**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 6TH DAY OF AUGUST, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION NO. 8936 OF 2022 (T-IT)**

**BETWEEN:**

NARAYAN RAVI PRAKASH
S/O LATE J T NARAYAN
AGED ABOUT 61 YEARS
RESIDING AT NO 29, 9TH CROSS 1ST MAIN ROAD
PRASHANTH NAGAR
BENGALURU - 560079

…PETITIONER

(BY SRI. NAVEEN G S., ADVOCATE)

**AND:**

1. INCOME TAX OFFICER
   NATIONAL FACELESS ASSESSMENT CENTRE
   INCOME TAX DEPARTMENT
   MINISTRY OF FINANCE
   GOVERNMENT OF INDIA
   NEW DELHI

2. INCOME TAX OFFICER WARD 2 (2) (2)
   INCOME TAX DEPARTMENT
   BMTC BUILDING
   80 FEET ROAD 6TH BLOCK KORAMANGALA
   BENGALURU - 560095

…RESPONDENTS

(BY SRI. RAVI RAJ Y V., ADVOCATE)

Digitally signed by ANAND N
Location: HIGH COURT OF KARNATAKA

THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED RE-ASSESSMENT ORDER DTD. 28.03.2022 PASSED UNDER SECTION 147 READ WITH SECTION 144B OF INCOME TAX ACT PRODUCED AS ANNX-E ISSUED BY R-1; QUASH THE DEMAND NOTICE UNDER SECTION 156 OF THE ACT DTD. 28.03.2022 PRODUCED AS ANNX-F.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

**ORAL ORDER**

In this petition, the petitioner seeks the following reliefs:

*"i. Issue a writ or order in the nature of certiorari to quash the impugned re-assessment order dated 28.03.2022 passed under Section 147 read with Section 144B of Income Tax Act bearing No.ITBA/AST/S/147/2021- 22/104850523(1) produced as ANNEXURE-E issued by Respondent No. I;*

*ii. Issue a writ or such other order in the nature of certiorari to quash the demand notice under section 156 of the Act dated 28.03.2022 bearing No.ITBA/AST/S/156/2021-2/1041853425(1) produced as ANNEXURE issued by Respondent No.1;*

*iii. Issue a Writ or Order in the nature certiorari quashing the penalty notice under Section 274 read with 270 A dated 28.03.2022 bearing No.*

*ITRBA/PNL/S/270A/2021-22/1041851447(1) produced as ANNEXURE-G issued by Respondent No. I."*

2. Heard the learned counsels for the parties and perused the material on record.

3. A perusal of the material on record will indicate that it is an undisputed fact that the petitioner sold the original asset, which was an industrial land for a total sale consideration of Rs.3,05,00,000/- on 29.08.2016, and from out of the sale proceeds, the petitioner invested a sum of Rs.1,86,55,700/- towards purchase of a residential site on 01.06.2017. On 29.09.2017, the petitioner filed income tax returns for the assessment year 2017-18 claiming exemption from long term capital gains on the ground that the balance/remaining amount of Rs.1,18,44,300/- was utilized by him for the purpose of putting up construction and the construction of the house was completed on 26.08.2019 [*within the prescribed period of three years from the date of sale of the original asset*]. In pursuance of the same, respondent No.2 passed an assessment order on 12.12.2019 accepting the returns filed by the petitioner. Subsequently, respondent No.2 issued a notice under Section 148 of the Income tax Act, 1961 [prior to amendment] [for short, '*the IT*

*Act'*] dated 29.03.2021 indicating that *there are reasons to believe that the income chargeable to Tax had escaped Assessment within the meaning of Section 147 of the Income Tax Act, 1961*.

