

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH ' '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

I.T.A. No.1157/Bang/2016 (Assessment Year : 2006-07)		
Dy. Commissioner of Income Tax, Circle 6(3)(1), Bangalore.	Vs.	Smt. Priyn N. Deshpande, Caso Orchards, No.E-70/19, 8 <sup>th</sup> Cross, RMV Extn., Sadashivanagar, Bangalore.
Appellant		Respondent.

Appellant By : Shri G. Kamaldhar, Standing Counsel. Respondent By : None.
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Date of Hearing : 26.04.2017.

Date of Pronouncement : 28.04.2017.

**O R D E R**

**Per Shri Vijay Pal Rao, J.M. :**

This appeal by the revenue is directed against the order dt.30.03.2016 of Commissioner of Income Tax (Appeals)-1, Bangalore for the Assessment Year 2006-07.

2. The revenue has raised following grounds :

1.	The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.
2.	On the facts and in circumstances of the case, the CIT(A) erred in considering the date of Sale Agreement as the date of holding of the property, without appreciating the fact that the date of Sale Deed was the actual date on which the assessee got possession of the property.
3.	For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
4.	The appellant craves leave to add, alter, amend or delete any of the grounds that may be urged at the time of hearing of the appeal.

3. None has appeared on behalf of the assessee despite the service of notice through acknowledgement on record therefore we propose to hear and dispose of this appeal exparte.

4. During the course of assessment framed under Section 143(3) r.w.s. 153A & 153C of the Income Tax Act, 1961 (in short 'the Act'), the Assessing Officer has treated the Long Term Capital Gain claimed by the assessee on account of sale of property as Short Term Capital Gain and

consequently denied the benefit of Section 54 of the Act. The assessee challenged the action of the Assessing Officer before the CIT (Appeals). The CIT (Appeals) held that the claim of the assessee of Long Term Capital Gain is correct and she is entitled for exemption under Section 54 of the Act.

5. We have heard the learned Departmental Representative as well as considered the relevant material on record. We note that the Assessing Officer has denied the claim of LTCG on the ground that the property in question was constructed only during Jan., 2003 and therefore prior to Jan., 2003 it cannot be purchased or held by the assessee as claimed vide Agreement dt.24.1.2002. Thus the property sold vide the sale deed dt.27.6.2005 was held by the Assessing Officer as was with the assessee from the date of possession taken by the assessee. The learned Departmental Representative has heavily relied upon the findings of the Assessing Officer and submitted that the Assessing Officer has recorded the fact that the construction of the property was actually completed as per Certificate dt.29.1.2003 as shown in the No Objection Certificate issued by Bangalore Mahanagar Palike (BMP). Therefore the

construction of the property was completed only during Jan., 2003 and not a son 24.1.2002 as claimed by the assessee.

6. We do not agree with the contention of the learned Departmental Representative on this point simply because of the reason that even in case the property was not constructed on 24.1.2002 the assessee acquired the right in the property on the said date, the Assessing Officer has not disputed that the only document of purchase of the property in question is the Agreement dt.24.01.2002 and therefore even if the construction of the property was not completed on the said date, the right acquired of the said property was prior to 3 years from the date of sale on 27.6.2005. Therefore the sale was after a period of three years from the date of acquisition/purchase. The CIT (Appeals) has decided this issue in paras 10 & 11 as under :

10. The AO rejected the claim of the assessee that it is long term capital gain and treated as short term capital gain on the ground that the construction of the property was actually completed as per certificate dated 29/10/2003 and as per NOC issued by the BBMP, so the property construction was not completed on 24/01/2002 as claimed by the assessee.

11. According to the assessee the issue of "Occupancy Certificate" is merely a formality and invariably involves substantial time from the date of application by the builder. The date of certificate and the date of completion is irrelevant to consider the rights of the appellant. The appellant paid sum

of Rs.78,40,122/- and Rs.74,64,524 for two apartments by entering into an agreement dated 24/01/2002 and 23/01/2002. These properties were sold by the appellant on 27/06/2005 to hold right in these properties for a period exceeding three years and therefore entitled to claim exemption u/s 54. The appellant has also relied upon certain judicial citations. The claim of the appellant appears to be correct and she is entitled to compute under long term capital gains. According to the AO, no supporting evidence was adduced regarding the claim of expenditure for improvement incurred, so that claim is not allowed. Accordingly appeal for the assessment year 2006-07 is allowed to that extent.

In view of the above discussion as well as facts and circumstances of the case, we do not find any error or illegality in the impugned order of the CIT (Appeals) qua this issue.

6. In the result, the appeal of revenue is dismissed.

Order pronounced in the open court on the 28th day of April, 2017.

Sd/-

**(S. JAYARAMAN)**

Accountant Member

Sd/-

**(VIJAY PAL RAO)**

Judicial Member

Bangalore,  
Dt.28.04.2017.

\*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

Assistant Registrar  
Income Tax Appellate Tribunal  
Bangalore.