

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF OCTOBER, 2019

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

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

WRIT APPEAL NO. 3031 OF 2019 (T-IT)

BETWEEN:

PROF. P.N. SHETTY
AGED 80 YEARS,
204-B, SAI RADHA PALACE
BRAHMAGIRI
UDUPI-576 103

... APPELLANT

(BY SHRI P N SHETTY, PARTY-IN-PERSON)

AND:

OFFICE OF THE INCOME TAX OFFICER
WARD 1
AYAKAR BHAVAN
ADI UDUPI
AMBALPADY
UDUPI-576 103
REPRESENTED BY
THE INCOME TAX OFFICER, WARD-1

... RESPONDENT

(BY SHRI K.V. ARAVIND ADVOCATE A/W
SHRI DILIP M., ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF
THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO
SET ASIDE THE ORDER MADE IN WRIT PETITION
NO.13541/2018 DATED 18.07.2019 AND ETC.

THIS APPEAL COMING ON FOR PRELIMINARY HEARING THIS DAY, **CHIEF JUSTICE** DELIVERED THE FOLLOWING:

JUDGMENT

The appellant appearing in person has challenged the judgment and order dated 18th July, 2019 passed by the learned Single Judge by which the writ petition filed by him has been rejected by the learned Single Judge.

2. The appellant who is the writ petitioner, filed his return of income in respect of the assessment year 2016-17. A show-cause notice under sub-section (3) of Section 142 of the Income Tax Act, 1961 (for short, 'the said Act') was issued to the appellant. The said show-cause notice was based on admitted facts. The appellant sold an immovable property held by him and out of the sale consideration received by him, he deposited a sum of Rs.1,15,00,000/- in the Capital Gain Account Scheme, 1988. A return of income for the assessment year 2013-14 was filed on 14th July, 2013 by claiming exemption under Section 54F of the said Act.

3. The appellant purchased a premises for the price of Rs.21,32,470/- on 20th August, 2013 which was before the

expiry of three years from the date of transfer of the capital assets. The notice which was the subject matter of challenge in the writ petition filed by the appellant was issued with a view to bring the unutilized capital gains to tax as per sub-section (4) of Section 54F of the said Act. The effect of the impugned notice was that the unutilized amount (Rs.1,15,00,000/- minus Rs.21,32,470/-) after the expiry of three years from the date of transfer of the original capital asset was proposed to be subjected to tax under Section 45 of the said Act.

4. The learned Single Judge after consideration of the provisions of Sections 45 and 54F of the said Act, and in particular sub-section (4) of Section 54F of the said Act, held that the appellant was entitled to withdraw the amount deposited in the Capital Gains Account subject to deduction of tax applicable to the case in hand.

5. The first submission of the appellant-petitioner-in-person is that the Department never filed objections before the learned Single Judge and therefore, the writ petition filed by him ought to have been allowed. He invited our attention to sub-section (1) of Section 45 and Section 54F

of the said Act. He submitted that as he has utilized the amount partly by acquiring another premises at the cost of Rs.21,32,470/-, the remaining amount deposited in the Capital Gain Account Scheme should be refunded to him in its entirety. His main contention is that the proviso to sub-section (1) of Section 54F of the said Act uses the words 'not utilized wholly or in part.' Therefore, if the amount is utilized in part, the remaining amount cannot be subjected to a tax under Section 45 of the said Act.

6. We have heard the learned counsel appearing for the respondent. We have considered the submissions.

7. Sub-section (4) of Section 54F of the said Act reads thus:

54F – Capital gain on transfer of certain capital assets not to be charged in case of investment in residential house.

(1) ...

(2) ...

(3) ...

(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 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, 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 utilized in accordance with any scheme which the Central Government may, by notification in the Official Gazette, framed in this behalf and such return shall be accompanied by proof of such deposit; and, for the purpose of sub-section (1), the amount, if any, already utilized by the assessee for the purchase or construction of the new asset together with the amount deposited shall be deemed to be the cost of the new asset;

Provided that if the amount deposited under this sub-section is not utilized 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 utilized by 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 unutilized amount in accordance with the scheme aforesaid.”

Under the said provision, 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 the 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, shall be deposited by him before furnishing such return in an account in any such bank or institution as may be specified in, and utilized in accordance with, any scheme which the Central Government may, by notification, frame in that behalf.

8. By virtue of sub-section (1) of Section 45 of the said Act, the amount deposited will be chargeable to income tax under the head 'Capital Gains' and shall be deemed to be income of the previous year in which the transfer took place. The proviso to sub-section (4) of Section 54F carves

out an exception to sub-section (4) of Section 54F of the said Act which deals with two contingencies - (i) where the amount deposited in Capital Gain Scheme Account is wholly utilized for the purchase or construction of a new asset within the period specified in sub-section (1) of Section 54F of the said Act; and (ii) where only a part of the said amount is utilized for the purchase or construction of a new asset. The next part of the proviso itself lays down that when the amount deposited in the Scheme is utilized only partly for the purchase or construction of a new asset, the amount by which the amount of Capital Gains 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, of clause (b) of sub-section (1), exceeds the amount that would not have been so charged, had the amount been actually utilized by the assessee for the purchase or construction of a new asset within the period specified in sub-section (1) of Section 54F of the said Act been the cost of the new asset, shall be chargeable under Section 45 as income of the

previous year in which the period of three years from the date of transfer of the original asset expires.

9. Thus, it is very clear that if only a part of the amount deposited in the Capital Gains Account Scheme is utilized for the construction or purchase of a new asset within the specified time, income tax is chargeable on the unutilized amount. That is why the learned Single Judge, by the impugned order, has directed that the appellant is entitled for withdrawal of the amount deposited under sub-section (4) of Section 54F of the said Act subject to deduction of tax applicable.

10. We find no error in the view taken by the learned Single Judge as, on its plain reading, the interpretation of the proviso to sub-section (4) of Section 54F of the said Act made by the learned Single Judge is correct. The writ appeal is accordingly dismissed.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

vgh*