4. It is the grievance of the petitioner that though the petitioner had complied with the requirements of Section 54F of the IT Act by utilizing the entire sale consideration by purchasing the aforesaid residential site within the prescribed period of one year and also putting up construction thereof within the prescribed period of three years from the date of the sale of the original asset, respondent No.2 has proceeded to pass the impugned assessment order and issued demand notice and penalty notice, which are contrary to the facts and law and the same deserves to be quashed. In support of his submissions, reliance is placed on the following judgments:

I. ***The Commissioner of Income Tax and Others Vs. Shri K. Ramachandra Rao*** *in* ***ITA No.47/2014 c/w ITA No.46/2014, ITA No.494/2013 and ITA No.495/2013*** *disposed of on* ***14.07.2014****;*

II. ***The Commissioner of Income Tax and Others Vs. Smt. B.S.Shanthakumari*** *in* ***ITA No.165/2014*** *disposed of on* ***13.07.2015****; and*

III. ***Pr. Commissioner of Income Tax and Others Vs. Shri. R. Srinivas*** *in* ***ITA No.381/2015*** *disposed of on* ***02.11.2015****.*

5. *Per contra*, the learned counsel for the respondents contends that so long as the petitioner did not deposit/invest the balance/remaining amount of Rs.1,18,44,300/- in a capital gains account, he would not be entitled to claim exemption from the payment of capital gains tax from the aforesaid amount and as such, respondent No.2 is fully justified in passing the impugned order and issuing the impugned notices, which does not warrant interference by this Court in the present petition.

6. As rightly contended by the learned counsel for the petitioner, under identical circumstances in the cases where non-investment of the sale consideration or portion thereof in the designated capital gains would not come in the way of the petitioner claiming exemption so long as the petitioner had invested the said amount for construction came up for consideration before the Division Bench of this Court in the case of ***Shri. K. Ramachandra Rao*** [*supra*] wherein, it was held as under:

*"3. The two substantial questions of law which arise for consideration in these batch of appeals are as under :-*

*1) Whether the assessee is entitled to the benefit conferred under Section 54F when the sale consideration*
*is utilized for construction of a residential house on a site*
*which is owned by him within one year from the date of transfer?*

*2) When the assessee invests the entire sale consideration in construction of a residential house within three years from the date of transfer can he be denied exemption under Section 54F on the ground that he did not deposit the said amount in capital gains account scheme before the due date prescribed under Section 139(1) of the IT Act?*

*4.Re.PointNo.1*

*Section 54(F) deals with capital gains on transfer of certain capital assets not to be charged in case of investment on house. It reads as under.*

***54F**. (1) [Subject to the provisions of sub-section (4), where, in the case of an assessee being an individual or a Hindu undivided family], the capital gain arises from the transfer of any long-term capital asset, not being a residential house (hereafter in this section referred to as the original asset), and the assessee has, within a period of one year*

*before or [two years] after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset), the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say,—*

*(a) if the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;*

*(b) if the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of the new asset bears to the net consideration, shall not be charged under section 45:*

***Provided*** *that nothing contained in this sub-section shall apply where—*

*(a) the assessee,—*

*(i) owns more than one residential house, other than the new asset, on the date of transfer of the original asset; or*

*(ii) purchases any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; or*

*(iii)constructs any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset; and*

*(b) the income from such residential house, other than the one residential house owned on the date of transfer of the original asset, is chargeable under the head "Income from house property".]*

*Explanation.—For the purposes of this section,—*

*[***]*

*[***] "net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.*

*(2) Where the assessee purchases, within the period of [two years] after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.*

*(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.]*

*[(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of10 which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139 in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset:*

***Provided*** *that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—*

*(i) the amount by which—*

*(a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds*

*(b)the amount that would not have been so charged had the amount actually utilised by11 the assessee for the purchase or construction*

*of the new asset within the period specified in sub-section (1) been the cost of the new asset, shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires ; and*

*(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.*

*Section 54F(1) provides, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of any long term capital asset, not being a residential house and the assessee within a period of one year before or two years after the date on which the transfer took place, purchased or has within a period of three years after that date constructed a residential house, the capital gain shall be dealt with in accordance with the said provision. This is subject to the provisions of Sub Section (4).*

