

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.5736/MUM/2025 ITA No.5737/MUM/2025
(Assessment Year:2011-2012) (Assessment Year:2013-2014)**

**ITA No.5738/MUM/2025 ITA No.6574/MUM/2025
(Assessment Year:2014-2015) (Assessment Year:2015-2016)**

Vatsalya B Wing Co-Operative Housing Society Ltd.

Plot 33/33A, Vatsalya B Wing Co-operative Housing Society Ltd.,
Sant Savta Marg, Nariyalwadi, Mazgaon,
Mumbai – 400010.Maharashtra.
[PAN:AAABV0338G]

..... **Appellant**

**Income Tax Officer – Ward 20(3)(1)
Mumbai**

Piramal Chamber, Mumbai – 400010.
Maharashtra

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Vijay Joshi
For the Respondent/Department : Shri Leyaqaat Ali Aafaqui

Date

Conclusion of hearing : 10.12.2025
Pronouncement of order : 05.01.2026

ORDER

Per Bench:

1. These are four appeals preferred by the Assessee pertaining to Assessment Year 2011-2012, 2013-2014, 2014-2015 and 2015-2016 which were heard together since the same involved identical issues and are, therefore, being disposed off by way of a common order.

ASSESSMENT YEAR 2011-2012 (ITA No.5736/Mum/2025)

2. We would first take up appeal preferred by the Assessee directed against the Order, dated 18/07/2025, passed by the Additional/Joint

Commissioner of Income Tax (Appeals) – 1, Chennai [hereinafter referred to as 'the **CIT(A)**'] whereby the Ld. CIT(A) had dismissed the appeal against the Intimation Order, dated 03/10/2016, passed under Section 143(1) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] for the Assessment Year 2011-2012.

3. The Assessee has raised following grounds of appeal :

- "1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the delay in filing the appeal cannot be condoned in view of negligent acts and lack of bonafide's by the Appellant.*
- 2. The learned CIT(A) failed to appreciate that the delay was neither intentional nor deliberate, and that the Appellant had reasonable and sufficient cause for the delay in filing the appeal, as explained in the condonation petition.*
- 3. The learned CIT(A) erred in dismissing the appeal in limine without adjudicating the matter on merits, which is contrary to the principles of natural justice.*
- 4. On the facts and under the circumstances of the case and in law the CPC has erred in not considering deduction of Rs. 71,364/- under Sec. 80P(2)(d) of the Act with respect to interest income earned from Co-operative Banks.*
- 5. On the facts and under the circumstances of the case and in law the CPC has erred in not considering deduction of Rs. 50,000 under Sec. 80P(2)(c)(ii) of the Act with respect to income from house property and interest earned from saving accounts with other than co-operative banks during the year ended 31st March 2011."*

4. The relevant facts in brief are that Assessee in the present case is a Cooperative Housing Society. For the Assessment Year 2011-2012 the Assessee filed return of income on 08/09/2011 declaring total income of INR.6,21,738/- after claiming deduction of INR.71,364/- and INR.50,000/- under Section 80P(2)(d) and 80P(2)(c)(ii) of the Act respectively. On 03/10/2016, the aforesaid return was processed and Intimation under Section 143(1) of the Act was issued to the Assessee. The deduction claimed by the Assessee under Section 80P of the Act was not allowed and consequent

demand was raised upon the Assessee. On receiving the Intimation, the Assessee filed online grievance before the Central Processing Centre (CPC) on 10/11/2016. This was followed up by submission of response against the outstanding demand on 05/12/2017. Since, no response as received, Assessee again filed grievance on 26/05/2023 before the Assessing Officer and requested for rectification of Intimation issued under Section 143(1) of the Act. On 26/10/2023, the Assessee received response stating that the issue mentioned for rectification was not rectifiable. Therefore, on 19/11/2024 the Assessee once again filed grievance addressed to the Assessing Officer as a request for rectification of the Intimation. The Assessee placed reliance upon the decision of the Learned CIT(A) in the case of Assessee for the Assessment Year 2017-2018 where the Learned CIT(A) had accepted the deduction claimed by the Assessee under Section 80P(2)(d) and 80P(2)(c)(ii) of the Act in identical facts and circumstances. On 02/01/2025, the Assessee received response for the grievance application, dated 19/11/2024, wherein it was stated that the request for allowing deduction under Section 80P of the Act was duly considered and not found to be accepted. It was further stated that issue of claim of deduction under Section 80P of the Act was a legal issue and the same was not rectifiable. Since, the Assessee was of bonafide belief that grievance raised by the Assessee was rectifiable, on 30/01/2025, the Assessee again filed grievance addressed to the Assessing Officer which was again rejected vide response, dated 10/02/2025, stating, inter-alia, that the issue of deduction under Section 80P of the Act was not rectifiable issue and the same was subject matter of appeal. In the aforesaid facts and circumstances, the Assessee preferred appeal before the Learned CIT(A) seeking condonation of delay for 8 years 5 months and 8 days in filing appeal against the Intimation Order dated 03/10/2016 issued under Section 143(1) of the Act. The Learned CIT(A) declined to condone the delay and dismissed the

