**In Re: Hari Nandan Agarwal**

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**SooperKanoon Citation** : sooperkanoon.com/459944

**Court** : Allahabad

**Decided On :** Dec-19-1984

**Reported in** : (1985)49CTR(All)304; [1986]159ITR816(All); [1986]25TAXMAN147(All)

**Judge** : N.D. Ojha and ;Om Prakash, JJ.

**Appeal No.** : Civil Miscellaneous Writ Petition No. 1040 of 1984

**Appellant** : In Re: Hari Nandan Agarwal;hari Nandan Agarwal (Huf)

**Respondent** : ;income-tax Officer, A-ward and anr.

**Advocate for Def.** : Sri. Markandey Katju

**Judgement** :

1. An order of assessment in regard to the assessment year 1981-82 was passed against the petitioner by the Income-tax Officer on March 30, 1983. An appeal was preferred by the petitioner against that to the Appellate Assistant Commissioner of Income-tax, which was allowed in part on February 1, 1984, and the matter was thereafter taken up before the Income-tax Appellate Tribunal, in a further appeal by the petitioner, which wasallowed on May 4, 1984, and the case was remanded to the Appellate Assistant Commissioner of Income-tax. After the remand, the Appellate Assistant Commissioner has by his order dated June 21, 1984 (a copy whereof has been filed as annexure '4' to the writ petition), restored the matter to the file of the Income-tax Officer for completing the assessment after giving the

petitioner an adequate and reasonable opportunity to put forward his case. The petitioner, in the meantime, in pursuance of the order passed by the Income-tax Officer had deposited a sum of Rs. 30,100 on various dates. Consequent upon the order of assessment being set aside by the Appellate Assistant Commissioner and the matter being restored to the Income-tax Officer for passing a fresh order of assessment as aforesaid, the petitioner made an application on July 21, 1984, before the Income-tax Officer, A-Ward, Aligarh (a copy whereof has been filed as annexure '5' to the writ petition), praying that a refund voucher may be prepared for a sum of Rs. 30,100 deposited by Mm, in pursuance of the assessment order, which has been set aside. The case of the petitioner is that even though nearly five months have passed since after making of the aforesaid application for refund, the amount deposited by the petitioner as aforesaid has not so far been refunded to him. Since the facts stated by the petitioner in the writ petition are borne out by the copies of the various orders passed by the income-tax authorities, we are of the opinion that it is a fit case, which may be finally decided at this very stage, as contemplated by the second proviso to r. 2 of Chapter XXII of the Rules of the Court.

2. We have heard counsel for the petitioner and Sri Markandey Katju, counsel for the respondents, on the merits of the writ petition. In our opinion, on the order of assessment being set aside and the matter having been restored to the Income-tax Officer for passing fresh order of assessment after giving to the petitioner adequate and reasonable opportunity of hearing, the petitioner is obviously entitled to get a refund of the amount deposited by him in pursuance of the assessment order.

3. In the result, the writ petition succeeds and is allowed. The Income-tax Officer, A-Ward, Aligarh, respondent No. 1, is directed to refund to the petitioner such amount as may have been deposited by him, in pursuance of the order of assessment, which has been set aside by the order of the Appellate Assistant Commissioner of Income-tax, Range III, Agra, dated June 21, 1984, within a month of the production of a certified copy of this order, unless in the meantime a fresh order of assessment has been passed and a fresh notice of demand has been issued to the petitioner.

4. A copy of this order may be supplied to the counsel for the petitioner today on payment of usual charges.