**(2000) 12 CAL CK 0029**

**In the Calcutta High Court**

**Case No :** Writ Petition No. 6819 of 1999 12 December 2000

PRABIR KUMAR MUKHERJEE APPELLANT

Vs

UNION BANK OF INDIA and Others RESPONDENT

**Date of Decision :** 12-12-2000

**Acts Referred:**

**Citation :** (2001) 166 CTR 530 : (2001) 118 TAXMAN 119

**Hon'ble Judges :** K.J. Sengupta, J

**Bench :** Division Bench

**Advocate :** Animesh Kanti Gosal and Joydip Ghosh, for the Assessee and Md. Nizamuddin, for the Revenue and Ranjit Chowdhury, for the Bank, for the Appellant;

## Judgement

K.J. Sengupta, J.:

During pendency of the writ petition further development admittedly had taken place. The assessment order in relation to which the amount in question was recovered from the joint account, has been set aside by the concerned appellate authority, namely, the Commissioner (Appeals) concerned. Therefore, according to the decision of the Commissioner (Appeals) this amount has become refundable but the department has taken this matter before the Tribunal and the appeal before the Tribunal is pending. Under such circumstances I observe that since initially the order of assessment was set aside, therefore, the recovery proceeding u/s 226(3) had become infructuous for the time being subject to decision of the Tribunal. Therefore, the petitioner for the time being should not be deprived of getting back his money. It appears to me this money was realised in relation to the alleged dues of the writ petitioner from the joint account and without observing other formalities. Therefore, justice would be sub-served by the following orders.

I direct the department concerned to refund a sum of Rs. 24,511 to the concerned bank from where this money was withdrawn. Such refund shall be effected within a period of four weeks from the date of communication of this order. On receipt of the aforesaid amount the bank concerned shall keep the same in a short-term fixed deposit and such fixed deposit shall be held by the writ petitioner and a xerox copy of the fixed deposit shall be supplied to the department concerned. Until decision of the Tribunal the aforesaid fixed deposit shall not be allowed to be encashed. If required the fixed deposit shall be renewed for similar terms or for longer terms as the situation will so demand.

2. I give liberty to the petitioner to pray for other reliefs namely, interest for wrongful realisation of the money after decision of the Tribunal. This order is passed without prejudice to the rights and contentions of the parties which might be taken before the Tribunal. The Tribunal is directed to hear out the appeal pending before it in relation to the aforesaid assessment order within a period of three months from the date of communication of this order.

The writ petition is thus dispose of

3. There will be no order as to costs.