

आयकर अपीलीय अधिकरण न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL

“(SMC)” BENCH, MUMBAI

BEFORE SMT. BEENA PILLAI, JM

&

SHRI ARUN KHODPIA, AM

I.T.A. No.2965/Mum/2026

(Assessment Year: 2012-13)

Bakhtawar Co-Operative Housing Society Ltd. Ground Floor Bhaktawar, 22 N D Road Nepeansea Road, Maharashtra - 400006 PAN: AAAAB0152B	Vs.	ITO, Ward 19(1)(1), Mumbai Piramal Chamber, Mumbai - 400012
Assessee- अपीलार्थी / Appellant	:	Revenue- प्रत्यर्थी / Respondent

Assessee by : Shri Rajesh S. Shah

Revenue by : Smt. B. Brahma Vidya (Sr. DR.)

Date of Hearing : 13.05.2026

Date of Pronouncement : 25.05.2026

ORDER

Per Arun Khodpia, AM:

This appeal is preferred by the assessee, directed against the order of Commissioner of Income Tax Appeal, ADDL/JCIT (A), Thiruvananthapuram [in short, “the Ld. CIT(A)”] dated 10.02.2026 for the assessment year 2012-13, which in turn arises from assessment order u/s 143(1) of the Income Tax Act, 1961 (“the Act”) dated 27.02.2013, passed by CPC, Bengaluru (in short, “the Ld. AO”). The grounds of appeal raised by the assessee are as under:

1. *On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in dismissing the appeal on account of delay in filing of an appeal without condoning the delay though the appellant had reasonable cause for delay in filing of an appeal.*
2. *On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in dismissing the appeal in limine without considering the merits of the case.*
3. *On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in not considering the following Grounds of Appeal:*
 - a) *On the fact and circumstances of the case and in law C.P.C. Bangalore erred in disallowing deduction u/s 80P amounting to Rs. 13,77,502/- of the Income Tax Act 1961, CPC is also erred in considering due date of filing is 31/08/2012, however as accounts of all co-operative societies are subject to statutory audit provisions under respective governing laws, therefore due date for filing return of income under the Income-tax Act, 1961 is September 30 of every year.*
 - b) *On the fact and circumstances CPC erred in not allowing deduction u/s 80P amounting to Rs. 13,77,502/- of the Income Tax Act 1961.*
 - c) *The CPC has erred in making addition of Rs.13,77,502/- by disallowing the claim of Provision of Sec 80P(2)(d). The CPC has assessed income of Rs.14,80,720/- as against the returned Income of Rs.1,03,210/-.*
4. *The appellant craves leave to add, amend, modify, substitute and/or cancel any of the ground of the appeal.”*

2. The sole issue in the present appeal arises on account of denial of deduction under section 80P amounting to Rs. 13,77,502/- by the CPC vide

intimation under section 143(1) of the Act dated 27.02.2013. The issue has been raised before the Ld. CIT(A) Appeals, who had dismissed the appeal of assessee treating the same barred by limitation being delayed by more than thirteen years in filing of the appeal. The assessee, being aggrieved with the decision of the Ld. CIT(A) Appeals, filed the present appeal before us.

3. Since the appeal of assessee was delayed before the Ld. CIT(A) Appeals, an affidavit for condonation of delay in filing of appeal has been filed, stating the reasons for delay. As per the contents of the affidavit, it is explained that when the claim of deduction under section 80P(2)(d) of the assessee was rejected by the CPC, the part time accountant, who was dealing with the matters, under impression that the matter can be resolved by explaining it to the Ld. AO had pursued the same before the Ld. AO. Also, the assessing office informed that the rectification will be carried out. The Tax Consultant of the assessee society also advised for not filing of an appeal against the aforesaid adjustment. Further, due to the Pandemic Covid the office bearers as well as the accountant, who were changed, the matter remained unattended without anyone's knowledge. Meanwhile, the refunds in respect of certain years were getting adjusted against the demand of assessment year 2012-13. The new committee, who had come into effect approached the New Tax Consultant to resolve the issue. Accordingly, they

approached the Ld. AO for rectification and also advised that an appeal is to be filed with the Commissioner of Appeals. As per advice, an appeal was filed before the Ld. CIT(A) Appeals on 04.02.2026. It was the submission that the delay was neither willful nor intentional but occurred due to circumstances beyond control. The delay was caused because of dependance on the accountant and change of incumbents in the managing committee every three years. Further, the Covid conditions, also added the reasons for delay. It was the prayer that since the delay was purely on account of number of problems and circumstances faced by small societies, the same may be condoned in the interest of justice. On the contrary, the Ld. DR representing the revenue objected to the contentions of the assessee and have vehemently supported the orders of the Ld. CIT(A) Appeals. In rebuttal, the Ld. AR strongly placed his reliance on various decisions wherein the 80P(2)(d) was granted to the Co-Operative Housing Societies on similar facts and circumstances, as in the assessee's case. The cases relied upon and listed as under:

Sl. No.	Particulars
1	<i>Vishva Villa Co-op Housing Society Ltd Vs. ITO. Ward 19(3)(1), ITA No. 682, 683 684/Mum/2024 dated 27.06.2024.</i>
2	<i>Suraj Co-operative Housing Society Limited Vs. ITO, Ward 19(3)(1), ITA No. 2348, 2349, 2350/Mum/2025.</i>
3	<i>Presidential Plaza Co-op Premises Society Limited Vs. ITO Ward 27(2)(1), ITA No. 1508/Mum/2024 dated 12.11.2024.</i>
4	<i>Kinjal Heaven Vs. ITO, Ward 19(2)(2), ITA No. 2955, 2956, 2957 & 2958/Mum/2023 dated 06.11.2023</i>
5	<i>M/s. Premium Tower Co-operative Housing Society Ltd. Vs. The Commissioner (Appeals) of Income Tax Mumbai, ITA No. 1583/Mum/2023 dated 17.05.2023.</i>

6	<i>Jagruti Nagri Sahakari Patsanstha Myt Parli Vajjnath Vs. ITO, ITA No. 2252 to 2254/Pun/2024, Dt. 23.01.2024, ITAT Pune.</i>
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4. We have considered the rival submissions, perused the material available on record and decisions relied upon by the assessee. Admittedly, an adjustment was made by CPC under section 143(1), by denying the claim of assessee regarding exemption under section 80P(2)(d) of the Act. It seems that the assessee society is entitled for such claim and the legitimate claim of the assessee society was denied by making a variation in the return of income. Regarding condonation of delay, we find substance in the submissions of the assessee that the delay was on account of certain reasons, which were beyond the control of assessee and it cannot be assumed that there would be any mala fide intentions or deliberate attempt of the assessee's society in the incidence of such delay. We, thus, condone the delay in filing of appeal before the Ld. CIT(A) Appeals.
5. Further, under similar facts and circumstances, this bench had decided the issue by setting it aside to examine the claim of assessee under section 80P(2)(d), after factual verifications. This issue is equally covered by the decision of ITAT, Mumbai "SMC" bench in the case of **Torino Co-operative**

Housing Society Ltd. Vs. ITO in ITA No. 1788/Mum/2026 vide order dated

05.05.2026, wherein the relevant findings of tribunal are as under:

"7. We have considered the submissions of assessee and reasons furnished before us. We find that the assessee is a Co-operative Housing Society, which had tried its level best to get the rectification done through various communications with the department. In view of such facts and circumstance, while the bona fides of the assessee society cannot be disbelieved and in absence of any default on the part of the assessee. In the interest of justice, we condone the delay in filing of appeal before Id. CIT(A) and direct to decide the issues in set aside afresh on merits."

6. Being the case of assessee identical and at parity with the facts and circumstances to the case of **Torino Co-operative Housing Society Ltd.** (**supra**), we, therefore, respectfully follow the aforesaid decision, as deemed appropriate set aside the matter to the file of Ld. AO for fresh adjudication.
7. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside proceeding. The assessee is also directed to cooperate and proactively assist in the set aside proceedings, failing which the Ld. AO would be at liberty to decide the appeal in accordance with the mandate of law.
8. In result, the appeal of assessee stands **allowed** for statistical purposes, in above terms.

Order pronounced in the open court on 25 -05-2026.

Sd/-

**(SMT. BEENA PILLAI)
JUDICIAL MEMBER**

Sd/-

**(ARUN KHODPIA)
ACCOUNTANT MEMBER**

Mumbai, Dated : 25-05-2026.

Soumili Das, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)

ITAT, Mumbai