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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA Nos.513 & 514/M/2025
Assessment Year: 2014-15 & 2015-16

M/s. Galaxy Co – op HSG Society Ltd., Flat No.7, Galaxy CHS, Plot No.30, Sector 2, Vashi S.O (Thane), Navi Mumbai – 400 703 **PAN: AAAAG2504N**	Vs.	**Income Tax Officer,** Ward (1)(1), Qureshi Mansion, Gokhale Road, Naupada, Thane, Maharashtra – 400 602
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Dhaval Shah, Ld. Amicus Curiae a/w Ms. Vidhya Jayakumar , Ld. CA

Revenue by Sr.D.R. : Shri Manoj Kumar Sinha, Ld.

Date of Hearing : 09.04.2025
Date of Pronouncement : 29.04.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the Assessee against the orders even dated 27.06.2024, impugned herein, passed by the Ld. Addl./Joint Commissioner of Income Tax (Appeals) (in short "Ld. Addl./Joint Commissioner") under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2014-15 & 2015-16.

2. Both the appeals are based on the identical facts, except variation in amounts and having involved identical issues; therefore, for the sake of brevity, the same were heard together and are being disposed of by this composite order by taking into consideration the facts and circumstances and issue involved in ITA No.513/M/2025 as a lead case and result of the same would be applicable mutatis mutandis to both the appeals under consideration.

3. In this case, the Assessee had earned an amount of Rs.2,28,408/- consisting of Rs.1,78,418/- being interest income earned from co-operative banks and Rs.49,990/- income earned from house property u/s 80P(2)(c) of the Act and claimed the same as exempt u/s 80P(2)(d) & u/s 80P(2)(c) of the Act, respectively. The said claim of the Assessee was disallowed by the CPC, vide intimation/order dated 20.05.2015 u/s 143(1) of the Act.

4. The Assessee, being aggrieved, challenged the said intimation/order dated 20.05.2015, by filing first appeal before the Ld. Commissioner, however, with a delay of 7 years and 6 months which was declined by the Ld. Commissioner by holding as under:

> *"That the Assessee has not submitted any petition with reasonable and sufficient cause requesting for condonation of delay in filing of the appeal. The Assessee has not submitted any evidence to express reasonable and sufficient cause due to which it could not file the appeal within the time limit prescribed in law. The Assessee was not having sufficient cause for delay in filing of the appeal and hence the appeal filed by the Assessee is held to be invalid and non maintainable being out of time".*

5. Though the Ld. Commissioner declined to condone the delay in filing of the appeal, however, he further proceeded with the case on merit and ultimately adjudicated the merits of the case as well

and ultimately dismissed the appeal of the Assessee not only on the point of limitation but also on merit.

6. The Assessee, therefore being aggrieved with the impugned order has challenged the impugned order by filing its appeal, however, with a delay of 146 days. With regard to the condonation of delay, the Assessee, by filing an affidavit of previous Secretary, has claimed that Mr. Suryanarayanan Chidambaran was the Secretary, who due to his mother's illness and mental preoccupation could not file the appeal in time which resulted into delay in filing of the instant appeal and as the Assessee is having good case in his favour being covered by various decisions of the Hon'ble Courts and therefore the delay of 146 days in filing of the instant appeal may be condoned.

7. On the contrary, the Ld. D.R. refuted the claim of the Assessee.

8. Considering the claim of the Assessee qua condonation of delay as bonafide, genuine and un-intentional, the same is condoned, however, subject to deposit of Rs.1100/- in the Revenue Department under "other heads" within 15 days of this order.

9. Coming to the merits of the case, as observed above, the Ld. Commissioner not only decided the appeal of the Assessee on the point of limitation declining the request of the Assessee for condonation of delay but also dismissed the appeal of the Assessee on merits. Therefore, question emerge "as to whether the Ld. Commissioner while refusing to condone the delay has rightly proceeded with the case on merits".

10. This Court observe that identical issue has also been dealt with by the Hon'ble Gauhati High Court in the case of Williamson

Financial Services Ltd. vs. CIT (2004) 140 taxman.com 246 (Gauhati), wherein the Hon'ble High Court has held as under:

> *"Once the Tribunal has arrived at the conclusion that the appeal is barred by limitation the Tribunal has no jurisdiction to entertain the appeal of the Revenue on the merits and issue any direction in regard thereto. The Tribunal having committed an error of law in remanding the matter, we allow the appeal filed by the assessee and set aside the order of remand passed by the Tribunal."*

11. This Court further observe that the Hon'ble High Court of Madras in the case of Centre for Individual & Corporate Action (CICA) vs. Assistant Commissioner of Income Tax, Business Circle-XII, Chennai (2016) 66 taxmann.com 346 (Madras) also dealt with the identical issue and held "that once the appeal itself is not entertained on the question of delay, then there is no question of deciding the issue raised in the appeal on merits", by observing and holding as under:

> *"10. Even at the very outset we find that the procedure adopted by the Tribunal is highly prejudicial to the interests of the appellant-assessee inasmuch as the Tribunal having decided not to proceed with the matter on the ground of condonation of delay, cannot unilaterally decide the appeals on the merits, more so when the appellant-assessee was not given proper opportunity to contest the matter in the main appeals on the merits. The order of the Tribunal is also not in consonance with section 253(5) of the Income-tax Act. Section 253(5) of the Income-tax Act mandates that an appeal should be admitted before ever an order is passed on the merits. Once the appeal itself is not entertained, the question of going into the merits of the matter does not arise. We, therefore, find that the order of the Tribunal deciding the appeals of the assessee on the merits, after dismissing the appeal itself on the question of delay, is an error apparent on the face of the record and that the order passed is without jurisdiction since when there is no appeal, there is no question of deciding the issue raised in the appeal on the merits.*
>
> *11. The above view of ours is fortified by the decision of the Gauhati High Court in the case of Williamson Financial Services Ltd. v CIT [2003] 262 ITR 595/ 140 Taxman 246.*

12. In view of the reasons abovementioned, we set aside the order of the Tribunal and remand the matters back to the Tribunal for reconsideration. Accordingly, the matters are allowed by way of remand to the Tribunal. Consequently, connected miscellaneous petitions are closed. It is needless to add that while dealing with the condonation of delay issue, the Tribunal shall keep in mind the proceedings which the assessee first went through even before this order, which goes to show that the assessee has been acting bona fide and diligently pursuing the matter before the appropriate forum."

12. This Court further observe that Hon'ble High Court of Madras in another case i.e. All Angels Educational Society vs. Chief Commissioner of Income Tax, Chennai-III (2016) 72 taxmann.com 251 (Madras) also dealt with the identical issue by holding that having rejected the application on the ground of limitation, the question of examining the merits of the matter would not arise, as it is a superseded exercise.

13. From the aforesaid judgments, it is clear that once the Court declined to condone the delay and/or dismissed the appeal of the Assessee in limine for want of limitation, then the Court is not supposed to touch upon the merits of the case and/or is not supposed to decide the case on merits.

14. Coming to the instant case, admittedly the Ld. Commissioner though declined to condone the delay and/or dismissed the appeal of the Assessee for want of limitation but still proceeded with the merits of the case and ultimately dismissed the appeal of the Assessee on merits as well; therefore, the impugned order is liable to be set aside. However, considering the peculiar facts and circumstances, as the issue qua deduction claimed u/s 80P(2)(d) of the Act, on account of interest income earned from co-operative banks, is not res-integra now as has been tested by various Courts including by the Tribunal in Pathare Prabhu Co-operative Housing Society Ltd. vs. ITO (ITA No.1346 & 1347/M/2023 decided on 27.07.2023) (2023) 153 taxmann.com 714 (Mum. – Trib.), wherein

the Hon'ble Tribunal by considering the relevant provisions of the law and judgments concerning the issue, ultimately allowed identical deduction claimed u/s 80P(2)(d) of the Act, by observing and holding as under:

> *"8. We have considered the submissions of both sides and perused the material available on record. The only dispute raised by the Assessee is against the disallowance of deduction under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The Assessee is a registered Co-operative Housing Society and during the assessment year 2018-19 earned interest income of Rs. 50,39,861 from the investments made in various Co-operative Banks.*
>
> *9. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the Assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an Assessee being a Co-operative Society. Further, section 80P(2)(d) of the Act, reads as under:*
>
> > *"80P. Deduction in respect of income of co-operative societies.*
> > *(1) .....*
> > *(2) The sums referred to in sub-section (1) shall be the following, namely:–*
> > *(a) .....*
> > *(b) .....*
> > *(c) .....*
> > *(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;"*
>
> *10. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the Co-operative Society from the investments, and (ii) such investments should be with any other Co-operative Society. Further, the term „co-operative society" is defined under section 2(19) of the Act as under:*
>
> > *"(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;*

11. In the present case, there is no dispute that the Assessee is a Co Operative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the Assessee, the same shall be allowed as a deduction. It is pertinent to note that since the Assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Cooperative Bank. Accordingly, the Assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The AO denied the deduction under section 80P(2)(d) of the Act on the basis that the Co-operative Bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. vs CIT, Calicut, [2021] 431 ITR 1 (SC) while analyzing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Cooperative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the Assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act which is not the facts of the present case. Therefore, we find no merits in the aforesaid reasoning adopted by the AO and upheld by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the Assessee.

12. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the Assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. In Kaliandas Udyog Bhavan Premises Coop Society Ltd vs ITO, in ITA No. 6547/ Mum./2017, vide order dated 25/04/2018, while dealing with the provisions of section 80P(2)(d) vis-à-vis section 80P(4) of the Act, the coordinate bench of the Tribunal observed as under:

> *"7. ……Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an Assessee cooperative society from its*

investments held with any other cooperative society, shall be deducted in computing the total income of the Assessee. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the Assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of Sub-section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardize the claim of deduction of a cooperative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a cooperative society from its investments made with any other cooperative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term 'co-operative society' had been defined under Sec. 2(19) of the Act, as under:

> *'(19) "Co-operative society" means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;'*

We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act."

13. We find that the learned CIT(A) has placed reliance upon the decision of the Hon"ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative Sales Society, [2017] 395 ITR 611 (Karn.), wherein it was held that interest earned by the Assessee, a Co-

operative Society, from surplus deposits kept with a Cooperative Bank, was not eligible for deduction under section 80P(2)(d) of the Act. We find that in an earlier decision the Hon'ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative Sales Society, [2017] 392 ITR 74 (Karn.) held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd., [1972] 88 ITR 192. In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the Assessee must be adopted".

14. Therefore, in view of the above, we uphold the plea of the Assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the Assessee in respect of interest income earned from investment with Cooperative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the Assessee are allowed."

15. As the issue qua deduction claimed u/s 80P(2)(d) of the Act as involved in this case, is squarely covered by the aforesaid decision of the Tribunal and therefore this Court is inclined to allow the said claim made by the Assessee. **Thus, the deduction claimed u/s 80P(2)(d) of the Act, by the Assessee, is allowed.**

16. Further, the Assessee has also claimed the deduction u/s 80P(2)(c) of the Act to the tune of Rs. 49,990/-. As the limit set out for claiming such deduction is Rs. 50,000/-, **thus the claim of**

the Assessee to the tune of Rs.49,990/- u/s 80P(2)(c) of the Act, is also allowed.

17. Resultantly, the appeal filed by the Assessee under consideration, stands allowed.

18. In view of decision of appeal no.513/M/2025, both the appeals under consideration are allowed, in the same terms.

19. This Court deem it appropriate to endorse and appreciate enthusiasm and able assistance provided voluntarily by Mr. Shri Dhaval Shah, Ld. Amicus Curiae, for substantial justice and proper and just decision of this case.

Order pronounced in the open court on 29.04.2025.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.