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IN THE HIGH COURT OF DELHI AT NEW DELHI

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WRIT PETITION (CIVIL) NO. 987/2012

Date of decision: 8th July, 2013

SECURI TECH INDIA P. LTD. COMPANY Petitioner

Through Dr. M.P. Raju, Advocate.

Versus

THE CHAIRMAN CENTRAL BOARD OF DIRECT TAXES

& ORS. Respondents

Through Mr. N.P. Sahni, sr. standing
counsel for R-1.

Mr. Abhishek Maratha, sr. standing counsel
for respondent Nos. 2 to 4.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J. (ORAL):

Securi Tech India Pvt. Ltd., petitioner No.1 has filed the present writ petition for refund of Rs.5,42,000/- with interest. It is stated that the respondent Nos.1 to 4 i.e. the income tax authorities are not obeying and complying with the order dated 13th January, 2006 passed by the tribunal and have acted contrary to the mandate and obligation imposed by Section 240 of the Income Tax Act, 1961 (Act, for short).

2. Rajender Prasad Tyagi, respondent No.5 was subjected to search and seizure operations under Section 132 of the Act on 21st January, 1997. An amount of Rs.5,42,000/- was found at the residence, which was allotted to Tuleshwari Tyagi wife of Rajender Prasad Tyagi, at Satya Sadan, Chanakyapuri, New Delhi. Seizure memo

(annexure P-1) records the name of the persons searched as R.P. Tyagi and Tuleshwari Tyagi and mentions that Rs.5,32,310/- and Rs.17,000/- in different denominations notes were found at the time of search in one bedroom and store room of the house. Rs.5,25,000/- out of Rs.5,34,310/- was seized.

3. By block assessment order dated 21st January, 1999, substantive addition of Rs.5,42,000/- was made to the income of Rajender Prasad Tyagi as declared. Another order under Section 158 BC was passed in the case of the petitioner No.1 and addition of Rs.5,42,000/- on account of the cash seized was made on protective basis in the hands of the petitioner No.1. As tax demands remained unpaid by Rajender Prasad Tyagi, this amount of Rs.5,25,000/-, which was lying in the PD of the Commissioner, were adjusted towards the demands payable by Rajender Prasad Tyagi. Rajender Prasad Tyagi, however, succeeded in first appeal and addition in his hands was deleted vide order dated 25th January, 2001 by Commissioner of Income-tax (Appeals) and it was held that this amount of Rs.5,25,000/- belonged to the petitioner No.1. Consequent upon the said order, the Assessing Officer passed a fresh assessment order dated 28th March, 2002 and added Rs.5,25,000/- on account of the cash seized on substantive basis to the income of the petitioner No.1. This addition was challenged before the first appellate authority and then before the tribunal. Tribunal by their order dated

13th January, 2006 quashed the original assessment order dated 25th January, 1999 made under Section 158 BC of the Act. We only record that the said order has become final. As a result, no addition has been made in the case of the petitioner No.1.

4. Since then, i.e., after 13th January, 2006, petitioner No.1 has been repeatedly asking for refund of the said amount and has written request letters dated 15th March, 2007, 20th September, 2007, 24th March, 2008, 20th August, 2008, 13th January, 2009, 5th February, 2009 and 26th March, 2009, etc. After a lapse of nearly three years, the Assessing Officer for the first time responded and asked the petitioner No.1 vide letter dated 8th April, 2009 to justify the claim of refund by filing documentary evidence. Reply was filed by the petitioner No.1 vide letter dated 2nd May, 2009. The Assessing Officer thereupon wrote letter dated 25th May, 2009/1st June, 2009 asking why the refund was being claimed by the petitioner No.1, as the seized cash could be adjusted against the demand created in the case of Rajender Prasad Tyagi. Thereafter, nothing happened. Petitioner No.1 thereupon approached Ombudsman but proceedings remained pending and no refund was made.

5. The petitioner No.1 has in these circumstances approached this Court by way of the present writ petition.

6. Rajender Prasad Tyagi, respondent No.5 has filed counter

affidavit to the present writ petition and has stated that he has no objection in case payment is made to the petitioner No.1. In the counter affidavit he has reproduced the findings recorded by the CIT (Appeals), which read:-

“4.3 The cash of Rs.5,25,000/- was not found from the bedroom or from the personal possession of the appellant but from the room wherein records and consumer containing entries of M/s Securi Tech India Pvt. Ltd. were kept by virtue of going a camp office of the said company operating from these premises.

4.4 Thus, the fact of ownership of cash confirmed by the persons connected to M/s Securi Tech India Pvt. Ltd. So, it cannot be presumed to be belonging to any other person.

4.5 The Department did not have any evidence to reject the statement of the assessee and the owners of the cash so found. Merely, on surmises and conjectures the same could not be assessed or presumed to be the undisclosed income of the appellant.

4.6 In respect of other amount of Rs.17,000/- Sh. Yashvir Tyagi, brother-in-law of the assessee, categorically confirmed in his statement that this amount was left by him with his sister and was a part of professional fee and expenses received by him for representing a murder case at Gurgaon. The fees was received at the residence of his sister and thereafter he proceeded to Gurgaon from where he returned to his home at Meerut without picking it up from the residence of his sister. He could not come to Delhi, thereafter, and the said cash was seized at the time of search.

4.7 Smt. T.D. Tyagi and Sh. R.P. Tyagi at the time of search in their statements recorded on 21.01.1997 categorically stated that this amount of Rs.17,000/- was left by Sh. Yashbir Tyagi, Advocate and brother of Smt. T.D. Tyagi. This was also confirmed by Sh. Yashbir Tyagi in his affidavit and statement filed before the A.O. In fact, the affidavit and other confirming evidence from his client, who paid the

fees to him, were also submitted before the A.O. Shri. Yashvir Tyagi has been assessed under Section 158 BC at the same time and the said receipt has already been considered as income in his hands.

4.8 Factually, the AO has not given any reason to reject the contention of the appellant and that of Shri Yashvir Tyagi. But he merely brushed aside the facts and submissions by stating the same to be an afterthought.

4.9 In respect of cash of Rs.5,25,000/- found from the flat, I am of the opinion that the appellant cannot be deemed to be the owner of the said cash as he has been able to discharge his onus.”

7. It is clear from the above quote that the CIT (Appeals) has held that the money belonged to petitioner No.1 and the amount seized Rs.5,25,000/- did not belong to any other person. The balance amount of Rs.17,000/- it was held belonged to one Yashvir Tyagi and has been assessed as his income under Section 158 BC. This order of the CIT (Appeals), as noted above, has been accepted by the Revenue and it has not been challenged or questioned.

8. We fail to understand that once the department has accepted the said order and treated Rs.5,25,000/- as income and money of petitioner No.1 and this was/is also the stand of respondent No.5, why the said respondents have not refunded or repaid the said amount. We also fail to understand why the Assessing Officer took three years to respond to the letter written by the petitioner No.1 and their ambivalence and distraught thereafter. Addition of Rs.5,25,000/- on substantive basis in

the case of the petitioner No. 1 was deleted by the tribunal by their order dated 13th January, 2006. Rs.5,25,000/- should have been refunded immediately thereafter. The department could not have adjusted the amount against the demand payable by Rajender Prasad Tyagi in view of the findings recorded by the CIT (Appeals) in the order dated 25.1.2001 that the amount belonged to petitioner No.1. It was not the money of respondent No. 5. We have recorded that there is no dispute between the petitioner No.1 and respondent No.5 that the amount belongs to petitioner No.1 and respondent No.5 does not claim any right or interest on the said amount.

9. In view of the findings recorded above and the statement made by respondent No.5, we are not inclined to entertain and examine the submission made by respondent Nos.1 to 4 that payment or refund under Section 132(3) can only be made to Rajender Prasad Tyagi and not to petitioner No.1. We would not like to examine the contour of Section 132 as the facts of the present case do not require the said examination. The said respondents accept that the refund of Rs.5,25,000/- is due. The amount belongs to the petitioner No. 1. Respondent No. 5 states and accepts that the amount/refund should be paid to the petitioner No. 1. As already noted above, the case of the respondent No.5 throughout has been that the money does not belong to him and the said finding has been accepted by the first appellate

authority under the Act, i.e., the Income Tax Act, 1961 and the order has become final. Prima facie it appears that Section 132(3) is meant to deal with the cases where there is difference or dispute between two or more persons as to whom the money belongs. In the present case, no such issue or question arises. In these circumstances, Section 132(3) need not be interpreted as the question is of merely academic interest.

10. Amount of Rs.5,25,000/- along with interest is lying deposited in this Court. It will be appropriate and proper if the said amount along with interest is released to the petitioner No.1 by the Registry of this Court. The petition is accordingly allowed to the extent indicated and the respondent Income-tax authorities, i.e., respondent Nos. 1 to 4 will pay costs of Rs.20,000/- to the petitioner No.1. The said costs will be paid within two months by sending a cheque. Mr. Abhishekh Maratha, who appears for respondent No.6, the Assessing Officer of Rajender Prasad Tyagi states that as per their records no amount is due and payable by Rajender Prasad Tyagi. In case any recovery has to be made from Rajender Prasad Tyagi, the same will be affected in accordance with law.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

JULY 08, 2013/NA/VKR