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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.4898 OF 2026

Nilesh Ramesh Modi .. Petitioner

Versus

The Income Tax Officer,
Ward- 16(3)(1), Mumbai & Ors. .. Respondents

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Mr. Percy Pardiwala, Senior Advocate a/w Nitesh Joshi, B. N. Jadhav i/b Bhairavnath Jadhav, Advocates for the Petitioner.

Mr. P. A. Narayanan, Advocate for the Revenue/Respondents.

CORAM: B. P. COLABAWALLA &
FARHAN P. DUBASH, JJ.
DATE: NOVEMBER 02, 2026

P. C.

1. Rule. After hearing counsel for the parties we felt that this Petition could be disposed off on a narrow issue and, hence, with the consent of parties, we propose to do so as under and, accordingly, make the Rule returnable forthwith.

2. During the previous year relevant to the Assessment Year 2024-25, the Petitioner had transferred tenancy rights in respect of two

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properties for which the aggregate consideration received by him was Rs.2,30,00,000/-. He had also sold certain shares which were held by him as long-term capital assets for an aggregate consideration of Rs.8,75,32,389/-. Likewise, shares of a company called *Olectra Greentech Limited*, which was a short-term capital asset, were sold for a sum of Rs.1,69,721/-. Thus, the aggregate consideration of the capital assets transferred during the year was Rs.11,07,02,110/-. On 13th July, 2023 the Petitioner entered into an understanding with the developers of a property situated at Mahalaxmi wherein he undertook to purchase two Units, viz., Flat No. 4106 and Flat No. 4107 in the North Tower, i.e. Tower No.3, in a residential project known as Piramal Mahalaxmi for a consideration of Rs.4,88,82,168/- for Flat No. 4106 and a consideration of Rs.4,78,45,668/- for Flat No. 4107.

3. From the inception the Petitioner's intention was always to use the two flats as one residential house as is spelt out from the letter dated 13th July 2023 a copy whereof is at page 73 of the Petition. A copy of the floor plan annexed at page 71 of the Petition would seem to suggest that the two flats could be used as one residential unit. According to the Revenue, however, the letter dated 13th July 2023 itself acknowledged that the two units were separate units, separate

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agreements for sale were executed in respect of each flat, and, in response to information called for under Section 133(6) of the Income Tax Act, 1961 (**"the Act"**) the developer stated that the two flats were separate units having separate entrances and kitchens, although the adjoining wall was of gypsum and could be dismantled.

4. The Petitioner filed his return of income on 27th October 2024 declaring a total income of Rs.1,17,32,274/- which included a long-term capital gain of Rs.37,84,378/-. This long-term capital gain was arrived at after claiming an exemption under Section 54F in a sum of Rs.9,99,99,793/- the particulars whereof are set out at page 77 of the Petition.

5. The Petitioner's case was picked up for a scrutiny assessment and after considering the detailed replies submitted by the Petitioner, Respondent No.1 framed an assessment under Section 143(3) read with Section 144B on 20th February 2026 by which order the total income of the Petitioner was computed at Rs.5,95,77,948/-. Respondent No.1 rejected the Petitioner's claim for an exemption under Section 54F in respect of the monies spent for acquiring both the flats and held that the Petitioner would be entitled to an exemption only in respect of the

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investment made in one flat. According to the Petitioner, contrary to the mandate of Section 54F, Respondent No.1 added a sum of Rs.4,78,45,668/- being the consideration for the purchase of Flat No.4107 to the total income. Inspite of determining the total income at page 16 of the assessment order at a sum of Rs.5,95,77,950/-, Respondent No.1 in the computation sheet annexed to the return of income determined the total income at Rs.14,03,59,210/- which included a capital gain of Rs.13,24,63,226/- and on that basis determined the tax payable at Rs.1,53,07,716/- as is apparent from pages 148 and 149 of the Petition. It may be apposite to mention here that the gains so determined was even in excess of the aggregate consideration of Rs.11,07,02,110/-.

6. The Revenue has stated in its affidavit-in-reply that during the assessment proceedings, notices under Sections 143(2) and 142(1) of the Act were issued, a video-conference hearing was afforded, and a Show Cause Notice dated 16th January 2026 proposing to disallow the claim under Section 54F in respect of Flat No.4107 was issued, to which the Petitioner responded on 27th January 2026. Information was also called for from the developer under Section 133(6) of the Act. According to the Revenue, Respondent No. 1 allowed the exemption under Section

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54F in respect of Flat No.4106, being the higher investment of Rs.4,88,82,168/-, together with a sum of Rs.32,72,000/- deposited in the Capital Gain Savings Scheme, and disallowed the claim in respect of the cost of Flat No.4107 amounting to Rs.4,78,45,668/-, on the footing that the two flats were separate units which could not be treated as one residential house merely on the basis of the future proposal to combine them. The Revenue further states that the judgments relied upon by the Petitioner, including ***CIT V/S Gita Duggal [(2013) SCC Online 752 (Del)]*** and ***PCIT Central-1 V/S Lata Goel [(2025) SCC Online 7765 (Del)]***, were distinguished in the assessment order as relating to assessment years prior to the amendment with effect from 1st April, 2015 by which the expression "a residential house" in Section 54F was substituted by "one residential house".

7. Being aggrieved by the said assessment order the Petitioner has preferred an appeal to the Commissioner of Income Tax (Appeals) on 28th March 2026 which appeal is pending hearing and final disposal. The Petitioner has also filed an application for rectification in terms of Section 154 *inter alia* pointing out that assuming the investment in Flat No.4107 is to be disregarded for the purpose of allowing exemption under Section 54F on the footing that it is a separate residential house

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and the exemption under Section 54F is available only in respect of one residential house, nevertheless, the amount that could be added to the Petitioner's income could only be Rs.1,77,41,254/-. It was also submitted that the tax payable that was determined in the computation sheet is factually incorrect inasmuch as Respondent No.1 has proceeded on the footing that the income under the head "capital gains" is Rs.13,24,63,226/- which, as noted earlier, is far in excess of the sale proceeds that the Petitioner received on the transfer of the capital assets during the previous year. Accordingly, the Petitioner requested Respondent No.1 to rectify the assessment order and determine the correct tax payable.

8. The Revenue states that the rectification application was filed on 17th March 2026, and contends that the issues raised therein, namely, whether the two flats can be treated as one residential house and whether only the capital gains and not the entire investment ought to have been added, are also raised in the pending appeal before the CIT(A). This necessarily involves examination of the factual and legal position, and cannot be treated as mistakes apparent from the record within the meaning of Section 154 of the Act. According to the Revenue, Section 154 cannot be used as a substitute for appellate adjudication.

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9. The Petitioner also filed, on 6th April 2026, an application for stay of recovery of the demand raised pursuant to the assessment order and it was submitted that having regard to the circulars issued by the Central Board of Direct Taxes as well as the principle enunciated by this Court in its earlier judgments, a stay of recovery of the entire demand ought to be granted.

10. During the pendency of the rectification application as well as the application for stay, the Petitioner received a communication dated 6th July 2026 from the office of the CIT (A) asking him to furnish his written submissions in support of the grounds raised in the appeal. In response thereto, the Petitioner had furnished his submissions on 25th July 2026.

11. By a communication dated 9th September, 2026 Respondent No.1 informed the Petitioner that an amount of Rs.1,93,75,019/- was due from him. The Petitioner was also informed that if any rectification application filed by him was pending, a copy of the same should be forwarded to him. The Petitioner was also informed that in the event he had filed an appeal against the assessment order for

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the Assessment Year 2024-25, he should immediately pay 20% of the demand and furnish proof thereof. In the event the Petitioner failed to do so, recovery proceedings would be initiated against the Petitioner.

