IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3514 of 2017 (O&M)
Date of decision : 22.10.2019

Harbhajan Singh ...... Petitioner

versus

Union of India & ors. ...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

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Present : Mr. A.S.Rehal, Advocate for the petitioner.

Mr. Kunal Sharma, Advocate
for the respondents.

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AJAY TEWARI, J. (Oral)

This petition has been filed for setting aside the order dated 19.12.2016 and for issuing the direction to the respondents to refund the excess amount of Rs.1,01,300/- paid by the petitioner due to inadvertent mistake while paying the tax through electronic medium where he deposited a sum of Rs.1,12,550/- instead of Rs.11,250/- under the Income Tax Declaration Scheme, 2016.

The brief facts are that the petitioner declared income of Rs.50,000/- under the above mentioned scheme, as per which he was required to deposit total tax of Rs.22,500/- (including surcharge and penalty) in three installments of Rs.5,625/-, Rs.5,625/- and Rs.11,250/- respectively. When the petitioner was to deposit the amount he wished to deposit the amount of the first two installments viz. Rs.11,250/- at one go and proceeded to make the online transaction. However, he inadvertently pressed on the digit '5' twice and consequently ended up depositing Rs.1,12,550/- instead of Rs.11,250/- and it is in these circumstances, that he is seeking the refund of the extra money which was deposited by mistake.

In reply, it has been admitted that the petitioner declared an income of Rs.50,000/- in the above said scheme; that the total amount of tax payable (with penalty and surcharge) was Rs.22,500/-; that the amount was to be paid in three installments of Rs.5,625/-, Rs.5,625/- and Rs.11,250/-; that when the petitioner was depositing the money online he was to deposit a sum of Rs.11,250/- (being the first two installments); and that instead of depositing Rs.11,250/- he deposited Rs.1,12,550/-. Thus the revenue has accepted that the amount was deposited by a mistake. However, reliance is sought to be placed on Section 191 of the Finance Act, 2016 (for short the Act) which is quoted herein below :-

> *"191-Any amount of tax and surcharge paid under Section 184 or penalty paid under Section 185 in pursuance of a declaration made under Section 183 shall not be refundable."*

The issue before us is whether the claim of the petitioner would be barred under this provision. In our considered view, this provision relates to a situation where a declaration is made for a certain amount and the tax is deposited as per the declaration but later on a refund is sought. In these circumstances, Section 191 of the Act would come into operation and such an Assessee may not be entitled to claim a refund but where the declaration is for Rs.50,000/- (accepted by the revenue) and the tax+penalty+surcharge thereon is Rs.22,500/- and a sum of Rs.1,12,550/- is credited to the account of the revenue it is clear that it is a case of mistake and to our mind this mistake would vitiate this payment and Section 191 of the Act would not be attracted.

Resultantly, this petition is allowed. The respondents are directed to calculate the amount after deducting Rs.22,500/- and refund the same to the petitioner within one month from the date of receipt of certified copy of this order, failing which he would be entitled to interest thereon at the same rate as the revenue charges for late payment of tax.

Since the main case has been decided, the pending C.M. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

22.10.2019
pooja sharma-I

Whether speaking/reasoned Yes/No

Whether Reportable : Yes/No