

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

(HYBRID HEARING)

**श्री के.नरसिम्हा चारी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI K. NARASIMHA CHARY, HON'BLE JUDICIAL MEMBER**

&

SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.360/VIZ/2024
(निर्धारण वर्ष/ Assessment Year: 2017-18)**

The Yanam Cooperative Stores Limited 3-2-058, Vishnalayam Street Yanam – 533464 Puducherry [PAN: AADFT3518R]	v.	Pr.CIT Aayakar Bhavan Dabagarden – 530020 Visakhapatnam Andhra Pradesh
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri Harsha Haridasu, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Dr.Satyasai Rath, CIT(DR)
सुनवाईसमाप्तहोनेकीतिथि/ Date of Conclusion of Hearing	:	05.12.2024
घोषणाकीतारीख/Date of Pronouncement	:	13.12.2024

आदेश /O R D E R

PER SHRI S BALAKRISHNAN, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee against order passed under section 263 of Income Tax Act, 1961 (in short 'Act') by Learned Principal Commissioner of Income Tax, Visakhapatnam – 1, [hereinafter in short "Ld.Pr.CIT"] vide DIN & Order No. ITBA/COM/F/17/2023-24/1063341085(1) dated 25.03.2024 for the A.Y. 2017-18.

2. Brief facts of the case are that, assessee-firm engaged in the business of selling alcoholic liquors, trading in Groceries, Vegetables, Books, crackers and other durable goods to its members. Assessee-firm has not filed return of income for the A.Y. 2017-18. On the basis of information available in ITS, it is observed that assessee-firm has purchased alcoholic liquor worth Rs. 3.17 crores and also deposited cash aggregating to Rs.2.25 crores. Ld.Assessing Officer [hereinafter in short "Ld. AO"] considering the investment in purchase of alcoholic liquor observed that even by estimating the profit at 5% assessee would have escaped income, escaping the assessment within the meaning under section 147 of the Act. Thereafter, he issued notice under section 148 of the Act dated 28.03.2021. In response, assessee filed his return of income on 27.04.2021. Subsequently, notices under section 143(2) and 142(1) of the Act were issued and served on the assessee along with the questionnaire. Considering the return filed by the assessee and after examination of the information produced by the assessee, Ld.AO accepted the income and completed the assessment under section 147 r.w.s. 144B of the Act. Ld. AO in the computation sheet in Sl.No. 16 has allowed the carried forward loss of the current year amounting to Rs. 76,33,897/- while determining the refund payable arising out of Tax Deducted at Source claimed by the assessee while filling the return of income under section 147 of the Act.

3. Ld.Pr.CIT exercising his powers under section 263 of the Act, considered the order of the Ld. AO as erroneous and prejudicial to the interest of the

revenue on the issue regarding the granting of refund of Rs. 4,12,417/- and also allowing the carried forward loss of Rs. 76,33,897/- where the return of income has not been filed within the time allowed under section 139(1) of the Act. He therefore directed the Ld. AO to withdraw the refund of Rs. 4,12,417/- and also to disallow the carried forward loss of Rs. 76,33,897/-. Accordingly, Ld.AO passed the consequential order dated 10.06.2024 determining the tax payable at Rs. 2,10,510/- while simultaneously disallowing the carried forward loss of Rs.76,33,897/-.

4. Aggrieved by the order of the Ld.Pr.CIT, assessee is in appeal before us by raising the following grounds of appeal: -

“1. Under sec 237 of Income Tax Act, 1961, signifies paying back of excess amounts of income tax that a tax payer has paid to the state or the return by the government of excess tax paid by an assessee after taking into consideration income tax withholdings, tax deduction or creditors and other factors. the doctrine of unjust enrichment and plethora of judicial judgements support our appeal”

5. The only issue contested by the assessee is with respect to the denial of refund directed by the Ld.Pr.CIT. On this issue, Ld. Authorised Representative [hereinafter “Ld.AR”] submitted that the income was assessed as NIL by the Ld.AO on the basis of return of income filed under section 148 of the Act. Ld.AO also granted refund of Rs. 4,12,417/- since no tax was payable by the assessee, the refund was arising out of the TDS credit. He therefore pleaded that the Ld.Pr.CIT has erred in directing the Ld. AO to withdraw the refund granted to the assessee. Ld.AR submitted that when the income is assessed as

NIL by the Ld.AO after examining the return of income filed by the assessee, the assessee is entitled to the refund of TDS available in Form – 26AS. He therefore pleaded that the order of the Ld.Pr.CIT be quashed. However, Ld.AR conceded that the carried forward loss shall be disallowed as the return of income was not filed within the due date specified under section 139(1) of the Act.

6. Per contra, Ld. Departmental Representative [hereinafter in short “Ld.DR”] argued that assessee is a non-filer and has not filed his return of income within the time allowed under section 139(1) of the Act by claiming the refund of TDS. Ld. DR further submitted that only during the re-assessment proceedings assessee filed its return of income by claiming the refund on TDS. Therefore, Ld.Pr.CIT is right in directing the Ld. AO to withdraw the refund. He pleaded that order of the Ld.Pr.CIT may be upheld on this issue.

7. We have heard both the sides and perused the material available on record including the case laws cited by the assessee while filing the written submissions. It is an undisputed fact that the assessee is a non-filer and has filed his return of income only in response to the notice under section 147 of the Act. It is also not disputed by the revenue that the Ld. AO has examined the return of income furnished by the assessee and the information produced in response to the notice under section 148 of the Act and has accepted the income declared by the assessee as Nil while framing the assessment under section 147 r.w.s. 144B of the Act. There is merit in the argument of the Ld.AR that when

the income is assessed as NIL, the assessee is entitled for the refund of excess payment of tax claimed in the return of income. Only issue here is, assessee has not filed its return of income under section 139(1) of the Act but has filed his return of income in response to the notice under section 147 of the Act while claiming the refund of excess tax paid. In our opinion, when the Ld. AO has framed the assessment considering the income as NIL as filed by the assessee in its return of income, the assessee is entitled for the refund of excess amount paid as taxes. Various judicial pronouncements have upheld the aforesaid view. Further, Section 237 of the Act provides that if the assessee has paid excess of the amount for which the assessee is properly chargeable under the Act for that assessment year such person is entitled to get the refund of the excess amount. In the instant case, the entire amount of TDS paid by the assessee was in excess of the amount which was actually chargeable. The assessee was therefore, entitled to have refund of the excess amount. Section 237 of the Act, does not specify that an assessment order must be made and that some amount must be found to be payable as tax, where the assessee has paid some amount in excess of amount. It is not a pre-condition for invoking that some liability must have been cast upon the person claiming the refund. We therefore, set-aside the order of the Ld.Pr.CIT on the issue of directing the Ld. AO to withdraw the refund.

8. Further, since the assessee has not filed its return of income within the due date specified under section 139(1) of the Act, the Ld.Pr.CIT has in accordance with the provisions of section 139(3) of the Act directed the Ld. AO

to carry forward loss of Rs. 76,33,897/- and we are of the considered view that there is no infirmity in the order of the Ld.Pr.CIT on this issue.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 13th December, 2024.

Sd/-
(के.नरसिम्हा चारी)
(K. NARASIMHA CHARY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(एस बालाकृष्णन)
(S. BALAKRISHNAN)
लेखा सदस्य/ACCOUNTANT MEMBER

Dated: 13.12.2024

Giridhar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **The Yanam Cooperative Stores Limited**
3-2-058, Vishnalayam Street
Yanam – 533464
Puducherry
2. राजस्व/ The Revenue : **Pr.CIT**
Aayakar Bhavan
Dabagarden – 530020
Visakhapatnam
Andhra Pradesh
3. The Principal Commissioner of Income Tax
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam