

Mrs. Sainaba Hamza Koya vs The Income Tax Officer

ID: F2J-C-2245 Court: Kerala High Court

Case: WP(C) NO. 40744 OF 2024 Date: 2025-09-16

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[Cites 9, Cited by 0]

Kerala High Court Mrs. Sainaba Hamza Koya vs The Income Tax Officer on 16 September, 2025 IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 16TH DAY OF SEPTEMBER 2025 / 25TH BHADRA, 1947

WP(C) NO. 40744 OF 2024

PETITIONER/S:

MRS. SAINABA HAMZA KOYA, AGED 67 YEARS PRASHANTHAM, S.A. ROAD, MANORAMA JUNCTION, KOCHI M.G. ROAD S.O., ERNAKULAM, PIN - 682016

BY ADVS. SHRI.AKHIL SURESH SMT.KALLIYANI KRISHNA B. SHRI.AMRITH M.J. SMT.ISABELL MANOJ SHRI.RAHUL T.

RESPONDENT/S:

1 THE INCOME TAX OFFICER, CENTRAL REVENUE BUILDING, IS PRESS ROAD, KOCHI, KERALA, PIN - 682018

2 STATE BANK OF INDIA, ERNAKULAM SOUTH, MANORAMA JUNCTION, SA ROAD, PANAMPILLY NAGAR, ERNAKULAM, PIN - 682036

R1 BY ADV. CYRIAC TOM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17.06.2025, THE COURT ON 16.09.2025 DELIVERED THE FOLLOWING: 2025:KER:68041 WP(C) No.40744 OF 2024 2

JUDGMENT

The petitioner, a widow and senior citizen, has approached this Court, being aggrieved by the denial of permission to her, by the 1 st respondent, to close a Capital Gain SB Account maintained by the petitioner, with the 2 nd respondent-Bank, and to release the amounts in the said account.

2. The facts that led to the filing of this writ petition are as follows:

A property having an extent of 4.04 Ares in Survey No.42/13/A/2 Edappally North Village, in Ernakulam District, was acquired by the petitioner by way of a gift deed dated 2.3.2020, executed by the brother of the petitioner. Subsequently, the petitioner sold a portion of the said property having an extent of 2.02 Ares, to one M.H. Abdul Jamal for a sale consideration of Rs.39,60,000/- as per document No.839/20 dated 13.3.2020 of SRO, Edappally. Thereafter, the remaining portion of the property was also sold to the same purchaser on 26.6.2020 for a consideration of Rs.43,64,000/- . Ext.P1 and P2 are the deeds 2025:KER:68041 WP(C) No.40744 OF 2024 3 evidencing the same.

3. On 6.3.2020, the petitioner opened a Capital Gain SB Account with the 2nd respondent-Bank and on 14.03.2020, she deposited an amount of Rs.39,60,000/- which is the sale consideration of the 1st transfer, which comes within the financial year 2019-2020. Similarly, Rs.43,64,000/-, which is the sale consideration of the second transfer, was also remitted on

3.7.2020 which comes within the financial year, 2020-2021.

4. The aforesaid deposits were made by the petitioner for getting the benefit of exemption of tax from capital gain, as contemplated under Section 54F of the Income Tax Act, 1961, as the petitioner wanted to construct a new case within three years of the sale of the landed properties. According to the petitioner, she spent an amount equal to Rs.39,60,000/- for constructing a residential property at Edappally. However, the construction was affected without withdrawing the amounts in the Capital Gain SB account and by borrowing the funds from her daughter and son-in-law. To be precise, the petitioner intended to utilize the money deposited with the 2nd respondent for repaying the debt which she incurred for constructing the house within the period of three years. As far as the deposit of Rs.43,64,000/-, which is 2025:KER:68041 WP(C) No.40744 OF 2024 4 the sale consideration of the 2 nd transfer is concerned, the petitioner did not claim the benefit and the tax in respect of the same was paid in the financial year 2021-2022 on capital gains.

5. Later, on 20.06.2023, the petitioner submitted two letters, which are produced as Ext.P4, before the 1 st respondent, requesting for permission to submit G forms for the closure of the said Capital Gain account and to release the entire amount to the petitioner. In response to the same, a notice dated 27.6.2023 was issued by the 1st respondent, requiring the petitioner to produce certain details on or before 6.7.2023, which was replied to by the petitioner, seeking an adjournment to the second week of August, 2023. Thereafter, Ext.P6 letter was issued by the 1 st respondent, rejecting the request placed by the petitioner, taking note of the fact that, the petitioner failed to submit the return for the assessment year, 2020-2021 and also citing the following reasons:

"(i) There are no supporting evidence for the deductions claimed from Gross Sales Consideration to compute Net consideration for both the assessment years.

(ii) Your claim for cost of acquisition was by adopting notional value, which is baseless and accordingly not admissible.

(iii) Your claim for deduction u/s.54F of the Act for the A Y 2020-21 was not made through a return of income filed for the year.

(iv). You have not utilized the amounts deposited under Capital Gains Account Scheme, 1988 for acquisition or construction of a new residential house within the stipulated time limits of 3 years from the 2025:KER:68041 WP(C) No.40744 OF 2024 5 date of transfer of original assets as stipulated under the provisions of section 54F of the Act. Spot enquiry conducted in your case on 19.10.2023 revealed that the construction of the building as per building permit No.GYP3/104/5716/22 dated 29.11.2022, which is claimed by you as investment in new asset, has not yet been completed.

(v) Amounts claimed by you as invested into construction of new residential building were paid prior to the date of issue of construction permit by the Local Government authorities.

(vi) Amounts claimed by you as invested into construction of new residential building were not paid from your bank account, but from the bank account of another person and accordingly cannot be considered as your investment in new residential asset"

6. In the said communication, the tax liability of the petitioner was determined as Rs 8,51,482/- and Rs.7,69,693/- pertaining to the assessment year, 2021-2022 and 2020-2021 respectively. As against Ext.P6, Ext.P7 objection was submitted by the petitioner, disputing the rejection of the request made by the petitioner and the determination of the tax liability by the 1 st respondent. This writ petition is submitted by the petitioner in such circumstances seeking the following reliefs:

"(i) To Quash Exhibit P-6 letter dated 27.10.2023 of the 1 st respondent which states that the funds in Capital Gain SB A/c 39196518292 will be blocked till payment of alleged assessed amount.

(ii) Issue a suitable writ, order, or direction in the nature of mandamus commanding the 2nd respondent to refund the entire amount lying in Capital Gain SB A/c 39196518292 amounting to Rs.83,24,000/- (Rs.39,60,000/-+Rs.43,64,000/-)

(iii) To issue such other writs, orders, or direction which this Hon'ble Court may deem fit and proper to issue in the facts and circumstances of the case."

7. A statement was submitted on behalf of the 1 st respondent, wherein, the respondents incorporated averments to 2025:KER:68041 WP(C) No.40744 OF 2024 6 support of the views taken in Ext.P6. It was also mentioned in the said statement that, the construction of the petitioner's building has not been completed yet and that, the construction so far conducted were made from the funds which were not drawn from the accounts of the petitioner. Therefore, it was contended that, the petitioner failed to construct the building by utilizing her own funds, within the period of three years from the date of transfer of the property, which is a mandatory requirement for availing the benefits of exemption contemplated under section 54F of the Income Tax Act.

8. I have heard Sri. Akhil Suresh, the learned counsel appearing for the petitioner and Sri Cyriac Tom, the learned counsel appearing for the 1st respondent.

