

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” “C” BENCH: BANGALORE**

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.6/Bang/2023
Assessment Year: 2017-18

Manish Roy A54, Diamond District HAL 2 nd Stage B 8 Bangalore Karnataka 560 008 PAN NO : ABFPR4822B	Vs.	ITO Ward 6(2)(4) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri G. Sathyanarayana, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue

Date of Hearing	:	08.02.2023
Date of Pronouncement	:	08.02.2023

ORDER

This appeal by assessee is directed against the order of NFAC/CIT(A), Delhi dated 30.10.2022 for the assessment year 2017-

18. The assessee has raised following grounds of appeal:-

- 1. The ld. ACIT CPC has erred in rejecting the rectification petition submitted by the appellant claiming exemption of pension received Rs.15,79,200/- from Defence Ministry even though the medical disability pension received is exempt from income tax vide instruction No.2/2001 dated 2.7.2001 in F.No.200/51/99-ITA-I and instruction No.136F No.34/3/68-IT (A) Government of India, CBDT dated 14.1.1970.*
- 2. The rejection of rectification petition filed of the appellant by the ld. ACIT, CPC is against the provisions and notification of Income Tax Act and hence against the principles of equity, law and natural justice.*

3. *The ld. ACIT CPC has deprived of the refund claimed Rs.1,62,040/- legally claimed by the appellant.*
 4. *Also the ld. CIT(A) while disposing the appeal is erred by rejecting the claim and relied on Circular No.13/2019 dated 24th June 2019 which is prospective and not applicable to the AY 2017-18.*
 5. *Also the ld. CIT(A) erred by not providing any personal hearing to represent the case and explain the facts of the case.*
 6. *Also the ld. CIT(A) erred in understanding the retirement of the assessee on account of medical disability while adjudicating the appeal.*
 7. *The assessee craves leave to alter any of the grounds of appeal on or before the date of final hearing.*
2. Facts of the case are that the assessee was assessed to income tax vide PAN ABFPR4822B. The assessee was an ex-army person receiving medical disability pension. He filed his original return on 30/07/2017 vide ack no. 971669890300717 declaring a taxable income Rs. 15,79,200/-. After receiving the intimation from the CPC, he realised that he had not claimed the exemption in respect of Defence Medical Disability Pension Rs. 15,79,200/- received from the Defence Department which is exempt from income tax vide CBDT instructions. To claim the exemption of Defence medical disability pension, he had filed his revised return on 15/12/2018 for the assessment year 2017-18 vide Ack. No.389160840151218. However, the learned Assistant Commissioner of Income Tax, CPC, Bengaluru rejected the exemption claimed by the assessee. Aggrieved by this the assessee filed a rectification petition under Section 154 of the Income-tax Act,1961 ['the Act' for short] on 05/06/2020 vide [ack.no. 492107290050619](#). The learned Assistant Commissioner of Income Tax, CPC, Bengaluru rejected the rectification petition. Once again, the assessee filed a rectification petition on

07/07/2020 vide ack. No. 384642870070720 after having a telephonic talk with the CPC officials. The learned Assistant Commissioner of Income Tax, CPC, Bengaluru has again rejected the rectification petition submitted by the assessee. Aggrieved by this the assessee submitted a Grievance Petition before the CPC on 20/08/2020 vide ack. No. 1000000002869892, UID 202008200455320. The CPC rejected the grievance petition also. By this the assessee deprived of the exemption allowed to Defence Medical Disability Pension Rs. 1579200/- received by him. In the result the assessee did not get the refund of TDS made on the exempt income. The assessee is a senior citizen aged 74 years now and he requested for refund, which is a legitimate claim as per the existing provisions of IT Act. Aggrieved by the decision of the CPC now the assessee preferred this appeal before NFAC to seek exemption of Defence Medical Disability Pension Rs. 1579200/- from tax and natural justice on the issue. However, the NFAC/CIT(A) confirmed the order of AO. Against this, the assessee is in appeal before me.

2.1 The ld. A.R. submitted that the Hon'ble Supreme Court in the case of Shri Pradeep Kumar Mathur & Ors. Vs. Union of India & Ors. in WP(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*'.

2.2 Further he drew my attention to CBDT 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.

2.3 He further drew my attention to 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.

3. On the other hand, the Id. D.R. relied on the order of lower authorities.

4. After hearing both the parties, I was of the opinion that similar issue came for consideration in the case of Shri Aradhya Ghosh Vs. Deputy Commissioner of Income-tax in ITA No.1788/Del/2022 dated 14.10.2022 wherein the Tribunal has held as under:-

“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.

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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.”*

4.1 In view of the above binding decision of the coordinate bench of this Tribunal cited (supra), the appeal of the assessee is allowed.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 8th Feb, 2023

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 8th Feb, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore