आयकर अपीलीय अधिकरण न्याय पीठ मुंबई में।

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

BEFORE SHRI PAWAN SINGH, JM &
SHRI ARUN KHODPIA, AM

I.T.A. No. 7121/Mum/2025
(Assessment Year: 2012-13)

I.T.A. No. 7120/Mum/2025
(Assessment Year: 2013-14)

I.T.A. No. 7122/Mum/2025
(Assessment Year: 2014-15)

Sterling Court F Wing Co-op. Housing Society Ltd., Survey No.17, Hissa No.2, CTS No. 55/1-11 Village Kondivita, Orkay Mill Lane, Andheri (East), Mumbai - 400093 **PAN: AAEAS0565P**	Vs.	**ITO, Ward-31(2)(1),** Kautilya Bhavan, Mumbi-400051.
Assessee -अपीलार्थी / Appellant	:	**Revenue -** प्रत्यर्थी / Respondent

Assessee by	:	Shri Vijay Shah, AR
Revenue by	:	Shri Nagnath Bhimrao Pasale, Sr. DR
Date of Hearing	:	08.01.2026
Date of Pronouncement	:	12.01.2026

<u>O R D E R</u>

<u>Per Arun Khodpia, AM:</u>

The aforesaid three appeals are preferred by the assessee, against the orders of Addl/JCIT(A)-3, Chennai [for short "ld. CIT(A)"] all dated 29.09.2025 for the AYs 2012-13, 2013-14 & 2014-15, arising out of orders under section 154 of the Income Tax Act, 1961 (the Act) dated 28.04.2023 passed by the ITO Ward-31(2(1), Mumbai for all the three AYs.

2. Since all these appeals are furnished to assail the impugned appeallate orders by first appellate authority on identical issue, which are interconnected and decided under similar worded impugned orders by ld. CIT(A), the same therefore, for the sake of brevity, are heard together and taken up for adjudication under this common order.

3. **ITA No. 7121/Mum/2025** for AY 2012-13 has been taken as the lead case wherein our observations, discussion and decision shall have equal application to the remaining two appeals also.

3. The assessee in all the appeals has raised the similar grounds of appeal, except variation of amount in figures, thus, ground of appeal for AY 2013-14 are as culled out as under to illustrate the contentions of the assessee:

Grounds of appeal for AY 2012-13

"1. On the facts and circumstances of the case, the Ld CIT Appeal has erred in law and fact in confirming and rejecting the application for rectification u/s 154 of the Act to allow the deduction of Rs.2,65,526/- u/s 80P of the Act even though it is a mistake apparent from the record.

2. On the facts and circumstances of the case, the Ld CIT Appeal has erred in law and fact by concluding that bank/co-operative bank cannot be considered as co-operative society and confirming the disallowance deduction of Rs.2,65,526/- under section 80P of the Income Tax Act.

3. On the facts and circumstances of the case, the Ld Assessing Officer and CPC has no jurisdiction to make an adjustment for deduction under section 80P of the Income Tax Act any adjustment while passing the intimation under section 143(1)(a) of the Income Tax Act. Because deduction under section 80P is a debateable issue."

ITA No. 7121/Mum/2025 for AY 2012-13

4. The brief facts of the case are that, the assessee has filed its return of income for the AY 2012-13 on 27.09.2012, declaring a total income at Rs. 89,650/- after claiming deduction under Chapter-VIA as per provisions of section 80P(2)(d) of the Act. The return of assessee was processed under section 143(1) on 27.02.2013, disallowing the claim of deduction under section 80P(2)(d) for Rs. 2,66,556/-. Being aggrieved with such disallowance, assessee preferred to file an application for rectification under section 154 of the Act before the Jurisdictional AO (JAO), but JAO rejected the request of assessee

vide order u/s 154 dated 28.04.2023, stating that there is no mistake apparent on record.

5. Aggrieved with the aforesaid rectification order, assessee preferred an appeal before the ld. CIT(A), who also had dismissed the appeal of assessee with the observations that the return filed by the assessee was beyond the stipulated date of filing of return of income under section 139(1), therefore as per the prevailing jurisdictional interpretation of section 80A(5) r.w.s. 139(1) of the Act, any deduction claimed under Chapter-VIA which includes section 80P also is not admissible unless the return of income is filed on or before the due date specified under section 139(1) of the Act. The ld. CIT(A) also mentioned that the interest income received by the assessee from Saraswat Co-operative Bank which has RBI Licence for carrying out banking services, cannot be held to be a Co-operative Society within the meaning of section 80P(2)(d) of the act, accordingly, the case of assessee falls within the purview of section 80AC of the Act, the assessee therefore is not eligible for deduction under section 80P of the Act.

6. In view of the dismissal of appeal by the ld. CIT(A), assessee preferred an appeal before the ITAT, in the present matter.

7. Before us ld. Counsel (AR) of the assessee submitted that the decision given by the ld. CIT(A) was not in accordance with the mandate of law, as the

issue is already decided by ITAT, Mumbai in the case of ***Sterling Court E Wing Co-op Housing Society Ltd. Vs ITO in ITA Nos. 72 to 75/M/2024 AY 2012-13 to AY 2015-16 vide order dated 28.06.2024***, wherein the ITAT has held that the disallowance of deduction under Chapter-VIA can be made under section 143(1)(a)(v) of the Act, only on account of non-furnishing of return of income within the due date of filing of the return and the condition does not apply for deduction u/s 80P even prior to 01.04.2021.

