

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No. 1215/Mum/2024
(Assessment Year: 2020-21)

The MIG Co-operative Housing Society (Bandra East) Group IV Limited D/69/675 MiG Colony, Kalanagr Bandra (E), Mumbai-400 051	Vs.	Addl/JCIT(A)-4 1 st Floor, Prestige Alpha No. 48/1 48/2, Beratennagrahara Bengur, Hosur Road, Uttarahalli Hubli, Bengaluru, Karnataka – 560 100
PAN/GIR No. AABAT 3244 P		
(Assessee)	:	(Respondent)
Assessee by	:	Ms. Neelam Jadhav
Respondent by	:	Smt. Mahita Nair
Date of Hearing	:	26.06.2024
Date of Pronouncement	:	24.09.2024

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2020-21.

2. The assessee has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the deduction in respect of interest income of Rs.1,07,71,178/- earned by the Society on the deposits held with the co-operative banks was duly claimed in the return of income and consequentially failed to appreciate that the adjustment to the returned income in respect of disputable issue falls outside the purview and scope of provisions of section 143(1) and thereby erred in confirming the addition of Rs.1,07,71,178/- in course of processing of return of income in respect of this deduction – Rs.56,03,430/-*

2. *Without prejudice to the first ground, on the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the deduction claim of the society pertaining to receipt of interest on deposits held with cooperative bank is fully and squarely covered by provision of section 80P(2)(d) which is evident from the appeal order of honorable Tribunal for A.Y. 2011-12 in the Society's own case and also from the appeal orders of CIT(A) for the A.Y. 2015-16, 2016-17 & 2017-18.*

3. *On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the credit for self assessment tax of Rs.7,32,257/- was claimed in the return and consequentially erred in denying the credit for the same – Rs.7,32,257/-*

3. Brief facts of the case are that the assessee 'The MIG Co-Operative Housing Society (Bandra East) Group IV Limited is a Co-operative Housing Society duly registered under Maharashtra Co-op. Societies Act, 1960. The assessee had filed its return of income on 20.01.2021, declaring total income at Rs.20,50,000/- after claiming deduction under Chapter VIA amounting to Rs.1,07,71,178/- u/s. 80P(2)(d) of the Act being the interest income earned on deposits with Co-operative Bank and the same was processed u/s. 143(1) of the Act where the learned Assessing Officer (ld. A.O. for short) / CPC disallowed the claim of deduction vide intimation dated 25.11.2021.

4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the assessment order.

5. The ld. CIT(A) vide order dated 23.01.2024, upheld the order of the ld. A.O. / CPC on the disallowance made u/s. 80P(2)(d) of the Act on the ground that the Co-operative Bank does not fall under the category of 'Co-operative Society' and on other findings.

6. Further, aggrieved the assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

7. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the assessee's case has been covered by the Tribunal's order in the case of *MIG Co-operative Housing Society* and *MIG Co-operative Housing Society Group-II Ltd. vs. ITO* (in ITA No.896/Mum/2016 vide order dated 11.02.2017) on the issue of section 80P(2)(d) of the Act and also in the assessee's case for A.Ys. 2011-12, 2015-16 and 2017-18. The ld. AR relied on various decisions of the Hon'ble Apex Court and the co-ordinate benches.

8. The learned Departmental Representative (ld. DR for short) for the Revenue, on the other hand, relied on the order of Tribunal in the case of *ITO vs. M/s. Brahmavara Vyavasaya Seva* (in ITA Nos. 656, 667, 668/Bang/2024 vide order dated 16.05.2024) and the order of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee had earned interest income of Rs.1,07,71,178/- which was deposited in Bharat Bank, NKGSB Bank and Saraswat Bank. The ld. A.O./CPC disallowed the claim of deduction of the said amount u/s. 80P(2)(d) of the Act along with the denial of credit of self assessment tax Rs.7,32,257/-. The assessee had filed a rectification application u/s. 154 of the Act and the ld. A.O. vide order dated 23.01.2023 rejected the rectification application filed by the assessee. In an appeal before the ld. CIT(A), it was held that the assessee had not made any claim under Chapter VIA deduction as well as on prepaid taxes, which according to the ld. AR was a erroneous finding for the reason that the assessee has claimed deduction u/s. 80P(2)(d) of the Act in its return of income. The issue that has to be adjudicated is whether the assessee is

entitled to claim deduction u/s. 80P(2)(d) of the Act towards the interest income received from the deposits made in the Co-operative Banks. The Id. AR has relied on the decision of the co-ordinate bench in assessee's case for earlier years where the said deduction u/s. 80P(2)(d) of the Act has been allowed consistently. It is observed that for the year under consideration, the Id. CIT(A) has held that the said claim of the assessee is disallowed for the reason that the assessee has not made claim under Chapter VIA in its return of income and had relied on the decision of Hon'ble Apex Court in the case of *Goetze India Ltd.* [2006] 284 ITR 323 (SC), wherein it was held that the Id. A.O. is not entitled to accept the claim for deduction which was not claimed at the time of filing of the return otherwise than by filing revised return of income. The Id. CIT(A) has also denied the claim of the assessee on the merits stating that the interest received from Co-operative Banks are not eligible for claiming deduction, as the same would not fall under a co-operative society. The Id. CIT(A) had relied on the decision of the Hon'ble Apex Court in the case of *The Mavilayi Service Co-op. Bank Ltd. vs. CIT, Calicut* 123 taxmann.com 161 (SC).

10. In the above factual matrix of the case, it is observed that the assessee has claimed deduction u/s. 80P(2)(d) of the Act in its return of income, towards the interest received out of the deposits made in the Co-operative Societies. The finding of the Id. CIT(A) that the assessee had not made any claim is factually incorrect. The Id. AR brought our attention to pg. no. 58 of the paper book where in the return of income, the said claim has been made by the assessee. With regard to whether the assessee is eligible to claim deduction u/s. 80P(2)(d) of the Act towards the interest received from the Co-operative

Bank, it is the settled proposition of law where the Hon'ble Apex Court in *The Mavilayi Service Co-op. Bank Ltd. vs. CIT, Calicut* (supra) has given a categorical finding as to the eligibility of the Co-operative Banks which are akin to that of the Co-operative Society unless the said co-operative bank holds a license issued by the RBI and whether its activities are as that of commercial banks. We do not find any such arguments in the order of the lower authorities as to the eligibility of the Co-operative Banks, in which the assessee has made deposits. We are also conscious of the fact that the co-ordinate benches of the Tribunal have in earlier years given the benefit of deduction u/s. 80P(2)(d) and the Revenue has also not brought anything on record as to any change in facts and circumstances for the year under consideration. We, therefore, direct the Id. A.O. to grant the deduction claimed by the assessee u/s. 80P(2)(d) of the Act in the light of the decision of the Hon'ble Apex Court in the case of *The Mavilayi Service Co-op. Bank Ltd. vs. CIT, Calicut* (supra). Hence, we allow ground no. 2 raised by the assessee.

11. Ground no.3 is on failure to grant credit for self assessment tax amounting to Rs.7,32,257/-. The Id. A.O. is directed to grant credit of the same to the assessee subject to verification and in accordance with law. As we have decided the issue on the merits of the appeal, ground no.1 raised by the assessee requires no separate adjudication and is, therefore, rendered academic.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 24.09.2024.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated :24.09.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai