

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.3085 of 1994

M/s Swaraj Yarn Agency...Petitioner

Versus

The Commissioner of Income Tax and others...Respondents

**and another connected petition being
Civil Writ Petition No.825 of 1995.**

Coram: Mr.Justice ADARSH KUMAR GOEL and Mr. Justice AJAY KUMAR MITTAL

Present: Mr. R.C.Setia, Senior Advocate with Mr.Anish Setia, Advocate for the petitioner (in CWP No.3085 of 1994).

Mr. B.B.S.Sobti, Advocate for the petitioner (in CWP No.825 of 1995). Mr. Rajesh Katoch, Senior Standing Counsel for respondents No.1 and 2.

Date of decision: 20.4.2011

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. This order will dispose of Civil Writ Petitions No.3085 of 1994 and 825 of 1995 as learned counsel for the parties have stated that both the petitions involve common question of liability of the assessee to pay tax again if tax already paid to the bank is misappropriated by the employees of the approved bank with whom the amount is deposited.

2. In Civil Writ Petition No.3085 of 1994, case of the petitioner is that for the assessment year 1993-94 it deposited advance tax vide income tax challan receipt dated 14.9.1992 Annexure P-2. Thereafter, a survey was conducted during which the petitioner surrendered further taxable income and demand of tax raised against it. The said demand was met by depositing the amount with the State Bank of Patiala, Ludhiana vide income tax challan receipt dated 28.10.1993 Annexure P-3. The petitioner also deposited further amount of tax vide receipts dated 14.12.1992 and 11.3.1993 Annexures P-4 and P-5 respectively. Thus, though the petitioner paid the tax due, the department raised a fresh demand without taking into consideration the tax already paid. As per newspaper report dated 22.12.1993, it was learnt that a fraud had been committed in the bank and the amount of tax deposited had been misappropriated. The petitioner accordingly wrote letter dated 25.1.1994 Annexure P-7 to the department intimating that deposit of tax had already been made and if the amount had been misappropriated by the bank, the

petitioner could not be required to deposit the same again. In reply to the letter of the petitioner, the stand taken by the department vide letter dated 25.1.1994 Annexure P-8 was that payments claimed to have been made by the petitioner had not been credited to the Central Government account.

3. Case of the petitioner is that once it had made the deposit and produced the receipts of the bank, mere fact that bank did not credit the payments to the Central Government account cannot be a ground to recover the tax again from the petitioner. Payment by the petitioner to the bank amounts to discharge of its liability.

4. In the reply filed to the petition, stand taken by the department is that the counter foils of challans showing payments to the bank were not genuine as stated by the bank. In the reply filed by the bank, it has been stated that the receipts are ingenuine, forged and fabricated as the signatures on the receipts are not the signature of any officer or employee of the bank.

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioner submits that the receipts produced by the petitioner are duly stamped and signed by the officials of the bank and the bank had also suspended its Head Cashier. In such circumstances, mere statement by the bank that the receipts did not bear the signatures of the officials of the bank cannot be accepted as conclusive without an independent enquiry. This contention has merit and there no reason has been shown by learned counsel for the department to reject this submission.

7. In view of above, we dispose of both these petitions by directing that the Income Tax Department may conduct an independent enquiry into the matter to ascertain whether the receipts produced by the petitioners are genuine. It is made clear that if the receipts are genuine and it is found that petitioners have made the deposit with the bank, such deposit will be treated to be discharge of the liability of the petitioner even if bank has failed to credit the payments to the Central Government Account. However, if the receipts are not genuine, the department will be at liberty to recover the amount from the assesseees.

8. A photocopy of this order be placed on the file of the connected case.