

Cooperative Housing Societies – Its Mutuality and Taxation:

A Legal Perspective

Introduction

Cooperative housing societies have long been a preferred structure for groups of individuals looking to pool resources for acquiring land and building homes. This model is common across India, especially where professionals or community groups come together to achieve the shared goal of owning residential property.

But questions often arise:

- How does the **doctrine of mutuality**, repeatedly tested before the Supreme Court, impact such societies?
- Do members need to deduct **TDS** while contributing funds?
- Is the cooperative society liable to deduct TDS on property purchases, construction payments or during the registration of the property?
- Does **GST** apply on contributions, construction, or registration of homes?

This article attempts to answer these questions in detail, weaving together statutory provisions, and landmark case laws.

The Doctrine of Mutuality: The Backbone of Cooperative Structures

The doctrine of mutuality is based on a simple yet powerful principle: **no person can make profit from themselves**. When individuals pool their money for a common purpose and any surplus is used exclusively for their collective benefit, such surplus is not considered “income” for tax purposes.

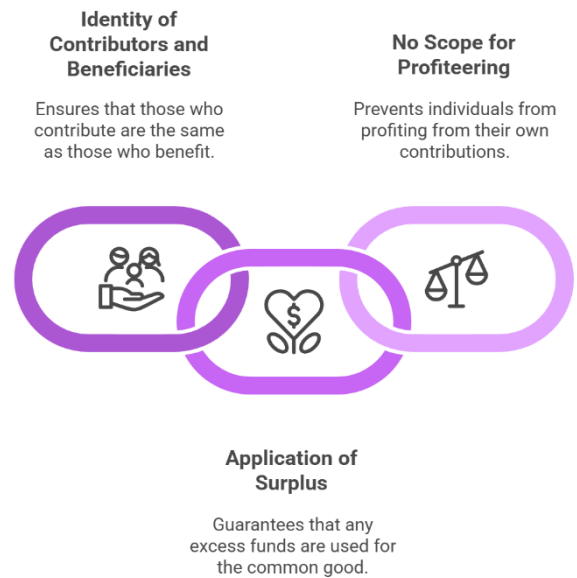
Under Sales Tax Law, supplies by clubs and associations to members were held non-taxable because there was no “sale” without two distinct persons. The term “sale” was drawn from the **Sale of Goods Act, 1930**, which defined it as a transfer of property in goods for a price. Three essential elements had to be satisfied –

- There must be **two distinct persons** – a buyer and a seller.
- There must be a **transfer of property in goods**.
- The transfer must be for **valuable consideration**.

In case of **Cooperative Societies**, could it be considered separate from its members?

Doctrine of Mutuality

The courts, relying on the **doctrine of mutuality**, repeatedly held that there were not two distinct parties in such transactions. When members contributed money and consumed refreshments or facilities, they were merely enjoying the fruits of their own collective contributions. In simple terms, the club was nothing more than an agent or a medium for its members. This caused substantial **loss of revenue** for States, as associations claimed exemption from sales tax on supplies to members.



The 46th Constitutional Amendment – A Legislative Response

The constant flow of revenue losses and judicial setbacks forced the legislature to act. Parliament brought in the **46th Constitutional Amendment Act, 1982**, which came into effect on 2nd February 1983.

This amendment inserted **clause (29A) in Article 366** of the Constitution. For the first time, the Constitution itself introduced the concept of “**deemed sales**.” Six categories of transactions were identified which, though not strictly sales under the Sale of Goods Act, would nonetheless be treated as sales for the purpose of taxation.

The provision most relevant to mutuality is **Article 366(29A)(e)**, which reads:

“a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration”.

This single clause changed the legal landscape. Supplies by clubs, co-operative societies, and other associations to their members were now **deemed to be sales**. The doctrine of mutuality, which earlier protected such transactions from sales tax, was effectively **neutralized** in the domain of goods. Importantly, this change was limited to **goods**. Services remained untouched, as they were not part of the sales tax framework at that time.

The amendment did not disturb the doctrine of mutuality under **income-tax law**. It was targeted only at the sales tax issue.

Landmark Judicial Precedents

- **Joint CTO v. Young Men's Indian Association (1970) 26 STC 241 (SC):** The Supreme Court held that a club and its members are not two distinct persons. Supplies of refreshments by the club were treated as members consuming their own pooled resources. Since there was no buyer–seller relationship, the transaction could not be regarded as a “sale.” Accordingly, no sales tax was leviable (Pre 46th Amendment position).
- **State of West Bengal v. Calcutta Club Ltd. (2019) 19 SCC 107 (SC):** It addressed taxation of goods and services supplied by clubs to their members. The club was charged both sales tax and service tax, raising questions about the applicability of taxes post-46th Amendment. The Court held that supplies of goods to members are taxable, as Article 366(29A)(e) treats them as sales. However, services provided to members are not taxable under the Finance Act, 1994, since mutuality still protected them. The ruling clarified that mutuality no longer shields goods but continues to protect services until GST removed this exemption in 2021. Overall, it established a clear distinction between taxation of goods and services in clubs (Post 46th Amendment position).
- **CIT v. Bankipur Club Ltd. (1997) 226 ITR 97 (SC):** Surplus from subscriptions, admission fees, or refreshments provided to members was not taxable under Income Tax law. The Court emphasized that as long as activities are restricted to members, mutuality protects such receipts.
- **Chelmsford Club v. CIT (2000) 243 ITR 89 (SC):** Even notional property income such as Annual Letting Value (ALV) of the club house was exempt when facilities were exclusively for members. ALV is a notional income concept under section 22, where property is deemed to generate income even if not let out. The Court confirmed that Section 22 (house property income) still falls within the concept of “income,” and where mutuality exists, it cannot be taxed.
- **Bangalore Club v. CIT (2013) 350 ITR 509 (SC):** Interest earned on fixed deposits with banks, even when the banks were club members, was held taxable. Once money is placed outside the “closed circle” of mutuality and used commercially, the identity between contributors and participators is lost.

Together, these judgments mark the **evolution of mutuality** in Indian tax law — from full protection of member-to-member dealings to a recognition that the principle ends once funds leave the members' pool.

Landmark Judicial Precedents in Mutuality



TDS Implications under the Income-tax Act, 1961

1. Contributions by Members

When members pool money to fund property purchase or construction, these are mutual contributions. They are not “income” of the society. Hence, **no TDS is required by members** at the time of contribution.

2. Purchase of Property

- **Section 194-IA:** The cooperative society, as buyer, must deduct TDS @1% if it purchases **non-agricultural land** from a **resident seller** for ₹50 lakh or more.
- If the seller is non-resident → **Section 195** applies.
- If the land is agricultural → excluded altogether.

3. Construction Contracts

- **Section 194C:** TDS on payments to contractors (1% if contractor is an individual/HUF; 2% if other entities) when limits are crossed.
- **Section 194J:** TDS @10% on payments to architects, engineers, or consultants if payments exceed ₹30,000 in a year.
- Purchases of materials (cement, steel, etc.) → no TDS.

4. Registration of Houses in Members' Names

When the completed houses are allotted to members, it is not a “sale” in the legal sense but an application of the members’ own funds. The society is not a *developer* selling property to outsiders; it is acting as a **collective vehicle of the members** to acquire land and construct houses. Further when houses are ultimately registered in members’ names, it is **not a transfer**

from society to members, as there is no “sale consideration.” It is essentially **allotment of property to members out of their own contributions** (principle of mutuality). Therefore, **no TDS is attracted under Section 194-IA or any other section** at the stage of registration.

GST Implications under the CGST Act, 2017

Section 7 of CGST Act, 2017

The Government of India, through **Section 108 of the Finance Act, 2021**, introduced a significant amendment to the **Central Goods and Services Tax Act, 2017 (CGST Act)**. This amendment inserted **Section 7(1)(aa)**, which came into force **retrospectively from 1st January 2022**. The purpose of this amendment was to clarify the scope of supply between associations, bodies, and their members for the purpose of GST.

Section 7(1)(aa) of the **CGST ACT 2017** reads as:

“(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another”.

Prior to this amendment, transactions within clubs, societies, and similar entities were sometimes shielded from GST under the principle of mutuality, as evidenced in cases like the Calcutta Club Ltd. (2019) SC decision. By deeming associations and their members as separate persons, the amendment effectively removes any such ambiguity, bringing inter-member transactions clearly within the GST framework.