8. Ld AR further placed his reliance on the CBDT's Circular No. 13/2023 dated 26.07.2023, according to which the pre-condition of filing of return on or before the due date specified under section 139(1) is applicable for the period commencing from 1st day of April 2006 but before 1st April 2018 on deductions admissible u/s 80IA, 80IB, 80IAB, 80IB, 80IC, 80ID or 80IE only and thereafter from 1st April 2018 the precondition to file the return before specified date u/s 139(1) would apply to all the deductions under chapter VIA, heading "C-Deductions in respect of certain incomes". It is further clarified in the said Circular that for AYs 2018-19 to 2022-23, the Chief Commissioner of Income Tax and Director General of Income Tax are directed to admit all pending as well as new application for condonation of delay in furnishing of return of income claiming deduction under section 80P of the Act, subject to certain enquiries. It was the submission, that the case of assessee pertains to AY 2012-13, 2013-14 and 2014-15, which falls in the category, where the requirement of

filing of return before the specified date was not mandatory, as section 80P was not specified for such preconditions before 01.04.2021, accordingly the disallowance of assessee's claim under section 80P(2)(d) is a mistake apparent from record and deserves to be rectified u/s 154. Denial of deduction, thus, under the provisions of section 143(1) of the Act was totally uncalled for and bad in law.

9. Per contra, ld. Sr. DR representing the revenue reiterated the finding AO as well as Ld. CIT(A) and submitted that the Saraswat Co-operative Bank from whom the assessee has received interest income is holding a licence from RBI for carrying out the banking services, the same does not fall within the definition of Co-operative Society as per provisions of section 80P, therefore even if the requirement of filing of return before the date prescribed under section 139(1) is not required in present case, the assessee would not be eligible for claim of deduction under section 80P(2)(d), being the interest received from an entity which is not a Co-operative Society. The order of Ld. CIT(A) therefore was justified in denying the deduction u/s 80P to the assessee.

10. In rebuttal to the aforesaid contention by ld. Sr. DR, ld. AR placed before us a decision from the **ITAT, SMC Bench, Mumbai in ITA No. 5769/Mum/2025 dated 27.11.2025** in the case of **Shree Raj Crystal Co-op. Housing Society Ltd. Vs. ADIT, CPC**, **Bangaluru**, wherein the claim of deduction under section 80P, on the interest income earned from Saraswat Co-

operative Bank was allowed following the decision in the case of **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.)**, having following relevant observations:

> *"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."***
>
> *(emphasis supplied by us)*

> *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."*

11. Back by aforesaid submissions, it was the prayer by ld. AR that the assessee in present case is entitled for claiming the deduction under section 80P(2)(d), therefore rejection of such deduction under section 143(1) was uncalled for and the same merits to be rectified under the provisions of section 154 of the Act. Reliance was placed on decision of **Hon'ble Supreme Court** in the case of **T.S. Balaram, Income-tax Officer V/s Volkart Brothers [1971] 82 ITR 50 (SC) [05-08-1971]**, according to which the AO is required to correct a mistake apparent on record which is obvious and patent on record.

12. On a thoughtful consideration of the aforesaid facts and circumstances and the case law relied upon by the assessee, we find substance in the contentions raised by ld. AR that:

(i) The deduction under section 80P(2)(d) can be claimed by an assessee, even if the return is filed belatedly after the prescribed date under section 139(1) of the Act (for AY 2012-13, 2013-14 and 2014-15), as held by the ITAT Mumbai in the case of **Sterling Court E Wing (Supra)** and also clarified by **CBDT Circular No. 13 / 2023**.

(ii) Regarding this status of Saraswat Co-operative Bank, even if it is a Co-operative Bank, since it continues to be a Co-operative Society also, the interest income received from the said Bank would entitle for claim of deduction under section 80P(2)(d) as held in ***Shree Raj Crystal Co-Operative Housing Society Ltd. (supra)***

13. In light of aforesaid facts, circumstances and observations, respectfully following the Jurisprudence referred to supra, we are of the considered view that the disallowance of exemption claimed under section 80P(2)(d) in processing of return under section 143(1) of the Act and thereafter rejection of rectification under section 154 was not in accordance with the settled principle of law. The assessee herein is entitled for the claim of deduction under section 80P(2)(d) of the Act on receipt of interest income from Saraswat Co-operative Bank, the findings of ld. CIT(A) therefore are liable to be set-aside. We, thus, direct the AO to allow the claim deduction u/s 80P(2)(d) to the assessee, as discussed hereinabove.

14. In result, appeal of assessee in **ITA No. 7121/M/2025** for AY 2012-13 stands **allowed**.

15. **ITA No. 7120 & 7122/M/2025** for AY 2013-14 & 2014-15, since are preferred to assail the identical issues, on similar facts and circumstances, being on parity with the appeal of assessee in **ITA No. 2171/Mum/2025** for AY 2012-13, thus, our decision therein shall *mutatis mutandis* apply to these two

appeals in **ITA No. 7120 & 7122/M/2025** also, the same are accordingly allowed, in terms of our aforesaid observations.

16. In combined result, all the three appeals of assessee are **allowed** in terms of our aforesaid observations.

Order pronounced in the open court on 12-01-2026.

Sd/-	***Sd/-***
(PAWAN SINGH)	**(ARUN KHODPIA)**
Judicial Member	**Accountant Member**

Mumbai, Dated : 08-01-2026.
**SK, Sr. PS*

<u>Copy of the Order forwarded to</u> :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai