<u>COURT NO. 34.</u>

INCOME TAX APPEAL NO. 112 OF 2004
Justice G.K. Mathur (Retd.) v. Commissioner of Income Tax, Meerut & another
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Hon'ble Sunil Ambwani, J.
<u>Hon'ble Aditya Nath Mittal, J.</u>

1. Heard Sri P.K. Jain, Senior Advocate, assisted by Sri Amitabh Aggarwal, learned counsel for the applicant on the application under Section 261of the Income Tax Act. Sri R.K. Upadhyaya appears for the Income Tax Department.

2. Income Tax Appeal No. 112 of 2004 (Justice G.K. Mathur (Retd.) v. Commissioner of Income Tax, Meerut and another) was decided by us on 24.8.2012. While deciding the appeal the questions of law raised by the appellant were decided against the assessee and in favour of the revenue.

3. Paragraphs 21 to 25 of the judgment are quoted as below :

> *"21. Section 2 (gg) inserted by Act No. 50 of 1961 w.e.f. 8.12.1961 of the High Court Judges (Salaries and Conditions of Service) Act, 1954 defines 'pension' as follows :-*
>
> > *"(gg) 'pension' means a pension of any kind whatsoever payable to or in respect of a judge, and includes any gratuity or other sum or sums so payable by way of death or retirement benefits."*
>
> *22. The President of India under Section 21 of the Act of 1954 is the authority competent to grant pension to a judge under the provisions of the Act. The pension would include, in view of the amended definition of pension under Clause (gg) of Section 2, all the amounts received by a judge as a pension and will also include extraordinary pension under Section 17, family pension and gratuities under Section 17A and commuted pension.*
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> *23. The exemption from liability to pay income tax on certain perquisites or allowances received by a judge and which may not be included in the computation of his income chargeable under the head 'salaries' under Section 15 of the Income Tax Act, 1961 is included under Section 22D, in Chapter IV as substituted by Act No. 20 of 1998. All other amounts received by a judge are taxable. The dearness relief will be included in the pension as defined under Section (gg) of the Act and is not exempt from income tax under Section 22D of the Act of*

1954.

24. We do not find any error of law in the judgment of the Tribunal in finding that the dearness relief is 'profit in lieu of salary' and is included as an amount received by a retired judge under Section 17 (3) (ii) of the Act and would be taxable as income. The questions raised are thus decided against the assessee and in favour of the revenue.

25. The income tax appeal is dismissed.”

4. This application for a certificate to be granted to file appeal to the apex Court under Section 261 of the Income Tax Act was filed on 18.10.2012.

5. Sri R.K. Upadhyaya appearing for the Income Tax Department states that a certificate may be granted by the High Court on its own motion or if an oral application is made by or on behalf of the party immediately after the passing or making of the judgment. In this case the application has been moved after about two months of making of the judgment purportedly to gain advantage of limitation for filing a Special Leave Petition Under Article 136 of the Constitution of India.

6. Having heard learned counsel appearing for the parties, we are of the view that the prayer for certificate to file an appeal to the Supreme Court should have been made on the day when the judgment was delivered.

7. In any case, we do not find that the questions, decided by us, raise or involve substantial questions of law of general importance to be decided by the Supreme Court.

8. The application for certificate under Section 261 of the Income Tax Act, 1961, is accordingly rejected.

Dated : 2.1.2013.
PG.