appeal as being barred by limitation. During the course of hearing, Learned Authorized Representative submitted that the Assessee had acted on the legal advice received and was diligently following the matter by raising grievance before the Assessing Officer. It was submitted that the delay in filing the appeal before the Learned CIT(A) was neither intentional nor deliberate. The Learned CIT(A) erred in dismissing the appeals without adjudicating the matter on merits. It was submitted that by refusing to condone the delay and declining to consider the appeals on merits, the Learned CIT(A) deprived the Assessee of a legitimate right to appellate despite the existence of sufficient cause. Hence, the rejection of the appeal was unjust and deserved to be set aside. It was further submitted that similar disallowances made in the Assessee's case for Assessment Years 2018-2019 and 2019-2020, were resolved by way of grievances filed by the Assessee. The details of rectification order passed were as under:

| Sr No. | Asst. Year | Date of Demand Issued | Date of Grievance/Responses Filed | Date of Demand Rectified |
|--------|------------|-----------------------|-----------------------------------|--------------------------|
| 1 | 2018-2019 | 13/05/2019 | 20/06/2019 | 08/10/2020 |
| 2 | 2019-2020 | 18/05/2020 | 02/07/2020 | 09/10/2020 |

This also led the Assessee to believe that the matter would be resolved via grievances raised by the Assessee and the rectification order shall be passed for the assessment years under consideration. It was further submitted that the Assessee was also aware of similar relief having been granted to other housing co-operative societies in its vicinity relating to disallowances under Section 80P of the Act by way of grievances raised through the IT portal. The last grievance for was filed by the Assessee on 30/01/2025 which was responded to on 10/02/2025. Thereafter, the Assessee proceeded to file appeal before the Learned CIT(A). It was submitted that the Assessee had been consistently and regularly communicating through Grievances with the Department. When the Assessee received specific

communication from the Department that the Assessee should resort to appeal, the same was promptly followed. The Assessee had also given detailed explanation in this regard before the Learned CIT(A). However, the Learned CIT(A) failed to appreciate the same and dismissed the application seeking condonation of delay. The Assessee also submitted details of the communication sent/received in the following tabular format for all the 4 Assessment Years:

| Sr. No. | Authority | Date of Grievance | Date of response from Department | No. of Days taken for response from Tax Officer |
|--------------------------------------------------------|-------------------|--------------------------|-----------------------------------------|--------------------------------------------------------|
| Communication History Assessment Year 2011-2012 | | | | |
| 1. | CPC | 10/11/2016 | - | No response received till date |
| 2. | Assessing Officer | 26/05/2023 | 26/10/2023 | 153 |
| 3. | Assessing Officer | 19/11/2024 | 02/01/2025 | 44 |
| 4. | Assessing Officer | 30/01/2025 | 10/02/2025 | 13 |
| Communication History Assessment Year 2013-2014 | | | | |
| 1. | CPC | 05/12/2017 | - | No response received till date |
| 2. | Assessing Officer | 16/03/2019 | 15/04/2019 | 30 |
| 3. | Assessing Officer | 15/04/2019 | 26/06/2019 | 72 |
| 4. | Assessing Officer | 26/05/2023 | 23/10/2023 | 150 |
| 5. | Assessing Officer | 19/11/2024 | 02/01/2025 | 44 |
| 6. | Assessing Officer | 30/01/2025 | 10/02/2025 | 11 |
| Communication History Assessment Year 2014-2015 | | | | |
| 1. | CPC | 07/01/2016 | - | No response received till date |
| 2. | Assessing Officer | 16/03/2019 | 15/04/2019 | 30 |
| 3. | Assessing Officer | 15/04/2019 | 26/06/2019 | 71 |
| 4. | Assessing Officer | 26/05/2023 | 23/10/2023 | 150 |
| 5. | Assessing Officer | 19/11/2024 | 02/01/2025 | 44 |

