

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BENGALURU**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER
and
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.834/Bang/2018
(Assessment year: 2014-15)

Income-tax Officer,
Ward 6(3)(1),
Bengaluru. ... Appellant

Vs.

Shri Arun Gautam Dugganapally,
Plot No.25, 2nd Main Road,
Cholanagar,
Bengaluru-560 032. ... Respondent
PAN: BRGPD1602P

Appellant by : Shri Vikas Suryavamshi, Addl.CIT.
Respondent by : None.

Date of hearing: 25/03/2019
Date of pronouncement: 03/04/2019

O R D E R

Per PAVAN KUMAR GADALE, JM:

The revenue has filed the appeal against the order of the CIT(A)-7, Bengaluru, dated 08/01/2018 passed u/s 143(3) r.w.s 250 of the Income-tax Act,1961 ['the Act' for short] for the assessment year 2014-15.

2. The revenue raised the following grounds of appeal:
 1. "The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.

Page 2 of 6

2. On the facts and circumstances of the case, whether the Ld. CIT(A) was right in treating the income of the assessee as long term capital gain whereas the assessee has sold the property even before getting its possession and didn't hold the property for 36 months to claim the long term capital gain.
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, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”

3. Brief facts of the case are that the assessee has filed the Return of income electronically on 21/07/2014 disclosing loss of Rs.25,34,044/-. Subsequently, the case was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) of the Act were issued. In compliance, the assessee through e-mail submitted the copy of income-tax return acknowledgment, sale deed, purchase deed and the computation of capital gains etc. The AO, on perusal of the computation of capital gains found that the assessee has entered into purchase agreement for flat with M/s. Puravankana Projects Ltd., on 29/01/2007 and on the same day construction agreement was also entered. The assessee paid advances in respect of purchase of flat and construction of flat. Th AO found that the assessee has paid

last instalment of Rs.9,46,535/- in the financial year 2013-14 and the assessee has claimed long term capital loss on sale of property. The AO found that the assessee has sold flat on 10/07/2013 through Assignment Deed for consideration of Rs.94 lakhs and also claimed expenditure on transfer. The AO is of the opinion that the assessee did not held the property for a period of 36 months to claim exemption of long term capital gain and with other additions, the AO assessed the total income of Rs.10,84,633/- and passed the order u/s 143(3) of the Act on 30/12/2016.

4. Aggrieved by the order, the assessee filed an appeal before the CIT(A). The CIT(A) having considered the grounds of appeal, submissions of the assessee and the judicial decisions, observed that the assessee has entered into Agreement for construction of flats with the Builder on 29/01/2017 and sold the property on 10/5/2013 before completion of the construction whereas the AO has rejected the claim of the assessee since no possession of the flat was taken by the assessee. Whereas the assessee submitted that the building under construction comes under the beneficial right as per definition of capital asset u/s 2(14) of the Act and also right to obtain conveyance of immovable property is capital asset and relied on the Hon'ble Bombay High Court decision in the

case of *CIT vs. Tata Service Ltd.* (122 ITR 594)(Bom) whereas the CIT(A) has also considered the Agreement entered by the assessee and having satisfied that the assessee has held the asset for more than 3 years from the date of agreement dated 21/01/2017, therefore, the asset is a long-term capital asset and partly allowed the appeal of the assessee. Aggrieved by the CIT(A) order, Revenue has filed the appeal with Tribunal.

5. None appeared on behalf of the assessee. The learned DR submitted that the CIT(A) has erred in granting relief without considering the fact that the AO has observed that the period of 3 years is not completed for the assessee to claim exemption of long-term capital asset.

6. We heard the submissions of the learned DR and perused the material on record. Prima facie, the disputed issue is related to period of holding of the property. We found from the order of the AO that the assessee has entered into an agreement with builder for construction of flat on 29/01/2007 and sold the flat on 10/5/2013 which is not disputed. whereas the AO is considering the holding period is less than 36 months and the flat was sold prior to possession. We found that the assessee has entered into Agreement of sale and Agreement of construction on 29/1/2007. The CIT(A) has perused the agreement in the course of appellate proceedings and referred

to a specific clause in the agreement that the purchaser can transfer, assign his/her rights under the agreement in favour of any one after 9 months from the date of agreement subject to written consent from the developer after payment of fees for transfer. We found the assessee has transferred his right in the flat in favour of third party on 10/5/2013 for a sale consideration of Rs.94 lakhs. Hence, the sale results in transfer of capital asset and the assessee is entitled to claim of long term capital gain or loss as the assessee has satisfied the conditions by holding the property from 29/01/2007 to 10/5/2013. We found that the CIT(A), having considered the provisions of law, judicial decisions and the facts of the case, has passed a reasoned order and cannot be interfered. The learned DR could not controvert the findings of the CIT(A) with any cogent material or evidence. Accordingly, we are not inclined to interfere with the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

7. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 3rd April, 2019.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER
Place : Bengaluru
Date : 03/04/2019.
srinivasulu, sps

sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore