

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA.No.1923/Mum./2024
Assessment Year 2018-2019

MIG Coop Housing Society Group-II Limited, Society Office-B Wing, Stilt Area, Kalpataru Sparkle, MIG Colony, Gandhinagar, Mumbai – 400 051 Maharashtra. PN AAAAM8129P	vs.	The Income Tax Officer, Ward-23(2)(1), Piramal Chamber, Mumbai. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	S/Shri Chaitanya Joshi & Deep Chauhan
For Revenue :	Smt. Mahita Nair, Sr. DR

Date of Hearing :	11.07.2024
Date of Pronouncement :	22.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This assessee's appeal, for assessment year 2018-2019,
arises against National Faceless Appeal Centre [in short the "NFAC"]
Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/

1063623476(1), dated 29.03.2024, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short “the Act”).

Heard both the parties. Case file perused.

2. It emerges in this factual backdrop that the assessee’s sole substantive grievance raised in the instant appeal seeks to reverse both the learned lower authorities action reversing assessment findings disallowing the assessee’s sec.80P(2)(d) deduction claim of Rs.2,41,41,832/- representing interest income derived from deposits made in cooperative societies/cooperative institutions; as the case may be.

3. Learned counsel representing the assessee has filed copy of this tribunal’s order in assessee’s case itself MIG Coop Housing Society Group-II Limited, Mumbai vs. ITO ITA.No.896/Mum/2016 dated 17.02.2017 deciding the very issue against the department as follows :

“12. Next is about allowing deduction u/s.80P of the Act. During the assessment proceedings, the AO held that the society had violated the principles of mutuality,that the

provisions of section SOP were not applicable to a Co-op.Housing Society that the assessee had made deposits out of money received against redevelopment agreement and from different channels, that same was not permissible under byelaws of the society, that it had transferred a sum of Rs.2.97 crores from the corpus fund to the P&L account that such investment in banks would not qualify for deduction u/s.80P of the Act Finally he denied the assessee the benefit of deduction u/s. 80P.

12.1. During the appellate proceedings the assessee referred to provisions of section 80P(2) of the Act especially 80P(2)(c)(ii) and 80P(d) of the Act and relied upon the case of Daoba Co- op Sugar Mills Ltd.230/774, Ashok APT CHS Ltd.(ITA/2845/M/2010), Sagar Sanjog CHS Ltd.(ITA/1972-74/Mum/2005); Panchratna Co-op.Hsg Ltd. (ITA2858/Mum/2010). Referring to the provisions of section 80P of the Act, the FAA held that restrictions put by the section was with regard to income received by way of interest on securities/income from house property, that the restriction could be extended to other

sub sections of section 80P(2), that there was no bar for claiming deduction under other sub sections of Section 80P(2) by a Co- op. Hsg. Society, that deductions could not be denied by observing that the society had breached the principle of mutuality or had violated the bye laws that till the society was registered as a CHS in the Register of the Registrar of Co-op. Society deduction u/s.80P could not be denied. Finally, he allowed the appeal filed by the assessee.

12.2. Before us, the DR relied upon the order of the AO and the AR relied upon the order of the FAA.

12.3. We find that the assessee had made a claim deduction of Rs.47.08 lakhs and Rs.50,000/- u/s.80P(2)(d) and 80P(2)(c)(ii) respectively, that the AO had invoked the provisions of Sec.80P (2) (f) and denied the society the benefits claimed by it. In our opinion, the sub sections of 80P deal with different claims and operate in different fields. The provisions of one sub section cannot be imported to another sub section. It is a fact that the Registrar of Co-op.Hsg. Society had not cancelled the registration of the Housing Society on the alleged violation of

principle of mutuality or bye laws. In these circumstances, in our opinion the FAA has rightly held that deduction claimed by the assessee under sub-sections (d) and (c)(ii) cannot be denied the assessee. Upholding his order, we dismiss the ground raised by the AO.

As a result, appeal filed by the assessee is partly allowed and the appeal of the AO is dismissed.”

4. The Revenue is fair enough in not pinpointing any specific distinction either on facts or on law in all these assessment years. Faced with this situation, we adopt judicial consistency to accept the assessee's instant sole substantive ground in very terms. Ordered accordingly.

5. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 22.07.2024

Sd/-
[GIRISH AGARWAL]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumba, Dated 22nd July, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "D" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,
Mumbai.