

Tax dues of partnership firm can't be adjusted against refund to partner in his personal capacity

Summary – The High Court of Allahabad in a recent case of Baljeet Singh Bakshi, (the Assessee) held that Tax dues of firm cannot be recovered/set off against refund due to partner in his personal capacity

Facts

- A search under section 132 was conducted at the residential and business premises of the assessee. Pursuant to the material seized in the course of search and seizure operation, block assessment was completed under section 158BC.
- Based on assessment proceedings, a demand was raised against the assessee pursuant to which he deposited a sum of Rs. 14 lakhs odd. The assessee preferred an appeal which was allowed by the Commissioner and the assessment order passed under section 158BC was modified.
- On the basis of order of Appellate Authority, the assessee applied for refund under section 245. The said application was kept pending by revenue authorities on ground that certain dues were pending against a firm in which assessee was a partner.
- The assessee filed instant writ petition praying for a writ of mandamus directing the Assistant Commissioner *i.e.*, respondent No. 1 to refund the amount of tax along with interest.

Held

- A perusal of the provision of section 245 indicates that the authority is entitled to set off the refund against the dues of the same person.
- The dues of the firm or a company in which the assessee is a partner could not be recovered/set off. Consequently, the action of the respondents in adjusting the dues of the assessee against another firm in which the assessee happens to be a partner, was wholly illegal and without jurisdiction. In any case, the appeal of said firm has been allowed and the demand created against it has been set aside.
- In view of the aforesaid, there is no justification for the revenue authority to retain this amount any further.
- Further, that once an order of demand has been set aside by a superior authority, the department is duty bound to refund the amount under section 245 and there is no justification to retain the same.
- Consequently, for the reasons aforesaid, the writ petitions are allowed.