9. The learned counsel for the petitioner vehemently contended that, the reasons mentioned in Ext.P6 for rejecting the request for closing the capital gain account and to release the entire amounts to the petitioner, are not legally sustainable. It is also the contention of the learned counsel for the petitioner that, the applications submitted by the petitioner as per Ext.P4, were only to grant permission to close account, as the Capital Gains Account Scheme 1988, envisages such 2025:KER:68041 WP(C) No.40744 OF 2024 7 permission. However, as per Ext.P6, the 1 st respondent converted the same, into an assessment proceedings, which was not at all permissible. It was also pointed out that, as of now, proceedings of assessment under Section 148 or under Section 143 of the Act are not initiated against the petitioner for the relevant assessment years and therefore under no circumstances Ext.P6, where the tax liability of the petitioner was determined, can be treated as a legally sustainable order. The learned counsel also placed reliance upon the decision rendered by High Court of Gujarat in Rashesh Shirish Sanjanwala v. Assistant Commissioner of Income Tax [MANU/GJ/2520/2021] and also referred to two orders passed by the Income Tax Appellate Tribunal, Chennai in Seetha Subramanian v. Assistant Commissioner of Income Tax [MANU/IM/0246/1996] and yet another decision of the said Tribunal in Shri Puranchand and Family (HUF) v. The Income Tax Officer [ITA No.2974/Mds/2016].

10. On the other hand, learned Standing counsel stoutly opposed the contentions raised by the learned Standing Counsel 2025:KER:68041 WP(C) No.40744 OF 2024 8 for the 1st respondent by pointing out that, Ext.P6 was issued for justifiable reasons, which are specifically mentioned therein and also in the statements submitted on behalf of the 1 st respondent.

11. Thus, the question that arises for consideration is with regard to the sustainability of Ext.P6 issued by the 1 st respondent, by which, the request for closure of the Capital Gain SB Account of the petitioner was rejected. Section 54F is the relevant provision under which, the claim of exemption from capital gains tax was sought by the petitioner. The said provision reads as follows:

"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, one residential house in India (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-

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(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 houseproperty'.

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. 2025:KER:68041 WP(C) No.40744 OF 2024 10 (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 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 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."

12. From the above, it is clear that, one of the essential requirements for claiming the benefit under the said provision is that, the amount acquired by the Assessee from the 2025:KER:68041 WP(C) No.40744 OF 2024 11 transfer of the property must have been utilised within a period of one year before or within two years after the date on which the transfer took place, for purchasing one residential building, or the said amounts must have been utilised for constructing a residential building within three years from the date of the said transfer. In this case, the case of the petitioner is that, the petitioner had utilised the funds generated from the transfer of her property, within the period of three years from the date of such transfer, for the purpose of construction of a residential building for her at Edappally. According to her, the construction was completed by using the funds borrowed by her from her daughter and son-in-law, and she wants to repay the debt by utilizing the amounts in the said property. In short, the case of the petitioner is that the construction was made by her, utilizing the borrowed funds with an intend to appropriate the amounts lying in the deposit for repaying the same. However, the said contentions are rejected by the 1 st respondent as per Ext.P6 and it was found that, the petitioner failed to utilise any amount from the funds she received from the transfer of her property. There is also a finding that, the construction itself was not completed within the time as claimed by the petitioner. 2025:KER:68041 WP(C) No.40744 OF 2024 12

13. The specific contention raised by the petitioner is that, as per the stipulations contained in Section 54F, it is not necessary that, the construction should be carried out only with the funds generated by way of transfer of property, which is the subject matter of assessment for capital gains. According to the petitioner, purchasing or constructing the residential building, by utilising the funds borrowed by the assessee and later appropriating the funds from the transfer of property to those transactions, are also permissible under Section 54F. To substantiate the said point, the petitioner relied on the orders passed by the Income Tax Appellate Tribunal which are referred to above.

14. After carefully examining the statutory stipulations in Section 54F, I have no reason to reject the said contention as such. Section 54F does not prohibit such an exercise and therefore, nothing would preclude the assessee from arranging funds from other sources for fulfilling the obligation of purchasing or constructing a residential building within the period stipulated. The same is evident from the fact that, in Section 54F, when it comes to the case of purchase of a residential building, the time mentioned for utilisation of the 2025:KER:68041 WP(C) No.40744 OF 2024 13 amount, is one year before or two years after the date on which the transfer took place. Thus, as the appropriation is permissible in respect of the purchase even before one year preceding to the date of transfer of the property from which the funds are generated, it gives a clear indication as to the permission for utilisation of the funds, as highlighted by the petitioner in this case. Ofcourse, it is true that, in the case of construction, period fixed is after three years from the date of transfer of property, and adjustment of the amount spent prior to the transfer of property is not contemplated. However, the permission granted to appropriate the funds spent by the assessee within one year before the transfer of property, in the case of the purchase of the residential building, clearly conveys the scheme envisaged in section 54F, where, such adjustment is permitted.

15. However, merely because of that reason, the contentions raised by the learned counsel for the petitioner cannot be accepted. This is because, even in a case where, the residential building was purchased, or it was constructed utilising the borrowed funds or funds from other sources, there is an obligation on the part of the Assessee to satisfy the authorities that, the funds were spent by the assessee either through 2025:KER:68041 WP(C) No.40744 OF 2024 14 borrowing or arranging from other sources at his/her own risks and costs, in anticipation of or with an intention to appropriate the income to be subjected to capital gain tax, for such purchase or construction. For the said purpose, materials will have to be produced before the

appropriate Authority and such Authority has to scrutinize such materials, for arriving at the conclusion that, the petitioner established the link between the utilisation of the income to be subjected to tax, and the purchase or construction of residential building, as the case may be. Therefore, mere claim of the petitioner by itself is not sufficient, but what is relevant is the satisfaction of the appropriate authority that the petitioner had indeed utilised the funds, which are otherwise subject to tax, for the purposes referred to Section 54F of the Income Tax Act.

16. In this case, after going through the materials placed by the petitioner, the 1st respondent was not convinced that, the petitioner had utilised the income for the purposes mentioned in the said provision and therefore the request of the petitioner to close the account and release the amount, was rejected. It is true that, the adjudication with regard to the tax liability of the petitioner or the entitlement of the petitioner 2025:KER:68041 WP(C) No.40744 OF 2024 15 under Section 54F of the Act, can be conducted only in a proceeding of assessment of the Income Tax Act, either under sections 143 or 148 thereof. It is also true that, as pointed out by the learned counsel for the petitioner, as of now, no such proceedings are initiated at the instance of the Department. However, it is to be noted in this regard that, as per Section 54F(4) of the Act, in case, the Assessee fails to comply with the conditions stipulated in Section 54F, within the period specified, such income shall be charged under Section 45, as the income of the previous year in which, the period of three years from the date of the transfer of the original Assessee expires. Therefore, it is a matter to be finally decided in an assessment proceeding pertaining to the Assessment year, as mentioned above, which is yet to take place.

17. As far as the findings entered into by the 1st respondent in Ext.P6 is concerned, the same cannot be treated as a conclusive findings, but instead the same will have the impact of a prima facie finding only, entered into, for the purpose of deciding whether the permission for closing the account and releasing the amount is to be granted or not. To be precise, while entering into the findings in Ext.P6, and determining the 2025:KER:68041 WP(C) No.40744 OF 2024 16 tax liability of the petitioner for the relevant years, the 1st respondent was only ensuring that, the petitioner is not getting away with the amount by evading the tax liability, after claiming the benefit of Section 54F, without complying with the mandatory requirements under the said provision. In other words, it was only to protect the interest of the Revenue, such a determination was made, which can only be treated as a prima facie finding, until a proper adjudication with regard to the claims of the petitioner is made, by way of assessment proceedings. In this regard, it is also to be noted that, as far as Rs.39,60,000/- is concerned, the petitioner failed to submit return for the relevant assessment year, during which such transaction took place. By virtue of stipulations in Section 54F (4), in case of non compliance of the conditions in the said provision, an assessment has to be made by treating it as the income of the petitioner for the previous year in which the period of three years from the date of the transfer of the original asset expired.

