

Relevance of Possession of Immovable Property

Section 45(1) of Income Tax Act, 1961 provides for taxability of profits or gains on transfer of Capital Asset in the year of transfer. The term 'transfer' inter-alia includes any transfer allowing the possessing of immovable property in part performance of contract referred to in 53A of Transfer of Property Act, 1882 ('TOPA').

Sec 53A of TOPA protect the interest of the transferee in case where he as part of contract has performed his part either in full or part and any enjoying the possession of the property pending registration.

This Section was used against the transferor under the Income Tax Act, 1961 to conclude that once provisions of Sec 53A of TOPA are complied with he has to pay tax on capital gain even in the absence of registration¹.

The chargeability of Capital Gains under Section 45(1) is subject to rollover of the taxability under Section 54/54F etc.

The moot question that would arise is whether the handing over possession of property with a right to enjoy being relevant both for purpose of chargeability of Capital Gain and as well for compliance of provisions enabling the rollover benefit?

The Mumbai Tribunal² has recently dealt with the issue and held that for compliance with the provisions of Section 54 date of possession with a right to enjoy is relevant consideration.

Facts of the Case: - Assessee has sold an immovable property on 28.03.2013 for a consideration of Rs. 74 Lakhs and claimed exemption under Section 54 by purchasing a new residential property.

Assessing Officer (AO) has disallowed the exemption on the ground that the assessee had entered into an agreement to purchase on 29.01.2009 which was beyond One Year prior to the date of transfer. However, possession of the same was handed over on 18.05.2012.

Assessee contend that purchase of a new residential property would be substantially affected on the date of the payment of full consideration on property becoming ready for occupation and the possession of the same.

¹ Amendment to Sec 17A of Registration Act requires registration of document even in cases covered U/S 53A of TOPA.

² Smt.Ranjana R.Deshmukh vs ITO 11 TMI 511

Since all these conditions were fulfilled on the date of handing over possession i.e 18.05.2012 which was well with in one year prior to the date transfer and is a sufficient of compliance of provisions of Sec 54.

Verdict: - Tribunal relying on the judgement of High Court of Bombay³ held the relevant date for determining allowing benefit of Sec 54 is the date on which full consideration was paid and handing over the possession. Since these conditions were fulfilled on 18.05.2012 which is well with in the period of one year prior to date of transfer allowed the benefit.

The date of possession is a relevant for both fixing the liability and as well as allowing benefit under Section 54 or 54F though the registration was not complete on that date.

³ CIT vs Beena K. Jain 75 Taxman 145