This includes- **Membership fees, Provision of services, Supply of goods** within clubs, societies, trusts, or other associations, irrespective of whether they are incorporated.

The retrospective application ensures that any such transactions from 1st January 2022 onward are subject to GST, reinforcing legislative intent and establishing clarity for taxpayers and authorities alike.

Applicability of GST w.r.t societies & properties

1. Members’ Contributions

When members pool their money into a housing society, it is treated as a mutual contribution rather than a payment for goods or services. The tax authorities, including in their own FAQs, have clarified that such contributions are not subject to GST. The only time GST becomes relevant is when members pay monthly charges, such as maintenance fees, that exceed ₹7,500 per month per member.

2. Purchase of Property

The GST law itself (**Schedule III of the CGST Act**) specifically excludes the **sale of immovable property** from its scope. In other words, buying property is neither a supply of goods nor a supply of services. Therefore, GST is not applicable when the society purchases property. However, normal state levies like **stamp duty and registration charges** will still apply.

3. Construction of Residential Houses

If a real-estate developer sells an **under-construction** flat or house to buyers, GST applies at 1% for affordable housing and 5% for other residential properties (without input tax credit).

As per **section 7(1)(aa) of CGST Act**, transactions between society and members are **deemed as supply**, overriding the doctrine of mutuality. The 46th Constitutional Amendment had already created a deeming fiction for sales by associations to members, which GST law has extended to services as well. Thus, construction of Residential Houses by society to its members is **taxable under GST**.

4. Registration of Completed Houses

Once the houses are complete and the society registers them in the names of its members, GST is not relevant. The law clearly states that transfer of immovable property **after a completion certificate or occupation certificate** is outside the scope of GST. At this point, the only costs are **stamp duty and registration fees**, payable under state laws.

TDS and GST Implications for Cooperative Societies

Characteristic	Members' Contributions	Purchase of Property	Construction of Residential Houses	Registration of Houses
TDS Implications	No TDS required	1% TDS if non-agricultural land purchased from resident seller for ₹50 lakh+	TDS u/s 194C & 194J on payments to contractors/consultants exceeding limits	No TDS
GST Implications	Not subject to GST unless monthly charges exceed ₹7,500	GST not applicable, but stamp duty/registration charges apply	Deemed as a "Supply" and taxable under GST	GST not relevant after completion certificate; stamp duty/registration fees apply

Conclusion

Cooperative housing societies that operate exclusively for the benefit of their members enjoy significant tax protection under the **doctrine of mutuality**.

Over the years, the Supreme Court of India has laid down clear conditions for mutuality:

- ✓ **Identity of contributors and beneficiaries** – the people who contribute funds are the same as those who enjoy the benefits.
- ✓ **Application of surplus** – any excess is applied solely for the common benefit of members.
- ✓ **No scope for profiteering** – contributors cannot earn profit from their own contributions.
- **Income-tax:**
 - ✓ Members' contributions are not income.
 - ✓ TDS obligations are limited to property purchase (sec. 194-IA) and construction-related payments (sec. 194C/194J).
 - ✓ No TDS on allotment/registration of houses to members.
- **GST:**
 - ✓ Not applicable on members' contributions, property purchase.
 - ✓ Applicable for construction of houses by society for its members.
 - ✓ Transactions between non-individual entities and their members are taxable, eliminating ambiguities from mutuality. It ensures a uniform GST framework where all associations, whether incorporated or unincorporated, are treated consistently.
- **Judicial backing:**
 - ✓ *Bankipur Club* (1997) → Member receipts are exempt.
 - ✓ *Chelmsford Club* (2000) → Even deemed property income (ALV) is exempt if confined to members.
 - ✓ *Bangalore Club* (2013) → Mutuality breaks when funds move outside the circle (e.g., bank deposits).

Final Word: As long as cooperative housing societies restrict activities to their members and do not divert funds to external commercial activities, they remain largely outside the ambit of Income-tax on their core member-to-member transactions.

Authors: **Kunwar Yashovardhan Kedia (B.A. (LLB) Hons.)**

CA Ankeeta Lohia

Adv. Kaushal Agarwal