18. Since I have already found that, the finding in Ext.P6 are only prima facie finding and not final, it is not necessary to go into the sustainability of the findings at this stage of the proceedings, that too, in a writ proceeding. The said 2025:KER:68041 WP(C) No.40744 OF 2024 17 question has to be finally decided by the competent authority in appropriate assessment proceedings, after complying with the principles of natural justice and after examining the contentions raised and the documents already produced and to be produced by the petitioner. In this regard, it is to be noted that, going by the Capital Gains Accounts Scheme, 1988, a specific stipulation has been made insisting the permission of the Assessing Officer, for closing the account and releasing the amount. Evidently, such stipulation was made, with the purpose of ensuring that, such accounts are not closed, without fulfilling the conditions to be complied with for availing the exemption from payment of Capital Gain Tax under the relevant provision. Thus, when it was made obligatory for the Assessee to get permission of the Officer concerned, it clearly implies that, such officer has a duty to ensure that, the necessary conditions are prima facie satisfied by the Assessee before permission is granted for closure of the account. Any other interpretation for the relevant provisions that provide for such insistence, would destroy or defeat the purpose for which the prior permission of the Officer is envisaged, for closure of account and releasing the amount.

19. In such circumstances, I do not find any 2025:KER:68041 WP(C) No.40744 OF 2024 18 necessity to interfere with Ext.P6, as far as the findings entered into therein is concerned. However, it is to be clarified that, those findings are only prima facie and not final. One important aspect to be noticed in this regard is that, as per Ext.P6, the request for the petitioner as such is declined after determining the tax liability, of course, as a preliminary finding, as observed above. Therefore, to that extent, some interference is required. Since the liability of the petitioner already determined, and it is also evident that such tax liability along with the interest and other charges are lesser than the amount lying in the Capital Gain SB Account of the petitioner, it was not proper to reject the request as a whole. On the other hand, the petitioner should have been permitted to withdraw the excess amount, if any, in the deposit, after retaining the amounts payable by the petitioner towards the Revenue, by way of tax and other incidental liabilities. In such circumstances, this writ petition is disposed of directing the 1st respondent to grant permission to the petitioner to release the balance amount, if any, in the Capital Gain SB Account maintained by the petitioner with the 2nd respondent-Bank, after retaining the amounts equivalent to the liability of the petitioner pertaining to the relevant assessment years referred to in Ext.P6. 2025:KER:68041 WP(C) No.40744 OF 2024 19 Necessary orders in this regard shall be passed within a period of one month from the date of receipt of copy of this judgment. It is clarified that, the findings in Ext.P6 are only prima facie in nature and the same have to be finalized in a proceeding of assessment to be conducted, if permissible. In case, such an assessment proceedings are not initiated within a reasonable time as stipulated in the statute or if initiation of such proceedings are impossible as of now, it shall be open for the petitioner to invoke the remedies under law, to seek release of the amount retained in the account as per the directions issued in this judgment. Sd/- ZIYAD RAHMAN A.A. JUDGE pkk 2025:KER:68041 WP(C) No.40744 OF 2024 20 APPENDIX OF WP(C) 40744/2024 PETITIONER EXHIBITS EXHIBIT P-1 TRUE COPY OF THE SALE AGREEMENT DATED 13.03.2020 EXHIBIT - P3 A TRUE COPY OF THE A/C STATEMENT OF CAPITAL GAIN SB A/C 39196518292 EXHIBIT P-2 TRUE COPY OF THE SALE AGREEMENT DATED 26.06.2020 EXHIBIT — P3. A TRUE COPY OF THE A/C STATEMENT OF CAPITAL GAIN SB A/C 39196518292 EXHIBIT — P4 TRUE COPY OF LETTERS ALONG WITH FORM G DATED 20.06.2023 EXHIBIT P-5. A TRUE COPY OF LETTER DATED 27.06.2023 EXHIBIT- P-6. A TRUE COPY OF THE LETTER DATED 27.10.2023 EXHIBIT P-7. A TRUE COPY OF THE LETTER DATED 14.02.2024