and in law the addition of Rs. 17,16,091/- made by the CPC Bangalore by way of adjustment and intimation u/s. 143(1)/154 is beyond the scope of section 143(1)/154 of Income Tax Act 1961 and therefore requires to be deleted.

4. In the facts and circumstances of the case and in law the CPC erred in disallowing deduction of Rs. 17,16,091/- u/s. 80P(2)(d) of the Income Tax Act 1961, being interest income earned by the assessee from the co-operative bank that too in total violation of provisions of section 154(3) of the Act.

5. The appellant craves leave to add, amend, alter, modify or omit any of the aforesaid Grounds of Appeal as occasion may arise of demand.

2. From the records, I noticed that the assessee was ex-parte before the AO and Ld. CIT(A) dismissed the appeal as the same was filed beyond the period of limitation.

3. I have heard the counsels for both the parties, perused the material placed on record and the orders passed by the revenue authorities. From the records, I noticed that assessee has filed an affidavit explaining the circumstance because of which he could not file the appeal within time before the Ld. CIT(A) which are reproduced herein below:

I, Mr. Sunil Jasani, residing at Sonmarg CHS Ltd., in my capacity as the secretary of (the assessee) Sonmarg Co-operative Housing Society, having its address at 17, Sonmarg CHS Ltd., 67/B, Laxmibai Jagmohandas Marg, Nepean Sea Road, Mumbai 400 006 say on solemn affirmation that:

I say that the assessee filed its income tax return for AY 2011-12 on 29/09/2011 declaring income at NIL. The said income is interest income including saving account interest and interest on

FDR with Co-operative Bank of Rs. 17,16,091/-. The assessee claimed deduction of Rs. 17,16,091/- u/s. 80P(2) (d) of the Act in respect of interest income earned on investment in Co-operative Bank. The assessee also claimed deduction of Rs. 50,000/- u/s. 80P(2)(c)(ii) of the Act.

I say that the assessee received intimation u/s. 143(1) from CPC on 16/02/2012 whereby CPC Bangalore denied deduction u/s. 80P(2)(c)(ii) to the extent of Rs. 36,848/- and raised a demand of RS. 8,461/-. Annexure "A" is the copy of the order dated 16/02/2012

I say that after receiving order u/s. 143(1) dated 16/02/2012, the assessee filed Rectification Application dated 25/6/2013 u/s. 154 of the Act requesting CPC to rectify the mistake and allow remaining deduction of 36,848/-/- claimed by the assessee u/s. 80P(2)(c)(ii) of the Act Annexure "B" is the copy of the of Rectification Application dated acknowledgment 25/06/2013.

I say that the CPC Bangalore on application u/s. 154 of the Act, dated 25/06/2013 made by the assessee, denied the entire deduction of Rs. 17,16,091/- claimed u/s. 80P(2) (d) of the Act vide their order dated 12/07/2013. Annexure "C" is the copy of the order dated 12/07/2013.

I say that the assessee on 12/11/2013 once again filed Rectification Application u/s. 154 of the Act to CPC and submitted that power u/s. 154 to disallow the claim is not permissible as per section 154(3), 154(6) of the Act. Annexure "D" is the copy of the acknowledgment of Rectification Application dated 12/11/2013.

I say that the said Application dated 12/11/2013 is pending in spite of specific provision of section 154(8) of the Act.

I say that the assessee approached the AO and brought to the notice of the AO that deduction u/s. 80P(2) (d) cannot be

denied to the assessee either under section 143(1) or under section 154 of the Act. The AO told the assessee the rights to rectify order u/s. 143(1) for AY 2011-12 are still with CPC Bangalore and he will rectify the same when the rights are given to the AO. was received from CPC Thereafter no correspondence Bangalore and from the AO.

I say that on 3/4/2024 the assessee received a letter for Recovery of Outstanding Demand in assessee's case for AY 2011-12, AY 2012-13. AY 2018-19 and AY 2019-20 by which the assessee came to know that the AO has not rectified Order dated 12/07/2013 passed u/s. 143(1)/154 of the IT Act whereby the AO has denied deduction of Rs. 17,16,091/- claimed u/s. 80P(2)(d) of the Act.

