

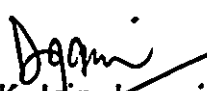
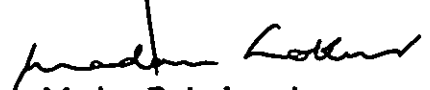


Sr. No.	Date	Orders
		<p data-bbox="459 293 638 331">% 25.3.2003</p> <p data-bbox="459 371 1273 495">Present: Mr. O.S. Bajpai for the Petitioner. Mr. Sanjiv Khanna for the respondent. Mr. Mohinder Ran for M/s Bansal Commodities.</p> <p data-bbox="459 535 1062 573">+ <u>CW No.7030/2002 &amp; CM No.1381/2003</u></p> <p data-bbox="459 607 1576 1059">* By this writ petition a direction is sought to the Income Tax Department to issue refund voucher in respect of the pay orders worth Rs.50.40 lacs, pursuant to the order passed by the Settlement Commission on 6 August 2002. The Settlement Commission has come to the conclusion that the pay orders in the said amount, drawn from a fictitious account in the name of Shri Surender Kumar, are the property of the petitioner.</p> <p data-bbox="459 1093 1592 2168">The stand of the Income Tax Department in the reply affidavit is that though the Settlement Commission has recorded the aforementioned finding in favour of the petitioner but at the same time, as observed in the order, it is without prejudice to the claim of one M/s Bansal Commodities who has also filed a writ petition being CWP No.3738/1994, which is pending disposal. The Income Tax Department has thus, stated in the reply affidavit that in view of the conflicting claim by two parties, namely, the petitioner and M/s Bansal Commodities they have not been able to issue cheques for the refund amount to the petitioner, in terms of the order of the Settlement Commission. It is further stated that the department is ready and willing to deposit the refund amount in this court and they have no objection if the same is released to the petitioner on his furnishing security/indemnity bond of a third person with a view to protect their interest in case the claim of Bansal Commodities is upheld by the Court</p>



Sr. No.	Date	Orders
		<p>We have heard Mr. O.S. Bajpai, learned counsel for the petitioner, Mr. Sanjiv Khanna, learned Senior Standing Counsel for the Revenue and Mr. Mohinder Rana, learned counsel for M/s Bansal Commodities.</p> <p>As noted above, the writ petition is not resisted by the Income Tax Department. However, they want their interest to be protected in case any claim with respect to the amount, which may be refunded in terms of the Settlement commission's order is preferred. The petition is, however, vehemently opposed by Mr. Mohinder Rana, learned counsel for the said Bansal Commodities. Mr. Rana submits that if the refund is granted to the petitioner at this stage the writ petition filed by M/s Bansal Commodities would be rendered infructuous. According to him, the petitioner herein has no lien on the pay orders and the view taken by the Settlement Commission is untenable. In support of his stand that Bansal Commodities have a very strong case, learned counsel has referred us to the stand of the petitioner himself in various proceedings, including before the Settlement Commission.</p> <p>We are of the view that in the light of the decision of the Settlement Commission the amount of refund, which has fallen due to the petitioner in terms of the order cannot be withheld merely because Bansal Commodities is contesting his claim. As and when their petition is decided, consequences would follow. As a matter of fact, we feel that any observation on the merit of the writ petition filed by M/s Bansal Commodities at this juncture may not be in the interest of Bansal Commodities. Nonetheless, in view of the fact that there are conflicting claims with respect to the pay orders in question, <sup>which</sup> are pending determination, we feel that in order to safeguard the interest of the</p>



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		<p>Revenue it would be necessary to put the petitioner to some terms.</p> <p>On the last date of hearing, on a query by the Court with regard to the status of the petitioner, it was stated by Mr. Bajpai that the petitioner may not be in a position to furnish an indemnity bond of a third person as desired by the Income Tax Department. We had asked Mr. Bajpai to have instructions if the petitioner could furnish a security of some un-encumbered asset in favour of the Income Tax Department. Mr. Bajpai submits that as per his instructions petitioner's wife owns a valuable piece of land.</p> <p>Without going into the question of market value of the said asset, which will be considered by the Commissioner, we direct that on petitioner's furnishing a security to the satisfaction to the Commissioner of Income Tax XIII, New Delhi, the amount of refund due to the petitioner in terms of the aforementioned order of the Settlement Commission shall be granted to him within two weeks of his furnishing and acceptance of the security. In so far as the interest payable to the petitioner in terms of the Settlement Commission's order is concerned, Mr. Khanna states that the issue is being examined by the department and if any interest is found due to the petitioner the same shall also be refunded along with the principal amount.</p> <p>The writ petition and the application for directions stand disposed of in the above terms. Dasti.</p> <p style="text-align: right;">   D.K. Jain, J. </p> <p style="text-align: right;">   Madan B. Lokur, J. </p> <p>March 25, 2003</p>