IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6716 OF 2021

Dr. (Lt. Col.) Vijay Seshan ….Petitioner

V/s.

Union of India and Ors. ….Respondents

Mr. Ramesh Ramamurthy a/w. Mr. Saikumar Ramamurthy for petitioner.
Mr. Suresh Kumar i/b. Mr. Sham Walve for respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 21st OCTOBER 2021

P.C. :

1 Petitioner has approached this Court aggrieved by an order dated 14th December 2020 passed by respondent no.2 rejecting petitioner's revised returns of income on the ground that petitioner was not entitled to tax exemption on the disability pension earned by him.

2 Petitioner is a Doctor with M.D. qualification in general medicine. Petitioner had put in a total of 23 years 1 month 4 days service in the Army Medical Service and took premature retirement from service on 19th February 1993 on account of medical disability. Petitioner's disability has been certified by Army Medical Board as being attributable to military service and aggravated by the military service. The assessment of the Army Medical Board of the said disability was 30% in 1993 and 50% with effect from January 2016 for life. In effect the assessment of the Army Medical Board clearly indicates that the disability has been acquired by petitioner

while in service and on account of the service conditions. Petitioner has annexed to the petition a certificate dated 4th December 2018 issued by the Additional Directorate General of Personnel Services, Adjutant General's Branch, Integrated HQ of Ministry of Defence (Army) which certifies that petitioner's disability, i.e., backache with spondylolisthesis, is attributable to his military service. There is also annexed to the petition a Circular No.13 of 2019 dated 24th June 2019 issued by Central Board of Direct Taxes (CBDT) which provides that pensions granted to members of armed forces, who have been invalidated for naval, military or air force service on account of bodily disability attributable to or aggravated by such service, would be exempt from tax under the Income Tax Act.

3 Petitioner, therefore, filed a revised returns alongwith condonation of delay application for assessment years 2013-2014 to 2016-2017 and 2018-2019 on 5th June 2020. By this application, petitioner claimed refund of the taxes paid since being a certified disabled person he was entitled to exemption from income tax under the Income Tax Act, 1961. The application has been rejected by the impugned order dated 14th December 2020 on the grounds that the disability of petitioner, i.e., backache with spondylolisthesis, has not been defined as bodily disability under the Rights of Persons with Disabilities Act 2016. In the impugned order, respondent no.2 has totally ignored the certificate dated 4th December 2018 certifying that petitioner's disability was attributable to military service and aggravated by the military service. Reliance has been placed on

paragraph 5 of the Circular dated 24th June 2019 of CBDT to state that petitioner has retired prematurely and there is a clarification in the circular that it will not apply to those who have retired on superannuation and otherwise. Certainly petitioner is not superannuated but has taken premature retirement on account of disability. If we have to accept what respondent no.2 has opined, then no pensioner in armed forces will be entitled to any tax exemption.

4 Having considered the certificate dated 4th December 2018 read with circular dated 24th June 2019, we are satisfied that the order impugned in the petition is required to be set aside. The order is hereby set aside. The delay in filing the application also is condoned. The matter is remanded for *denovo* consideration to respondent no.2, who shall pass orders on the revised returns based on the views expressed above by this Court.

5 Petition disposed.

6 The application shall be considered and disposed within six weeks from today and should petitioner wish a personal hearing to be granted, the same shall be granted by respondent no.2 and petitioner can be represented by an authorised person of his choice.

7 All to act on copy of this order authenticated by the Associate of this Court.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**

Gauri Gaekwad