*I say that after receiving the Recovery of Demand Notice dated 3/4/2024, the CA of the assessee personally met income tax officer for rectification of order for AY 2011-12 as the Application NOTA u/s. 154 is pending at the. The assessee brought to the * empowered income authorities to amend intimation u/s. 143(1)/154 where apparent mistake is found in 143(1)/154 order,*

I say that in the meanwhile, assessee's appeal being ITA No. 1334/M/2021 for AY 2017-18 came up for hearing before ITAT Mumbai wherein in identical circumstances deduction claimed u/s. 80P(2)(d) of the Act of 19,54,427/- in respect of interest received from investment in Co-operative Bank which was initially denied by the AO was allowed vide their Order dated 29/3/2022.

say that for AY 2018-19 and AY 2019-20 in assessee's own case, on identical issues, deduction u/s. 80P(2) (d) which was denied by the CPC Bangalore was allowed by the CIT(A) vide its orders dated 29/2/2024 under DIN ITBA/APL/S/250/2023-24/1061752729(1) Order and and No. order dated 27/2/2024 under DIN and Order No. ITBA/APL/S/250/2023- 24/1061605078(1) after condoning delay for filing appeals.

I say that the assessee was under the bonafide belief that in view of specific provision of section 143(1) and section 154(8), the AO will modify the order dated 12/07/2013 on his own in

response to Rectification Application dated 12/11/2013 as the said order u/s. CARL54 dated 12/7/2013 was passed in gross violation of provisions of section 143(1)/154 of IT. Act. I further say that CPC/AO failed take cognizance of 154 application dated 12/11/2013 till this date is violates assessee's remedy u/s 154(8) of the Act.

I say in view of the above facts, though there is no delay in filing appeal against order u/s. 154 dated 12/7/2013, to be on safer side I say that there is a delay of 3375 days (excluding COVID period from 22nd March 2020 to 28/02/2022) for filing the present appeal by the Society. The said delay is due to the bonafide belief of the Society that the Rectification Application dated 12/11/2013 will be disposed of by the AO as order (intimation) dated 12/7/2013 passed by the CPC Bangalore was passed in violation of section 154. On taking legal advice the Society has now filed the present appeal. Therefore, the delay, if any, for filing the present appeal be condoned so that the justice is not defeated.

I say CIT(A) Faceless failed to take cognizance of above facts while rejecting assessee's request for condonation of delay and therefore I say that delay for filing of the appeal before CIT(A) be condoned and the appeal be heard on merit.

Whatever stated above is true to my knowledge and belief.

3. Considering the entire factual position as explained before us and also keeping in view, the principles laid down by Hon'ble Supreme Court in the case of **Land Acquisition Collector Vs. Mst. Katiji & Ors., [1987] AIR 1353 (SC)**, wherein it has been held that where substantial justice is pitted against technicalities of non-deliberate delay, then in that eventuality substantial justice is to be preferred. In our view the principals of advancing substantial justice is of prime importance. Hence considering the explanation put forth by the Assessee by

justifiably and properly explaining the delay which occurred in filing the appeal and construing the expression "sufficient cause" liberally I am inclined to condone the delay in filing the appeal before Ld. CIT(A).

4. Since we have already condoned the delay, therefore we restore the matter back to the file of Ld.CIT(A) for deciding the same on merits after providing fair opportunity of hearing to both the parties. The assessee shall not seek any adjournment on frivolous grounds and shall remain cooperative during the course of proceedings.

5. Before parting, I make it clear that our decision to restore the matter back to the file of the AO shall in no way be construed as having any reflection or expression on the merits of the dispute which shall be adjudicated by the AO independently in accordance with law.

6. In the result the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11/12/2025

Sd/-
(SANDEEP GOSAIN)
(JUDICIAL MEMBER)

Mumbai:

Dated: 11/12/2025

KRK, Sr. PS.

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By order

(Asstt. Registrar)
ITAT, Mumbai