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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd July, 2026

\+ W.P.(C) 9365/2026, CM APPL. 43745/2026 &CM APPL. 43746/2026

DELHI TAX BAR ASSOCIATION THROUGH ITS SECRETARY K G BANSAL .....Petitioner

Through: Mr. Sachit Jolly, Sr. Advocate with Mrs. Mansha Anand, Mr. Sohum Dua, Mr. Abyudaya Shankar Bajpai, Ms. Saloni Ray, Mr. Ghunaim Siddiqui, Ms. Manvi and Mr. Ramanand Roy, Advocates.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Shlok Chandra, SSC along with Ms. Naincy Jain and Ms. Madhavi Shukla, JSCs and Mr. Udit Dad, Advocate for R-2.
Ms. Arti Bansal, CGSC along with Ms. Shruti Goel, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

J U D G M E N T

***Per* DINESH MEHTA, J. (*Oral*)**

1. By way of the present writ petition, the petitioner-Delhi Tax Bar Association has assailed the Office Memorandum dated 12.09.2025, issued by the Central Board of Direct Taxes *(hereinafter referred to as*

'CBDT') giving clarification in relation to allowances payable to Judges of the High Courts under Section 22D of the High Court Judges (Salaries and Conditions of Service) Act, 1954 *(hereinafter referred to as 'the Act of 1954')* in the backdrop of the provisions of Section 115BAC of the Income Tax Act, 1961 (Section 202 of the Income Tax Act, 2025).

2. Apprising the Court about the *locus* of the petitioner, Mr. Sachit Jolly, learned Senior Counsel informed that the members of the petitioner-association not only file returns of income of Hon'ble Judges of the High Court and the Supreme Court, but also advise them in relation to their investment and tax related issues. He added that the members of the Bar are equally concerned with overall judiciary, its dignity and independence.

3. Having regard to the issue involved, before proceeding to hear the matter, as a judicial propriety we deem it our duty to make a disclosure that so far Hon'ble Mr. Justice Rajneesh Kumar Gupta is concerned, he has already filed his return of income, though under new regime but without claiming exemption of the contentious allowances and so far as author of the order (Justice Dinesh Mehta) is concerned, though he is yet to file his return of income but would be filing return under the old regime, so that the issue in hands does not personally affect or influence his decision or discretion in any manner.

4. Learned Senior Counsel submitted that as per Section 22D of the

High Court Judges Act, 1954 and 23D of Supreme Court Judges Act (Salaries and Conditions of Service) 1958, notwithstanding the provision of Income Tax Act, allowance payable under Section 22A, 22B and 22C and Leave Travel Concession provided to Hon'ble Judges of High Court and Supreme Court are totally excluded from the computation of their income chargeable under the head salary under Section 15 of the Act of 1961.

5. He submitted that impugned Office Memorandum seeks to take away the vested right of Hon'ble Judges of the High Court and on similar analogy the allowances payable to Hon'ble Judges of the Supreme Court are also likely to be taken away in the new regime under the Act of 1961/2025.

6. He argued that the Office Memorandum is violative of Article 125 and 221 of the Constitution, which guarantee that the allowances and salaries of Judges of the Supreme Court and High Court shall not be curtailed or varied to their detriment from the date of their appointment.

7. Impeaching the Memorandum, learned Senior Counsel argued that the CBDT has ruled, that after introduction of new regime, the allowances such as Rent-Free Official Residence, Conveyance Allowance, Sumptuary Allowances and Leave Travel Concession (hereinafter 'cumulative by referred to as the allowances') shall not be exempted, because the new regime provides moderate rate of tax, with

no deduction and exemption.

8. Laying emphasis over the language used in Section 22D and 23D of the above Acts of 1954 and 1958, learned Senior Counsel submitted that they use a different and unique expression; they do not provide or talk of any 'deduction' or 'exemption'; they rather take the allowances out of the purview or ambit of Section 15 of the Act of 1961. Meaning thereby, there cannot be treated to be any deduction or exemptions in any manner so far as 'these allowances' given to Hon'ble Judges are concerned. He submitted that other allowances not covered by Section 22D/23D are obviously taxable.

9. He, therefore, argued that regardless of introduction of new regime in the form of Section 115BAC in the Act of 1961 or 202 in the Act of 2025, these allowances shall continue to be out of the tax-net. He iterated that the CBDT's Office Memorandum dated 12.09.2025 is clearly contrary to law, while maintaining that it is nothing short of interference in the independence of judiciary. He submitted that because of the Office Memorandum or otherwise, the new Format/Software (Returns Preparation Utility or RPU) does not provide any drop box or facility/utility where exemption or deduction can be claimed, in case an assessee opts for new regime.

10. He informed that in the new utility of e-filing, once Heading 'Exempt Income' is selected from the Dashboard, there appears a category 'other Income', in which sub-category 'Receipts not in the

nature of income' and prayed that by way of interim direction it may be ordered that all the Hon'ble Judges may file their return of income under New Regime reflecting these allowances under sub-category 'Receipts not in the nature of Income' and subject to final outcome their returns of income be accepted.

11. Mr. Shlok Chandra, learned Senior Standing Counsel for the respondents prays for and is granted two weeks' time to file reply. Rejoinder thereto, if any, be filed within two weeks thereafter.

12. Heard on stay application.

13. Section 22D in The High Court Judges (Salaries And Conditions Of Service) Act, 1954 reads as thus:

> ***"22D. Exemption from liability to pay income-tax on certain perquisites received by a Judge.—***
> *Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961),—*
> *(a) the value of rent-free official residence provided to a Judge under sub-section (1) of section 22A or the allowance paid to him under sub-section (2) of that section;*
> *(b) the value of the conveyance facilities provided to a Judge under section 22B;*
> *(c) the sumptuary allowance provided to a Judge under section 22C; (d) the value of leave travel concession*

provided to a judge and members of his family, shall not be included in the computation of his income chargeable under the head "Salaries" under section 15 of the Income- tax Act 1961 (43 of 1961)."

14. Having considered the submissions of Mr. Jolly, in *prima facie* opinion of this Court, the non-obstante clause in Section 22D and 23D gives Section 22D/23D overriding effect over all the provisions of the Income-Tax Act, 1961, including Section 115BAC. That apart, the expression used in Section 22D drives the allowances even outside the computation of income under the head salaries-'<u>an amount which is not even included in the income cannot be said to have been exempted or deducted'</u> so as to fall foul of Section 115BAC of the Act of 1961.

15. Matter requires consideration.

16. Meanwhile, all Hon'ble Judges of Supreme Court and High Court may file their return of income/Revised Return reflecting the amount allowance covered by 22D and 23D of the Act of 1954 and 1958 under the caption <u>'receipts not in the nature of income'</u> by going to 'Exempt Income' part of the Dashboard and then opting category 'other incomes' and sub-category 'receipts not in the nature of income', while furnishing their return of income.

17. The returns so filed by Hon'ble Judges of the High Court and Supreme Court shall not be processed and proceeded with, until

further orders.

18. List on 03.09.2026.

DINESH MEHTA
(JUDGE)

RAJNEESH KUMAR GUPTA
(JUDGE)

JULY 22, 2026/v