12. Immediately thereafter, on 16th September 2026, the Petitioner wrote to Respondent No.1 and pointed out that he had requested for a stay of the recovery of the demand as well as filed an application for rectification which were both pending disposal. These two applications, thereafter, came to be disposed of by Respondent No.1. By an order dated 17th September 2026, the Petitioner's rectification application was rejected on the ground that the Petitioner had filed an appeal to CIT(A) wherein the grievances raised in the application for rectification were also the subject matter of appeal and, hence, the rectification application was not maintainable. The Petitioner's application for stay was disposed of under Section 220(6) of the Act by granting a stay of 80% of the demand outstanding subject to the Petitioner paying 20% of the demand outstanding which was computed at Rs.38,75,018/- within a period of seven days of receipt of the order.

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13. According to the Revenue, the stay application was not rejected *in toto*, the order having been passed after considering the application CBDT instructions, and the stay was made subject to conditions regarding the Petitioner's cooperation in the early disposal of the appeal. The Revenue further states that the rectification order requested the Petitioner to co-operate in the appellate proceedings.

14. Being aggrieved by the said orders, the Petitioner has approached this Court seeking certain reliefs as sought for in prayers (a) to (g) of the Petition.

15. We make it clear that we are expressing no opinion whatsoever on the merits of the Petitioner's claim that he is entitled to claim an exemption under Section 54F in respect of the investments made by him for purchase of two contiguous residential units which are to be used as a single residential house. It is the case of the Petitioner that the said claim is supported by various judgments but as we are not deciding this aspect of the matter, we are not adverting to the same. The Revenue, on its part, contends that the said judgments pertain to assessment years prior to the amendment with effect from 1st April 2015 whereby the expression "a residential house" was substituted by "one

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residential house" in Section 54F, and were distinguished on that ground in the assessment order. We express no opinion on this contention as well.

16. The only issue on the basis of which we propose to dispose of this Petition is on the footing that the amount of tax payable at 20% of the demand has not been determined properly. Section 54F of the Act provides, in so far as is relevant for the purpose of the above Petition, that where an Assessee, being an individual, has earned capital gains from the transfer of any long term capital asset not being a residential house 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, the capital gains shall be dealt with in accordance with the provisions of this section. Clause (a) of sub-Section (1) has no relevance to the present case and, accordingly, it is Clause (b) that would apply which provides that if the cost of the new residential house is less than the net consideration in respect of the residential asset, then, 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 of the Act.

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17. In Exhibit "A" to the affidavit-in-rejoinder the Petitioner has determined that if effect is given to the provisions of Section 54F(1)(b), the correct amount of capital gains would be Rs.2,93,47,526/- which computation is not disputed by the learned counsel appearing for the Revenue. This is also apparent from the plain language of the section and, therefore, the addition of Rs.4,78,45,668/- being the amount invested in purchase of Flat No.4107 is manifestly incorrect. Thus, the total income would come to Rs.3,72,43,511/- on which, the tax payable, after giving credit for the advance tax and self-assessment tax paid is Rs.32,50,541/-. 20% thereof is Rs.6,50,108/-. Respondent No.1 in his Affidavit in Reply has not in any manner pointed out that as to how the figure of Rs.13,24,63,226/- was determined as the capital gain in the computation sheet when in the assessment order itself there is no reference to such figure. All that is stated in the Affidavit in Reply is that the assessment order records the addition of Rs.4,78,45,668/- and the assessed total income of Rs.5,95,77,950/-, that the computation sheet is a separate sheet accompanying the assessment order containing the tax computation and demand figures, and that any computational issue is subject to the remedies provided under the Act and the pending appeal.

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18. Therefore, in the peculiar facts and circumstances of the present case, we direct that the interest of justice would be served if the Petitioner is called upon to pay a sum of Rs.6,50,108/- within one week from the date of this order and the recovery of the balance demand of Rs.32,24,910/- is stayed pending the disposal of the appeal by the CIT(A) and for a period of four weeks thereafter. We also request the CIT(A) to dispose of the appeal as expeditiously as possible and preferably by 31st March 2027, especially having regard to the fact that written submissions have already been filed before him in response to his notice dated 6th July 2026.

19. Rule is made absolute in the aforesaid terms, and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

20. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FARHAN P. DUBASH, J.] **[B. P. COLABAWALLA, J.]**

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