| | | | | |
|--------------------------------------------------------|-------------------|------------|------------|--------------------------------|
| 6. | Assessing Officer | 30/01/2025 | 10/02/2025 | 11 |
| Communication History Assessment Year 2015-2016 | | | | |
| 1. | CPC | 05/12/2017 | - | No response received till date |
| 2. | CPC – ITR | 03/12/2021 | 14/01/2023 | 407 |
| 3. | Assessing Officer | 24/01/2023 | - | - |
| 4. | Assessing Officer | 26/05/2023 | 23/10/2023 | 150 |
| 5. | Assessing Officer | 19/11/2024 | 02/01/2025 | 44 |
| 6. | Assessing Officer | 30/01/2025 | 10/02/2025 | 10 |

5. Per contra, the Learned Departmental Representative vehemently contended that there was inordinate delay in filing the appeal before the Learned CIT(A). The fact that Assessee has been raising grievances before the incorrect forum cannot be considered as the basis for condoning delay in filing the appeal before the Learned CIT(A). The order under Section 143(1) of the Act is appealable order and the Assessee should have preferred the appeal against the same. Since, the Assessee failed to do so in the prescribed time, the Learned CIT(A) was justified in dismissing the appeal as being barred by limitation.

6. We have considered the rival submissions and have perused the material on record. There is no dispute to facts the Assessee is a cooperative housing society aggrieved by denial to deduction claimed under Section 80P of the Act. In order to address the grievance the Assessee chose to file grievance/rectification objections through Income Tax Business Application (ITBA) portal which did not lead to favorable results. It is the case of the Assessee that the Assessee was under bonafide belief that in similar facts and circumstances the claim of deduction under Section 80P of the Act made by the Assessee as well as other identically placed assessees were accepted by the Revenue on raising similar grievance. We note that even in the case of the Assessee for the Assessment Year

2017-2018, the Learned CIT(A) had condoned the delay of 1612 days in filing the appeal observing that the Assessee had followed the process of filing grievances and rectification before resorting to Appeal. Further, we note that for the Assessment Year 2018-2019 and 2019-2020, similar grievance raised by the Assessee had resulted in favourable response. For the Assessment Year 2019-2019, grievance was raised by the Assessee on 20/06/2019 seeking rectification of demand raised on 13/05/2019. The aforesaid grievance got resolved and rectified demand was raised vide Order, dated 08/10/2020 accepting Assessee's claim for deduction under Section 80P of the Act. Similarly, for the Assessment Year 2019-2020, grievance was raised by the Assessee on 02/07/2020 seeking rectification of demand raised on 18/05/2020. The aforesaid grievance got resolved and rectified demand was raised vide Order, dated 09/10/2020 accepting Assessee's claim for deduction under Section 80P of the Act. The aforesaid lends credence to the submission advanced on behalf of the Assessee that the Assessee was under bonafide belief that the grievance raised by the Assessee would result in favourable result obviating the need to file appeal before the Learned CIT(A) to challenge the deduction claimed under Section 80P of the Act. Even otherwise, we are of the view that in the facts and circumstances of the case it cannot be said that the Assessee was negligent. The Revenue has disputed the material placed on record to show that the Assessee was diligently following up the issue albeit before an incorrect forum. We also note that the initial grievance raised by the Assessee was not responded to by the Central Processing Centre.

7. During the course of hearing, reliance was placed on behalf of the Assessee on the decision of Mumbai Bench of the Tribunal in the case of Fakhri Cooperative Housing Society Ltd. Vs. Commissioner of Income Tax (Appeals) [ITA No.785/Mum/2023, dated

29/05/2023]. In that case the Tribunal had condoned delay of 2414 days in filling of the appeal taking note of the fact that unsatisfactory responses to grievances were received by the Assessee. This was considered by the Tribunal to be sufficient cause for delay in filing the appeal. Further, we note that in the case of Collector of Land Acquisition Vs. Mst. Katiji & others AIR 1987 1353 (SC) the Hon'ble Supreme Court has, while dealing with the issue of condonation of delay, emphasized that substantial justice should prevail over technical considerations. Every day's delay must be explained does not mean that a pedantic approach should be taken and that the aforesaid doctrine must be applied in a rational common sense and pragmatic manner, more so in circumstances where a litigant does not stand to benefit by lodging the appeal late (as is the case in appeal before us). Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

