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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 7th November, 2024

+ W.P.(C) 12196/2024

RAKESH KUMAR SAINI

.....Petitioner

Through: Mr. Kirti Uppal, Senior Advocate
with Mr. Shekhar Kumar, Advocate
and Petitioner in person.

versus

THE POWER FINANCE CORPORATION LTDRespondent

Through: Mr. Apoorv Kurup, CGSC with Mr.
Gurjas Singh Narula, Ms. Niomi
Mittal, Ms. Nidhi Mittal, Ms. Gauri
Goburdhan, Mr. Arnav Mittal, Ms.
Jaya Choudhary and Mr. Shuray
Agarwal, Advocates.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, Mr. Rakesh Kumar Saini, a practising Advocate of this Court, sold his residential property bearing No. (GF) House No.2/13-A, Jangpura-A, Delhi-110014. He claims that he was advised to invest the sale proceeds in bonds¹ issued by the Respondent - Power Finance Corporation in order to avail the benefit of capital gains tax exemption under Section

¹ "PFC bonds"



54EC of Income Tax Act, 1961². He was led to believe that if he used the capital gains from the sale of his residential property to purchase another property, he would not qualify for the capital gains tax exemption under Section 54(1) of the Income Tax Act.

2. Following this advice, the Petitioner invested an amount of INR 48 lakhs (capital gains) in PFC bonds, despite being aware that the interest rate on these bonds was lower than what he could have earned through standard investment options, such as Fixed Deposit Schemes available to senior citizens. The Respondent issued a certificate to him on 19th June, 2024 for the said PFC Bonds which has lock-in period of 5 years.

3. In the meantime, the Petitioner booked a residential flat in Noida and he wanted to make payment for the final instalment of the flat in lieu of the residential property sold by him in Delhi. Thus, he sought further financial advice on the matter. On this occasion, he was informed that he would, in fact, have been eligible for a capital gains tax exemption had he used the proceeds from the Delhi property sale to purchase the property in Noida.

4. Accordingly, within a month of the bond certificates being issued, the Petitioner, through communication dated 13th July, 2024, requested the Respondent to cancel the PFC bonds and refund the invested amount, intending to use those funds to pay the final instalment for the residential flat in Noida. In this communication, the Petitioner clarified that his sole purpose in investing in the PFC bonds was to obtain a capital gains tax exemption—a benefit he could still secure by using the capital gains to purchase the Noida property. He explained that his investment in the PFC bonds had been made under a mistaken impression, resulting from incorrect

² “Act”



financial advice, which he now sought to rectify by redirecting the funds toward the Noida property purchase.

5. The Petitioner further clarified that no interest on the bonds has been paid to him, nor had he derived any kind of benefit from the investment thus far. He sought refund of the principal amount invested, at his own responsibility and risk, fully aware that he may not get the exemption from capital gains tax as anticipated. He further undertook not to claim any such exemption on account of the investments made in the PFC bonds. The Petitioner contended that no loss was being caused to the Respondent by cancellation of the bonds since the refund of the money was being done at initial stage.

6. On 16th July, 2024, the Respondent replied to the Petitioner's request, stating that there was no procedure in place to allow redemption of the investment before maturity of the bonds. The Respondent emphasized that, under the terms governing these bonds, the Petitioner could only redeem the invested funds upon the bonds reaching maturity. Aggrieved by this refusal, the Petitioner filed the present writ petition, seeking a mandamus directing the Respondent to cancel the bonds and refund the invested amount after deducting any secretarial or administrative expenses incurred by the Respondent.

7. Mr. Kirti Uppal, Senior Counsel for the Petitioner, argues that Mr. Saini has no intention of deriving any benefit from the PFC bonds. In fact, when Mr. Saini noticed that he had received a dividend payment of INR 53,705 from the Respondent, he promptly returned the same to them *via* a NEFT dated 2nd August, 2024. Moreover, Mr. Uppal further asserts that should the Respondent genuinely incur any damage or interest shortfall on



account of premature cancellation of the bonds, Petitioner is willing to compensate them for such losses. However, considering Petitioner's urgent need for funds, the bonds should be cancelled prematurely and invested amount refunded.

8. Mr. Uppal contends that, according to the scheme governing the PFC bonds, the Respondent corporation includes a disclaimer stating that it assumes no responsibility if the capital gains tax exemption under Section 54EC of the Income Tax Act is ultimately denied to the investor. This, he argues, makes the scheme one-sided, as it fails to grant investors the right to request premature cancellation. Since the Respondent corporation does not take any responsibility/ consequence for the investor not getting capital gains exemption under the Income Tax Act despite investment in the PFC bonds, the Respondent corporation ought to have acceded to the Petitioner's request.

9. On the other hand, Mr. Apoorv Kurup, CGSC for the Respondent contends that the bonds in question are part of a new series of bonds launched by the Respondent on a private placement basis, known as "54EC Capital Gain Tax Exemption Bonds – Series VIII". The statute and the terms governing the bonds do not permit any premature cancellation of the bonds. The lock-in period of 5 years was expressly specified in the bond document issued to the Petitioner and therefore, the invested amount cannot be refunded to him prior to the maturity of the PFC bonds.

10. Mr. Kurup urges that the terms and conditions of the bonds issued to the Petitioner were disclosed to him at the time of allocation of the bonds. He further urges that the instant writ petition is not maintainable as the dispute is purely a subject matter of the contract between the parties.



Moreover, the Petitioner does not contend that the contract between the parties is either void or voidable; rather, the sole basis for seeking cancellation rests on an alleged “mistake of fact”. Such alleged claim squarely falls within the domain of contract law and is thus beyond the scope of adjudication in writ jurisdiction under Article 226 of the Constitution.

11. The Court has considered the contentions of the parties. The PFC bonds, are known as “54EC Capital Gain Tax Exemption Bonds – Series VIII”. This is a type of investment instrument authorized by the Income Tax Act, 1961. These bonds provide an opportunity for individuals to save on long-term capital gains taxes incurred from the sale of property or assets. By investing in these bonds, one can defer the payment of capital gains tax and enjoy the potential benefits of a reliable investment option. Such investment is held for 5 years and the bonds so acquired cannot be transferred or converted into money or any loan and neither can an advance be taken on security of such bond within 5 years from date of acquisition. Any such action would result in withdrawal of the capital gain exemption benefit.

12. Thus, the subject bonds issued by the Respondent fall within the category of ‘long-term specified assets’, in terms of notification dated 8th June, 2017 issued by the Ministry of Finance, and as defined in Section 54EC of the Act to mean “*any bond, redeemable after five years and issued on or after the 1st day of April, 2018*”. The long term specified assets/bonds can be redeemed only after 5 years from the date of the issuance due to the lock-in period under Section 54EC of the Act as amended by Section 21 of the Finance Act, 2018. Furthermore, this information with regard to the lock-in period is mentioned in Clause 13 of the information memorandum



issued by the Respondent regarding the subject bonds. The said clause stipulates as under:

“13) Certain Issue Highlights:

ii) Lock in period of 5 (five) years (No transfer/premature redemption is permitted). The Bonds will automatically redeem after expiry of five years.”

13. As noted above, the Petitioner, Mr. Saini transferred an amount of INR 48 lakhs to the Respondent by submitting an application form for the subject non-convertible, non-cumulative, redeemable, taxable bonds with a view to avail the benefits of exemption from capital gains tax under Section 54EC of the Income Tax Act. His request was accepted and accordingly, he was allotted 480 bonds priced as INR 10,000/- per bond, having a tenure/lock-in period of 5 years. As per the terms and conditions of the bonds, the deemed date of the allotment is 31st May, 2024 and the date of maturity is 31st May, 2029.

14. In the opinion of the Court, having regard to the statutory scheme and the terms and conditions of the subject instrument, the Petitioner's request for cancellation or redemption, cannot be accepted. The funds raised through the 54EC bonds are specifically intended to support Respondent's financial objectives. The 'Object of the Issue' of the PFC Capital Gain Tax Exemption Bonds is – *‘to augment resources of PFC for meeting fund requirement’*. These funds are in the nature of long term funds borrowing. This intent, combined with the five year lock-in period, imposes a clear embargo on premature redemption, as it ensures that the investments remain committed to Respondent's financial stability and to meet the object of the Issue. This lock-in period is not a mere formality but a substantive requirement, integral to the legislative intent behind Section 54EC.



Moreover, the terms and conditions governing the bonds, stipulated by the Respondent clearly restrict any withdrawal, redemption, or transfer of these bonds before the completion of the mandated 5-year period. This restriction applies regardless of whether the Petitioner has claimed the capital gains exemption or not, and regardless of any willingness on the Petitioner's part to forgo interest, as these bonds are essentially bound by legislative and contractual rigidity. Permitting any deviation from the stipulated lock-in period would compromise the object and purpose underlying these bonds, creating an avenue for circumventing statutory obligations under Section 54EC. The statutory framework does not just seek to incentivize tax savings but to ensure that these savings result in actual, long-term capital allocation. Allowing premature redemption through judicial intervention would not only be against the contractual terms, but also contravene the statutory intent of encouraging long-term investment. Thus, it is beyond the scope of this Court, particularly under the writ jurisdiction under Article 226 of the Constitution, to modify or rewrite the conditions stipulated for allocation of bond.

15. Mr. Kirti Uppal, places reliance in *Major Amandeep Singh v. University of Delhi*, to contend this Court under Article 226 of the Constitution has the power to mould reliefs in order to meet the ends of justice. He urges that in the peculiar facts and circumstances, notwithstanding the lack of any specific right of the Petitioner, this Court may still grant the reliefs sought. However, as persuasive as this argument may seem, the Court is of the view that the judgment in *Major Amandeep Singh* does not apply to the present case. Upon issuance of the bonds to the Petitioner, the rights and obligations of both parties are governed by the



specific terms of the financial instrument. Neither party can alter the same unilaterally. Any attempt would not only contravene the contractual terms, but would also be against the statutory purpose underlying the bond scheme.

16. Although not expressly argued, and only vaguely alluded to, the Petitioner's claim for cancellation appears to stem from an alleged mistake of fact and reliance on misguided financial advice. Such grounds, in the opinion of the Court, do not create any enforceable right and cannot be adjudicated under Article 226 of the Constitution. Consequently, the relief sought in the present petition lies beyond the purview of this Court's authority and, therefore, cannot be granted.

17. All rights and contentions of the parties are left open.

18. In light of the foregoing, the present writ petition is disposed of.

SANJEEV NARULA, J

NOVEMBER 7, 2024

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