

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA.No.1788/Del./2022  
Assessment Year 2017-18

Shri Aradhya Ghosh, Nabakalish 10-F, 55/4 Ballygunge Circular Road, Kolkata – 700 019 PAN AAFPG5069A	vs.	The DCIT, Circle – 69(1), Delhi. PIN – 110 002.
(Appellant)		(Respondent)

For Assessee :	Shri Hemant Pai, C.A.
For Revenue :	Shri Anuj Garg, Sr. DR

Date of Hearing :	29.09.2022
Date of Pronouncement :	14.10.2022

**ORDER**

This appeal filed by the assessee has been directed against the Order of the Ld. CIT(A), National Faceless Appeal Centre [NFAC], Delhi, dated 21.06.2022 relating to the A.Y. 2017-18.

2. Briefly stated facts of the case are that the assessee is a retired employee of Indian Air Force. The assessee had declared income from salary, income from house property and income from other sources during the

financial year relevant to the assessment year under consideration. The assessee filed return of income on 31.05.2017 declaring total income of Rs.42,63,710/- which was processed under section 143(1) of the Income Tax Act, 1961. Later, the assessee filed his revised Return of Income for the impugned A.Y. 2017-18 on 12.09.2017. Subsequently, the case was selected for scrutiny under CASS and accordingly notice under section 143(2) of the Income Tax Act, 1961 (hereafter referred to as 'the Act') was issued on 11.08.2018 which was duly served upon the assessee. In response to the said notice, the assessee filed reply on 04.09.2018. The A.O. issued statutory notice under section 142(1) of the Act along with detail questionnaire on 12.06.2019. In response, the assessee filed his reply on 19.06.2019 & 20.06.2019 which have been placed on record. The A.O. further issued notices under section 142(1) of the Act on 19.09.2019 and 06.11.2019 and the assessee filed his replies to the said notices on 22.09.2019 and 07.11.2019 respectively. During the course of assessment proceedings, the A.O. noted that the assessee has claimed

'Disability Pension' amounting to Rs.8,43,226/- as exempt income in his revised ITR. The Investigation of the submissions and verification with the concerned authorities shows that the assessee Wg. Cdr. Aradhya Ghosh had taken pre-mature retirement from Indian Air Force w.e.f. 01.04.2016 and the disability was not the reason for retirement. To ascertain the facts, an information under section 133(6) of the Act was called for by the A.O. from the Directorate of Air Veterans, Air Force Head Quarters. In reply to the said notice, an information was received from Directorate of Air Veterans vide its letter dated 24.10.2019 wherein it was clearly mentioned that the officer has retired pre-maturely on his own request and the disability was not the reason of the retirement. The information provided also contained the certificate dated 01.02.2016 regarding Pre-mature Separation from Service of Wa. Cdr. Aradhva Ghosh issued by Air Headquarters (VB), New Delhi. The A.O. reproduced the certified issued by the Air Headquarters in the assessment order. The A.O. noted that since the assessee had taken pre-mature retirement at his own

request and was not invalidated from service on account of bodily disability attributable to or aggravated by such service, the disability pension amounting to Rs.8,43,226/- shall not be exempt from Income Tax and is being added back to the taxable income of the assessee for the impugned A.Y. 2017-18 and determined the total income of the assessee at Rs.45,72,036/- as against the returned income by the assessee at Rs.37,28,810/- and passed the assessment order under section 143(3) of the I.T. Act, 1961 vide order dated 19.11.2019 and also initiated penalty proceedings under section 270A of the I.T. Act, 1961 separately.

2.1. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A), NFAC, Delhi and filed written submissions also. However, the Ld. CIT(A) vide order dated 21.06.2022 confirmed the addition made by the A.O. on similar lines.

3. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal and has raised the following grounds :

*“1. The order passed by the learned Commissioner of Income Tax (Appeals) under section 250 of the Income Tax Act, 1961 insofar as it is against the Appellant, is opposed to law, probabilities on the facts and circumstances of the Appellant's case.*

*2. The Appellant denies himself liable to be assessed at Rs.45,72,036/- as against the declared total income of Rs.37,28,810/- on the facts and circumstances of the case.*

*3. The learned Commissioner of Income Tax (Appeals) erred in law in confirming the addition of Rs.8,43,226/- being disability pension claimed as exempt by the Appellant on the facts and the circumstances of the case.*

4. *The authorities below failed to appreciate that the disability pension is not exigible to tax on the facts and the circumstances of the case.*

5. *The Appellant craves leave to add, alter, modify, substitute, change and delete any or all of the grounds and to file a paper book at the time of hearing the appeal.”*

4. During the course of hearing, the Learned Counsel for the Assessee submitted paper book containing 1 to 59. He drew the attention of the Bench at page-26 of the Paper Book about the interim stay order of the Hon'ble Supreme Court in the case of Shri Pradeep Mathur & Ors. Vs., Union of India & Ors. in W.P.(C) No.953/2019 dated 30.08.2019 wherein the Hon'ble Supreme Court directed the respondents '*pending further consideration, the parties shall maintain status quo in the matter*'. He also drew the attention of Bench page-25 of the paper book and submitted that the CBDT in its Circular dated 24.06.2019 vide No.13/2019 [F.No.173/250/2019-ITA-I] exempted the

armed forces personnel who have been invalided from service on account of bodily disability attributable to or aggravated by such service and not to personnel who have been retired on superannuation or otherwise. He also drew the attention of Bench at page-36-38 of the paper book which is the Circular issued by the Principal Controller of Defence Accounts (Pensions), Allahabad vide Circular No.211 dated 03.03.2020 to the effect that the Pension Disbursing Agencies not to recover tax on disability pension for Defence Forces Personnel. He submitted that though all the above documents were filed before the Ld. CIT(A), however, the Ld. CIT(A) without considering the order of the Hon'ble Supreme Court dated 30.08.2019 (supra), confirmed the addition made by the A.O. which is not in accordance with law and, therefore, prayed that the addition made by the A.O. and confirmed by the Ld. CIT(A) be deleted.

5. On the other hand, the Ld. D.R. relied on the orders of the lower authorities. He submitted that the assessee was not disabled while in service and he has taken

voluntary retirement from service and, therefore, the Circular issued by the CBDT and the Circular of Principal Controller of Defence Accounts (Pensions) (supra) as well as the order of the Hon'ble Supreme Court dated 30.08.2019 (supra), cannot be taken into consideration in the case of assessee as those Circulars and Order of Hon'ble Supreme Court were applicable only to the Defence Forces Personnel disabled while in service.

6. I have considered the rival submissions, perused the material available on record and the orders of the authorities below. I find that the A.O. made the addition of Rs.8,43,226/- on account of disability pension not exempt from tax as the assessee had taken pre-mature retirement at his own request. In appeal, the Ld. CIT(A) also confirmed the addition made by the A.O. with similar observations. I find in the instant case that at the time of disbursement of amount, no TDS has been deducted in the case of assessee and from careful perusal of the order of the Hon'ble Supreme Court dated 30.08.2019, it is noticed that the Hon'ble Supreme Court directed the respondents to

maintain status quo in the matter. The Circular issued by the CBDT as well as in the Circular of Principal Controller of Defence Accounts (Pensions) in which it is clearly stated that tax exemption shall be available to the Defence Forces Personnel who have been invalidated from service on account of bodily disability while in service. Since the Ld. D.R. has failed to furnish any contrary material or decision of any higher Judicial Forum to the notice of Bench, I allow the claim of assessee and direct the A.O. to delete the addition. Accordingly, appeal of the assessee is allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 14.10.2022.

Sd/-  
 [CHANDRA MOHAN GARG]  
 JUDICIAL MEMBER

Delhi, Dated 14<sup>th</sup> October, 2022

VBP/-  
 Copy to

1.	The appellant
2.	The respondent
3.	Ld. CIT(A) concerned
4.	CIT concerned
5.	DR ITAT "SMC" Bench, Delhi
6.	Guard File

//By Order//

Assistant Registrar, ITAT, Delhi Benches, Delhi.