8. In the present case the Assessee was not negligent and was following diligently following up the issue with bonafide belief that his grievance would be redressed based upon past experience. Therefore, the explanation offered by the Assessee cannot be rejected as laden with malafides. To the contrary, the material on record supports the explanation offered by the Assessee. We have already noted hereinabove that the initial communication sent by the Assessee to CPC was not responded. As and when the response was received to the grievances raised, the Assessee kept taking up follow up or remedial action, albeit before incorrect forum. The Revenue has not disputed the contention of the Assessee that the claim for deduction under Section 80P of the Act made by the Assessee for the Assessment Year 2017-2018, 2018-2019 and

2019-2020 has been allowed to the Assessee. Therefore, given the facts and circumstances of the present case refusing to condone the delay may result in a meritorious matter being dismissed at the very threshold. Therefore, keeping in view the totality of the facts and circumstances of the present case, we deem it appropriate and in the interest of justice to overturn the decision of the Learned CIT(A) and condone the delay on filing appeal before the CIT(A). Thus, the order, dated 18/07/2025, passed by Learned CIT(A) set aside with the directions to adjudicate the grounds raised by the Assessee in appeal on merits after granting the Assessee a reasonable opportunity of being heard. The Assessee is also directed to file details, documents & submission in support of its claims/contentions before the Learned CIT(A). The Learned CIT(A) would be at liberty to admit/consider the same as per law. In terms of the aforesaid and without returning any findings on merits, Grounds No.1-3 raised by the Assessee are allowed and Ground No. 4 & 5 are dismissed as having being rendered academic on account of setting aside of the impugned order.

9. In result, appeal preferred by the Assessee is partly allowed.

ITA No.5737/Mum/2025 [Assessment Year 2013-2014]
ITA No.5738/Mum/2025 [Assessment Year 2014-2015]
ITA No.6574/Mum/2025 [Assessment Year 2015-2016]

10. We would now take up appeals preferred by the preferred by the Assessee directed against the Order, dated 18/07/2025, 18/07/2025 and 15/07/2025 passed by the Learned CIT(A) whereby the Learned CIT(A) had dismissed the appeal against the Intimation Order, dated 21/07/2014, 14/12/2015 and 24/04/2016 respectively passed under Section 143(1) of the Act for the Assessment Year 2013-2014, 2014-2015 and 2015-2016.

11. During the course of hearing both the sides had agreed that our

finding/adjudication on the Grounds raised in appeal preferred by the Assessee for the Assessment Year 2011-2012 shall apply mutatis mutandis to Grounds raised in by the Assessee in the present appeal for the Assessment Year 2013-2014, 2014-2015 and 2015-2016. Thus, keeping in view the parity in the relevant facts and circumstances, and adopting the reasoning given while adjudicating grounds raised in Assessee's appeal for the Assessment Year 2011-2012, we deem it appropriate and in the interest of justice to overturn the decision of the Learned CIT(A) in all the three appeals and condone the delay of about 11 years, 9 years and 11 years in filing appeals against the Intimation Order under Section 143(1) of the Act for the Assessment Year 2013-2014, 2014-2015 and 2015-2016, respectively, before the Learned CIT(A). Thus, the impugned order, dated 18/07/2025, 18/07/2025 and 15/07/2025 passed by Learned CIT(A) for the Assessment Year 2013-2014, Assessment Year 2014-2015 and Assessment Year 2015-2016, respectively, are set aside with the directions to adjudicate the grounds raised by the Assessee in the respective appeal on merits after granting the Assessee a reasonable opportunity of being heard. The Assessee is also directed to file details, documents & submission in support of its claims/contentions before the Learned CIT(A). The Learned CIT(A) would be at liberty to admit/consider the same as per law. In terms of the aforesaid and without returning any findings on merits, Grounds No.1-3 raised by the Assessee in all the three appeals are allowed and Ground No. 4 & 5 are dismissed as having being rendered academic on account of setting aside of the impugned order. Thus, the appeals pertaining to Assessment Year 2013-2014, 2014-2015 and 2015-2016 are partly allowed.

12. In conclusion, the four appeals preferred by the Assessee are partly allowed.

Order pronounced on 05.01.2026.

Sd/-
(Om Prakash Kant)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 05.01.2026
Milan,LDC

Sd/-
(Rahul Chaudhary)
Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai