

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

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO.2881/MUM/2022 (A.Y: 2018-19)**

Krishna Kaveri Cooperative Housing Society Limited Krishna Kaveri, Off Link Road Yamuna Nagar, Andheri (W) Mumbai-400053  <b>PAN: AAAAK2142C</b>	v.	Income Tax Officer-24(1)(1) Piramal Chamber Dr SS Rao Marg, Parel Mumbai- 400012
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri. Piyush Chhajer &amp; Shri Sumit Mantri</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri. Saurabh Kumar Rai</b>
<b>Date of Hearing</b>	<b>:</b>	<b>09.01.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>03.04.2023</b>

**PER S. RIFAUR RAHMAN (AM)**

**1.** This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 25.08.2022 for the A.Y.2018-19.

**2.** Brief facts of the case are, assessee is a cooperative housing society filed its return of income for the A.Y. 2018-19 on 24.10.2018 declaring income from the head "business and professions" at ₹.6,16,535/-. The assessee claimed deduction u/s. 80P(2)(d) and claimed the same under Part C of Chapter VIA i.e. interest / dividend from investment in other cooperative society. Subsequently the above return was revised on 22.02.2019 due to the reason income wrongly disclosed in "business and professional" head instead of "income from other sources". In the revised return assessee has declared exempt income in Schedule BP of ITR Form as under: -

Members Contribution	₹.46,26,855/-
Misc. Receipts & Rebate Received	₹. 1,86,146/-
Dividend from MDCC Bank	₹. 61/-
Total	₹.48,13,062/-

**3.** However, while declaring the same in Schedule EI assessee failed to disclose the same as exempt income. The return was processed u/s.143(1) of the Act wherein Centralized Processing Centre has made the addition of ₹.48,13,001/ as income of the assessee. The assessee filed rectification application before Centralized Processing Centre and the same was rejected.

4. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and filed detailed submissions and in the submissions assessee has submitted as under: -

**"Contribution from members exempt on mutuality concept:**

*During the year under consideration, the appellant had received contributions from the members of the cooperative society. The said contribution was received as reimbursement the expenses. The Cooperative society as a whole paid some expenses like society Maintenance charges, service charges, sweeper charges, security changes etc., which are for the members of the society. Subsequently, the said expenses was reimburses from the society members.*

*The main source that runs the society is the pooling together of the members' financial contributions to pay for the service and amenities. This includes a gambit of charges paid by members such as maintenance expenses, water, electricity, service staff charges, lift charges, etc. All these are simply collected by the managing committee who acts as a collector and then pays it forward to the relevant parties. These are not taxable under the income tax Act.*

*Even after the charges have been paid by the society and there remains some surplus, it is not taxable and is categorised as an exemption under the 'concept of mutuality'. It means that one cannot profit from one's own contributions. The members towards a common fund, which is not considered as an individual's income, pay all the expenses.*

*Thus, we pray kindly delete the said addition and oblige us."*

5. After considering the submissions of the assessee, Ld.CIT(A) briefly explained the facts in his order and dismissed the appeal filed by the assessee with the following observations: -

*"4.4. The issue that the appellant has raised in appeal is regarding the contribution received from its members and other receipts which was shown under the head "Business" in the original return filed on*

*30.09.2018 and according to the appellant these items were later on shown under the head BP and claimed as exempt income by filing a revised return on 22.02.2019. It is claimed by the appellant that it forgot to fill in the details of these items in Schedule EI-Exempt Income.*

*4.5. Now, based on the details filled in by the- the amount shown as business income in Schedule BP in the Return of Income has been processed as such without any adjustment by CPC. As there was no claim of exempt income made by the appellant in Schedule EI-Exempt Income, the income shown under the head "Business" was treated as such in the intimation issued u/s.143(1).*

*4.6. Therefore, this is not a case of any mistake apparent from record which can be rectified under section 154. The claim that the receipts shown under Business Income was incorrect and that it ought to be treated as exempt income is outside the scope of section 154. This claim involves admission of new facts which were not on the records at the time of processing the return and also needs a long-drawn process of verification, which is not permissible under section 154. This is not a claim which can be considered on the basis of facts as available on records. Appellant's grounds therefore, do not have any basis and hence does not merit any consideration on facts and in law.*

*4.7. It is a trite law as laid down by Hon'ble Supreme Court, in the case of Chandra Kishore Jha v. Mahavir Prasad [1999] 8 SCC 266, that "if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner". This proposition has been earlier laid down by Hon'ble Apex Court in the case of State of Uttar Pradesh v. Singhara Singh AIR 1964 SC 358. It is the appellant who claims that a particular income/receipt is exempt and therefore, the primary onus was on the appellant to comply with the statutory requirements of making a valid claim under the Act, as held by the Hon'ble Bombay High Court in the case of Commissioner of Income-tax v. Shivanand Electronics 209 ITR 63 extracted hereunder:*

*"When the Legislature casts a duty on the assessee claiming certain benefit, to comply with requirements which are associated with such benefit, the assessee cannot get the benefit without doing his part of the duty.*

*He cannot be allowed to say that it was for the ITO to ask him to do so. If the assessee does not do his part of the statutory duty, the ITO may proceed to decide the allowability or otherwise of the relief on the basis of the facts and material available before him"*

*4.7. In view of the above facts and provisions of law, claim of exempt income now being made by the appellant is not based on facts on records and therefore, there being no mistake apparent from records in the intimation issued u/s.143(1), the order passed u/s. 154 reaffirming the same does not warrant any interference on the issue. Appellant's Ground No.1 is dismissed accordingly.'*

**6.** Aggrieved assessee is in appeal before us raising following grounds in its appeal: - .

*"1. On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) NFAC erred in appreciating the facts of the case and sustained the disallowance of exempt income claimed in the computation of income which was wrongly processed u/s 143(1) and therefore the same been a mistake apparent from the record.*

*2. On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) NFAC erred in confirming the order passed u/s 154 by CPC without appreciating that non- granting of a claim made in computation of income is a mistake apparent from record and therefore CPC ought to have rectified in response to an application made under 154.*

*3. On the facts and circumstances of the case, the Learned Commissioner of Income Tax (Appeals) NFAC failed to appreciate that the appellant is a Co-operative Housing Society and governed by the concept of mutuality and therefore amount received from the members of the appellant are exempt and not taxable and therefore, the claim under computation of income ought to have been allowed.*

*4. The Appellant craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at/or before the time of hearing."*

7. At the time of hearing, Ld. AR submitted that the issue under consideration is receipt of contribution from members of the housing society and this contribution is collected for mutual benefits of the society. Therefore, the concept of mutuality is applicable and he argued that since the issue involved is involving mutuality concept, therefore it does not fall to assess the same u/s. 143(1) of the Act. In this regard he relied on the following case laws: -

<b>S/No</b>	<b>Particulars</b>
1.	<i>The ITAT Bangalore, Bench "A" in Goodwill Management Pvt Ltd ITANo.670/Bang/2020</i>
2.	<i>The ITAT Rajkot in Rupam Impex [2016] 66 taxman.com 181</i>
3.	<i>The ITAT Mumbai "SMC" Bench in M/s Shrikant Real Estate Pvt Ltd ITA No. 4304/MUM/2012</i>
4.	<i>The Supreme Court of India in Venkatesh Premises Co-operative Society Ltd [2018] 91 taxman.com 137 (SC)</i>

8. On the other hand, Ld.DR relied on the orders passed by the lower authorities.

9. Considered the rival submissions and material placed on record, we observe that the assessee is a cooperative housing society and it collects the contribution from members of the society and initially assessee has filed the return of income with the wrong head of income i.e. "business income" and subsequently it has revised the return of income by declaring the same and claimed it as exempt income. However, in schedule EI

assessee failed to inform the same while filing the revised return of income. Therefore, the Centralized Processing Centre has considered the same as not exempt income and brought to tax. Assessee also filed rectification application u/s. 154 of the Act before Centralized Processing Centre, however, the Centralized Processing Centre has rejected the same. This fact was brought to notice of the Ld.CIT(A) and by observing the whole facts on record, however, he proceeded to dismiss the appeal on technical ground that assessee claimed exempt income which is not based on the facts on record i.e. not filling proper details in revised return of income. Therefore, there being no mistake apparent from records in the intimation u/s. 143(1) of the Act, the order passed u/s. 154 reaffirming the same does not warrant any inference on this issue. We find it difficult to comprehend that Ld.CIT(A) has perused the whole facts on record and also observed that assessee is a cooperative housing society and the receipts are only from the members for the maintenance of the society. In the similar situation the ITAT Bangalore bench in the case of Goodwill Managemnet Pvt. Ltd., v. DCIT in ITA.No. 670/Bang/2020 dated 15.01.2021 has decided as under: -

*"6. I heard the rival contentions and perused the record. I noticed that the assessee has mentioned that the dividend income of Rs.13.37 lakhs is exempt in "Schedule BP" relating to computation of business income. However, the details of exempt income were*

*mentioned in the schedule EI of the return of income. In view of the same, the CPC has not granted exemption to the assessee. The question that arises is whether the inadvertent error committed by the assessee while filling up the return of income filed through electronic mode would be fatal and would disentitle the assessee from exemption, which is otherwise allowable as per the provisions of the Act. An identical issue was examined by the Mumbai bench of Tribunal in the case of Suman Chandra G. Mehta (supra). Following observations made by the Tribunal in the above said case are relevant here:*

*"4. When this matter was agitated before the Ld. CIT(A), the CIT(A) was of the opinion that it was a incorrect claim on account of the assessee, failing to reflect the correct details in the return of income, as per computerized processing programme, the A.O. has rightly made adjustments for this incorrect claim for deduction and held that there is no mistake in the processing of return and further concluded that no appeal lies against such processing where adjustments have been correctly made during processing as per Sec.143(1)(a)(ii) of the Act.*

.....

*7. The present case is a perfect example of such ignorance. The assessee has shown interest income earned as well as interest paid under the head "income from other sources". Not realizing the negative figure is not accepted by the server and therefore the interest paid shown as Rs.2,33,535/- was rejected by the server while processing the return.*

*8. No doubt the CBDT has the powers to frame the rules but, at the same time, it cannot benefit from the ignorance of the taxpayers using the latest technology. We do not find any reason why such error should not be rectified by the AA.O. This is not ignorance of law but ignorance of the usage of the latest technology.*

*9. Therefore in the interest of justice and fair play to the taxpayer, we restore this issue back to the files of A.O. The A.O. is directed to examine the claim of the assessee*

*of interest paid at Rs.2,33,535/- and if satisfied with the claim, the A.O. is directed to deduct the same from the positive interest figure of Rs.3,38,345/- meaning thereby that only Rs.1,04,810/- should be added to the taxable income.*

*10 Before parting, a similar issue came up for hearing before the Tribunal in the case of Srikant Real Estate Pvt. Ltd. 140 ITD 155 wherein one of us (AM) is the author of the decision where also the Tribunal has taken a similar view and directed the A.O. to rectify the error. Drawing support from the findings given in the aforesaid case, this appeal is also restored back to the files of the A.O. with the above direction."*

*7. The facts in the present case are identical. The assessee, out of ignorance or inadvertence has omitted to mention the details of exempt income in the relevant "Schedule EI". So, the ignorance of the assessee or inadvertent mistake committed by the assessee should not come in his way in claiming exemption, which is otherwise allowable under the Act. It is also not a case that the assessee did not respond to the notice issued by CPC. The assessee has duly responded to the same, but it is the submission of revenue that the assessee should have filed a revised return of income. There is no dispute with regard to the fact that the assessee is entitled for exemption of dividend income. The object of assessment is to determine correct total income of the assessee. Accordingly, I am of the view that the right of the assessee could not be denied merely on accounting of technical errors. Hence there is a mistake apparent from record in not granting exemption claimed by the assessee. Accordingly, I am of the view that the said mistake deserves to be rectified.*

*8. Accordingly, I set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to allow the exemption claimed by the assessee."*

**10.** Respectfully following the above said decision, we are inclined to decide the issue in favour of the assessee and delete the addition made

by the Centralized Processing Centre u/s. 143(1) of the Act and observe that mere technical mistake does not change the facts on record and justice has to be prevailed over such technical mistakes. Accordingly, ground raised by the assessee is allowed.

**11.** In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 03<sup>rd</sup> April, 2023

Sd/-  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

Mumbai / Dated 03/04/2023  
Giridhar, Sr.PS

Sd/-  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**