*Sub Section (4) stipulates if the amount of net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which transfer of the original asset took place or which is not utilized by him for the purchase or construction of the new asset before the date of furnishing the return of income under Section 139 of the Act shall be deposited by him before furnishing such return in any case not later than the due date applicable in the case of the assessee for*

*furnishing the return of income under Section 139(1) of the Act in an account in any such bank or institution as specified and utilized in accordance with any scheme which the Central Government may, by notification in the official gazette framed in this behalf.*

*Sub Section (4) is attracted only to a case where the sale consideration is not utilized either for purchase or for construction of a residential house. It has no application to a case where the assessee invests the sale consideration derived from the transfer either in purchasing the property or constructing the residential house within the period stipulated in Section 54F(1). The proviso to Section 54F puts an embargo on the application of Section 54F to cases which are mentioned in the said proviso. That is to be eligible for the benefit under Section 54F(1) the assessee should not be owning more than one residential house other than the new asset acquired or he should not purchase any residential house other than the new asset within a period of one year after the date of transfer of residential asset or constructs any residential house other than the new asset within a period of three years after the date of transfer of the residential asset. In the entire scheme there is no prohibition for the assessee putting up construction out of sale construction received by such transfer of a site which is owned by him as is clear from the language used. It is open for the assessee to put up a residential construction or to purchase a residential house. It is not the requirement of law that he should purchase a residential site and then put up*

*construction. Therefore, in the instant case admittedly the assessee has purchased a vacant site on 31.3.2001. He sold the original asset on 27.8.2003 on which date he was already owning a site. In fact even before sale of the original asset he had started construction on such site by availing loan from the Bank. In terms of Section 54F(1) all investments made in the construction of the residential house of the said site within a period of one year prior to 27.8.2003 would be eligible for exemption under Section 54F(1). Similarly all investments in the said construction after 27.8.2003 within a period of three years there from is also eligible for exemption. Therefore, the argument that such investment in putting up a residential construction cannot be made on a site owned by him to be eligible for exemption is without any substance. Both the Appellate Authorities have rightly extended the benefit to the assessee and there is no error committed by them which calls for interference.*

***4.Re.QuestionNo.2:***

*As is clear from Sub Section (4) in the event of the assessee not investing the capital gains either in purchasing the residential house or in constructing a residential house within the period stipulated in Section 54F(1), if the assessee wants the benefit of Section 54F, then he should deposit the said capital gains in an account which is duly notified by the Central Government. In other words if he want of claim*

*exemption from payment of income tax by retaining the cash, then the said amount is to be invested in the said account. If the intention is not to retain cash but to invest in construction or any purchase of the property and if such investment is made within the period stipulated therein, then Section 54F(4) is not at all attracted and therefore the contention that the assessee has not deposited the amount in the Bank account as stipulated and therefore, he is not entitled to the benefit even though he has invested the money in construction is also not correct.*

*5. For the aforesaid reasons both the substantial questions of law are answered in favour of the assessee and against the Revenue. Therefore, we do not see merit in any of the appeals. Accordingly, all the four appeals are dismissed."*

So also in the cases of ***Smt. B.S.Shanthakumari*** and ***Shri R. Srinivas*** [*supra*], the Division Bench also reiterated the same position. In view of the law laid down by the Division Bench to the effect that mere non-deposit of the sale consideration or portion thereof in a designated capital gains account would not deprive or come in the way of the petitioner from claiming exemption from payment of capital gains tax, I am of the view that the impugned reassessment order and notices are contrary to law and the

aforesaid judgments of the Court and the same deserves to be quashed.

In the result, I proceed to pass the following:

**ORDER**

a The petition is hereby allowed.

b The impugned reassessment order [*Annexure-E*], the demand notice [*Annexure-F*] and the penalty notice [*Annexure-G*] dated 28.03.2022 are quashed.

**Sd/-**
**(S.R.KRISHNA KUMAR)**
**JUDGE**

RB