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**IN THE INCOME TAX APPELLATE TRIBUNAL  
VISAKHAPATNAM BENCH, VISAKHAPATNAM.  
(Through Virtual Hearing)**

**BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER AND  
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.45/Viz/2025**  
(निर्धारण वर्ष / Assessment Year: 2018-19)

The Yanam Co-operative Stores Limited, Yanam. PAN:AADFT3518R (Appellant)	<b>Vs.</b>	Principal Commissioner of Income Tax, Visakhapatnam. (Respondent)
निर्धारिती द्वारा / Assessee by:		Shri Harsha Haridasu, C.A.
राजस्व द्वारा / Revenue by:		Dr. Satyasai Rath, CIT-DR
सुनवाई की तारीख / Date of hearing:		26/03/2025
घोषणा की तारीख / Pronouncement:		15/04/2025

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M.:**

This appeal is filed by The Yanam Co-operative Stores Limited (“the assessee”), feeling aggrieved by the order passed by the Learned Principal Commissioner of Income Tax, Visakhapatnam-1 (“Ld. PCIT”), dated 28.11.2024 for the A.Y. 2018-19.

2. The assessee has raised the following grounds :

*“ The refund was issued after due verification of TDS records in Form 26AS, which reflected a TDS credit of Rs.2,86,834/-. The*

*refund arose due to excess TDS paid, and as per section 237 of the Income Tax Act, a taxpayer is entitled to claim a refund of any tax paid or deducted in excess.”*

3. The brief facts of the case are that, the assessee is a co-operative society did not file any Return of Income (“ROI”) u/s.139 of the Income Tax Act, 1961 (“the Act”) for A.Y. 2018-19. Subsequently, the case of the assessee was reopened u/s.147 of the Act and a notice u/s.148 of the Act was issued by Learned Assessing Officer (“Ld. AO”). In response to the notice u/s.148 of the Act, the assessee filed its ROI on 2.5.2022 declaring total income at Rs.Nil and claiming a refund of Rs.2,72,885/-. The Ld. AO completed the assessment u/s.147 r.w.s. 144B of the Act on 09.03.2023, accepting the return as filed and granting a refund of Rs.2,86,834/-. Subsequently, the Ld. PCIT invoked section 263 of the Act, relying on the judgement of Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (1992) 198 ITR 297 (SC) stating that, since the assessee did not file any ROI u/s.139 of the Act, the reassessment proceedings u/s.147 of the Act could not be used for the benefit of the assessee. The Ld. PCIT also observed that the refund granted by the Ld. AO was erroneous and prejudicial to the interest of revenue. Accordingly, the order of Ld. AO was set aside by Ld. PCIT and the Ld. AO was directed to withdraw the refund.

4. Aggrieved with the order of Ld. PCIT, the assessee is in appeal before us. The Learned Authorised Representative ("Ld. AR") submitted that Ld. PCIT has misinterpreted the judgment of Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra). Further, the Ld. AR distinguished the ruling given by the Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra) stating that, the issue in that case was whether the assessee could claim additional deduction or exemption unrelated to the escaped income in reassessment proceedings. The Hon'ble Supreme Court in that case held that, reassessment is meant to assess escaped income and cannot be used as an opportunity to claim fresh deduction or exemption. However, in the present case, there is no fresh claim of deduction or exemption. The assessee has merely claimed a refund of TDS, which is a statutory right and directly linked to the income assessed in the return filed in response to notice u/s.148 of the Act. In support of his submission, the Ld. AR relied on the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Vali Brothers (2005) 282 ITR 149 (Allahabad) and Hon'ble Jharkhand High Court in the case of Shri Chitranjan Jaiswal Vs. CIT in C.W.J.C. No.2889 of 2000 on 16.06.2011. The Ld. AR further relied on the decision of the co-ordinate bench of the Tribunal in assessee's own case for A.Y. 2017-18 in ITA No.360/Viz/2024 dated 13.12.2024, where under similar facts, the

Tribunal ruled in favour of the assessee holding that refund claimed linked to assessee's income cannot be denied merely because the reassessment was initiated u/s.147 of the Act. Finally, the Ld. AR submitted that, the invocation of section 263 by Ld. PCIT was unjustified and liable to be quashed.

5. Per contra, the Learned Department Representative (“Ld. DR”) supported the order of Ld. PCIT and contended that the reassessment was initiated only to assess the escaped income and it cannot be used for granting refund or any other relief to the assessee. He also submitted that, the Ld. PCIT has correctly invoked section 263 of the Act in view of the judgment of Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra). Finally, the Ld. DR prayed before the bench to dismiss the appeal of the assessee.

6. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. We have gone through the provisions of section 263 of the Act which grants revisionary power to Ld. PCIT but with specific condition. The provisions of section 263 can be invoked only if the order of Ld. AO is erroneous and it is prejudicial to the interest of revenue. We also found that the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd. Vs. CIT, 243 ITR 83 (SC) has categorically held that unless both the conditions are satisfied, section 263 can be invoked.

6.1 Reliance placed by Ld. PCIT on CIT Vs. Sun Engineering Works (P) Ltd. (supra) is misplaced. We have gone through the judgment of Hon'ble Supreme Court in the case of CIT Vs. Sun Engineering Works (P) Ltd. (supra), wherein the Hon'ble Supreme Court dealt with a situation that the assessee admitted to claim additional deduction unrelated to the reassessment issue. However, in the present case, the refund claimed by the assessee is not a fresh deduction / exemption, but a claim of TDS credit linked to the assessed income. Further, the TDS is a statutory right u/s.199 and 237 of the Act and it credits cannot be denied merely because reassessment was initiated u/s.147 of the Act.

6.2 We have also gone through the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Vali Brothers (supra) and the decision of Hon'ble Jharkhand High Court in the case of Chitranjan Jaiswal Vs. CIT (supra), wherein both the Hon'ble High Courts have held that, the assessee is entitled for refund in pursuance of return filed u/s.148 of the Act.

6.3 We have also gone through the decision of co-ordinate bench of ITAT in assessee's own case for A.Y. 2017-18 (supra), wherein at para no.7 the Tribunal has decided the issue in favour of the assessee which is to the following effect :

*“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.”*

6.4 In the present facts and circumstances, we found that the assessee has merely claimed a refund of TDS, which is a statutory right and directly linked to the income assessed in the return filed in response to notice u/s.148 of the Act. The Ld. AO has examined the TDS credit and refund claim before allowing it. Further, the Ld. PCIT has not demonstrated any error in this regard. The

provisions of section 263 can be invoked only if the order of Ld. AO is erroneous and it is prejudicial to the interest of revenue. Accordingly, we are of the opinion that there is no error in the order passed by the Ld. AO which is prejudicial to the interest of revenue. Therefore, the invocation of revisionary jurisdiction u/s.263 of the Act by Ld. PCIT is without any jurisdiction and unsustainable. Accordingly, we set aside the order of Ld. PCIT u/s.263 of the Act.

7. In the result, the appeal filed by the assessee is allowed

**Order pronounced in the open Court on 15th April, 2025.**

**Sd/-**

**(RAVISH SOOD)**  
JUDICIAL MEMBER

**Sd/-**

**(MADHUSUDAN SAWDIA)**  
ACCOUNTANT MEMBER

Hyderabad.

Dated: 15.04.2025.

*\* Reddy gp*

**Copy of the Order forwarded to :**

1. The Yanam Co-operative Stores Limited, 3-2-058,  
Vishnu Street, Puducherry-533464
2. CIT, Visakhapatnam.
3. Pr.CIT, Visakhapatnam.
4. DR, ITAT, Hyderabad.
5. Guard file.

BY ORDER,