

Tribunal outlines the difference between ‘usage’ vis-a’-vis ‘acquisition’ for the purpose of section 50(1)(iii)

In a typical immovable property purchase transaction in today’s date, what everyone experiences is the delay in transfer of possession despite committed/provided in the purchase agreement. However, it becomes trickier when it is the other way round, i.e. where the possession is handed over by the builder, though for fit-outs, and the agreement is entered later on, to determine as to whether such transaction could be termed as an acquisition of asset as contemplated u/s. 50(1)(iii) of the IT Act.

Recently, the Mumbai ITAT had an occasion to decide on these facts as to whether section 50(1)(iii) envisages actual ‘usage’ of the asset or a ‘mere acquisition’ is enough to fall within its ambit. The ITAT observed that 'occupation' could be equated to term 'use' as contemplated under section 32 of IT Act whereas it cannot be equated to concept of 'possession' to understand completion of process of acquisition in terms of Section 53A of Transfer of Property Act. The distinction between possession and occupation has to be kept in mind, which is relevant only for the purpose of determining the question of "use", but not for the purpose of acquisition as contemplated in section 50(1)(iii). In the case on hand, the ITAT observed that the Assessee had handed over the entire sale consideration to the builder and in turn, the builder handed over the premises to the Assessee for carrying out necessary fit-outs and later on it issued the occupancy certificate to the Assessee. These arrangements were duly reduced in writing by way of an allotment letter and the builder also unequivocally confirmed the same. The ITAT held that under the present system, there is no mandatory requirement to enter into a written agreement to outline the terms of transaction and even verbal agreements, followed with detailed allotment letter suffice the purpose of transfer of property. Needless to state that the compliance of stamp duty and registration procedures has to be ensured. Once the possession was handed over to the Assessee, it alienated rest of the world from dealing with the said property. Having put an emphasis on the word ‘acquired’ as used in section 50(1)(iii), the ITAT held that the said section does not contemplate ‘usage’ of the property in order to fall within its ambit. Accordingly the ITAT held that the Assessee was entitled to claim the actual cost of the property so acquired u/s. 50(1)(iii) for the year under consideration.

For complete text of the decision, refer **Indogem v. ITO [19(1)(5)] [72 taxmann.com 315 (TMum)]**