

1. **Whether provisional booking of immovable property amounts to acquisition of capital asset, whether deduction is available u/s 54 for both cost of investment and cost of improvement – Held Yes.** In the decision reported as *Gulshan Malik v. CIT, inter alia*, consider what amounted to acquisition of a capital asset - though in the context of a claim that capital gains had accrued due to the sale of the property. The facts in that case were that the assessee had booked a flat, and was recipient of a provisional allotment letter. Subsequently, the transaction was converted into a written agreement to sell. The Court, noting the contentions of the parties and also, significantly, taking note of the definition of "transfer" and "capital asset", was of the opinion that "capital asset" has been defined in extremely wide terms - A reference to Section 2(47), which defines "transfer", and particularly its second Explanation to Clauses (v) and (vi) made it clear that possession, enjoyment of property as well any interest in any of transferrable capital asset was included within the ambit of "capital asset". The Court held importantly that even booking rights or rights to purchase the apartment or to obtain its letter was also capital asset. Whether improved cost was deducted, this Court has no manner of doubt that the Revenue does not dispute the acquisition of second property at Model Town. Given that the Revenue does not dispute that the second transaction of purchase took place, it has to necessarily follow that the cost of improvement was deductible. **Commissioner of Income-tax-XVI v. Ram Gopal [2015] 372 ITR 498 (Delhi).**
2. **Whether payments made for software embedded in hardware amounts to ‘royalty’ u/s 9(1)(iv) – Held No.** "Computer programs are the product of an intellectual process, but once implanted in a medium are widely distributed to computer owners. An analogy can be drawn to a compact disc recording of an orchestral rendition. The music is produced by the artistry of musicians and in itself is not a "good," but when transferred to a laser-readable disc becomes a readily merchantable commodity. Similarly, when a professor delivers a lecture, it is not a good, but, when transcribed as a book, it becomes a good. That a computer program may be copyrightable as intellectual property does not alter the fact that once in the form of a floppy disc or other medium, the program is tangible, moveable and available in the marketplace. The fact that some programs may be tailored for specific purposes need not alter their status as "goods" because the Code definition includes "specially manufactured goods." A fortiori when the assessee supplies the software which is incorporated on a CD, it has supplied tangible property and the payment made by the cellular operator for acquiring such property cannot be regarded as a payment by way of royalty. **(Commissioner of Income-tax v. Alcatel Lucent Canada,)/[2015] 372 ITR 476 (Delhi)**