IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.16363, 18782, 16365 & 18773 of 2020 &
W.P.Nos.9888 & 9892 of 2021

S.Padmapriya	...Petitioner in WP.16363/2020
S.Rukmani	...Petitioner in WPs.18782 & 18773/2020
S.Padmapriya	...Petitioner in WP.16365/2020
S.Yashwanthi	...Petitioner in WPs.9888 & 9892/2021

Vs.

1. The Income Tax Officer,
   Non Corporate Ward 2(5),
   Chennai.

2. The Branch Manager,
   Indian Overseas Bank,
   East Mada Street Branch,
   Chennai. ...Respondents in all WPs

Prayer in W.P.16363/2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the First Respondent to give no objection for withdrawal of the amount from capital gains account scheme with Indian Overseas Bank in Account Number 231100002 and counter sign the Form G submitted by the Petitioner.

Prayer in WP No.18782 of 2020 : directing the second Respondent to refund the monies in capital gains account scheme with Indian Overseas Bank, Mylapore East Mada Street Branch in Account Number 231400001 along with interest at prevailing rates till date.

Prayer in WP No.16365 of 2020 : Directing the Second Respondent to refund the monies in capital gains account scheme with Indian Overseas Bank, Mylapore, East Mada Street Branch in Account Number 231100002 along with interest at prevailing rates till date.

Prayer in WP No.18773 of 2020 : directing the 1st Respondent to give no objection for withdrawal of the amount from capital gains account scheme with Indian Overseas Bank in Account Number

231400001 and counter sign the Form G submitted by the Petitioner.

Prayer in WP No.9888 of 2021 : Directing the First Respondent to give no objection for withdrawal of the amount from capital gains account scheme with Indian Overseas Bank in Account Number 231400003 and renewal deposit number 231200003 and counter sign the Form G submitted by the petitioner.

Prayer in WP No.9892 of 2021 : Directing the Second Respondent to refund the monies in capital gains account scheme Indian Overseas Bank, Mylapore, East Mada Street Branch in Account Number 231400003 and renewal deposit number 231200003 along with interest at prevailing rates till date.

(In all WPs)
For Petitioners : Mr.N.V.Narayanan

For Respondents : Mrs.Hema Muralikrishnan (for R1)
Senior Standing Counsel
Mr.K.K.Sivashanmugam (for R2)

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COMMON ORDER

These writ petitions have been filed by mother and her two daughters seeking a mandamus as against the Assessing Authority in one group of writ petitions and the Branch Manager of Indian Overseas Bank, East Mada Street Branch, Chennai (Bank) in the second group of writ petitions to refund the monies lying in the Capital Gains Account Scheme (CGAS) with the bank along with interest at prevailing rates.

2. The facts are common to all writ petitions. The Income Tax Act, 1961 (in short Act) provides for a scheme of investment of capital gain in terms of Section 54/54F thereof. The petitioners had sold a property (asset) on 11.09.2007 and had deposited part of the sale proceeds in an account bearing Account No.231100002 with R2 bank under the CGAS Scheme.

3. Having invested part of the sale consideration, the petitioners rested quiet and did nothing further thereafter either by way of further investments or filing of a return of income to offer the gain to tax. The asset had been transferred for a sum of Rs.34,00,000/- (Rupees thirty four lakhs only). Part of the sale consideration had been invested in Rural Electrification Bonds in respect of which the petitioners had proposed to claim deduction under Section 54EC.

4. The investment made by them in the bank account has not been utilised in any way thereafter. The fact that the petitioners had sold the asset, filed no returns of income or invested only part consideration in the CGAS, has escaped the attention of the Income Tax Department and no action has been taken to call upon the petitioners to file returns, either original or revised within the timelines stipulated under Statute.

5. On 31.03.2018, the first respondent received an application from the petitioners seeking no objection for the refund of the monies invested under the scheme. This is in line with scheme requirements that require the depositor to file Form-G with the Manager of the concerned bank seeking closure of the account. The Form has to be approved and endorsed by the jurisdictional assessing authority.

6. Evidently, R2, when approached, did not entertain the request of the petitioners for closure of the accounts and refund of the balances. It was at this juncture that the petitioners had executed Form-G and had approached the assessing authority seeking no objection for the same. There was no response, driving the petitioners to approach this Court seeking mandamus in the present writ petitions.

7. Heard Mr.N.V.Narayanan, learned counsel for the petitioners, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for R1 and Mr.K.K.Sivashanmugam, learned counsel for R2 bank.

8. As regards the taxability of the transaction of sale, there is nothing to be said in so far as, admittedly, the time lines for bringing capital gains, if any, to tax, have long elapsed. The allegation of the revenue to the effect that the petitioners have timed the request for closure well after the expiry of the statutory timelines may well be correct, but the Department has missed the bus in this regard. What remains is the closure of the account and refund of the amounts to the petitioners.

9. The operation of the account in question is a matter of contract qua the petitioners and R2 and the petitioners are at liberty to give such instructions to R2 as they may wish to, in this regard. Form-G which is to be approved by the assessing authority will have no application in this case since the transaction giving rise to capital gains has not been captured by the Department. In any event, today, R1 does not have any claim towards the amounts in the bank accounts. Thus, the petitioners are at liberty to issue suitable instructions to R2 in regard to their bank accounts and such request, including

request for closure of and refund of balances, shall be honoured by R2 in accordance with the terms of the contract governing the parties and without insistence upon Form-G of the CGAS Scheme.

10. These writ petitions are disposed in the aforesaid terms. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Income Tax Officer,
   Non Corporate Ward 2(5),
   Chennai.

2. The Branch Manager,
   Indian Overseas Bank,
   East Mada Street Branch,
   Chennai.

+1CC to Mrs.Hema Muralikrishnan, Advocate, Sr.No.27878
+2CCs to M/s.N.V.Balaji, Advocate, Sr.Nos.27988, 27989

W.P. Nos.16363, 18782, 16365 & 18773 of 2020 &
W.P.Nos.9888 & 9892 of 2021

SKY (CO)
K.RK. (04.08.2021)