

- 1. Advances paid for purpose of purchase and/or acquisition of plant/machinery, and land/building amount to utilization by assessee of capital gains under section 54G.** A reading of section 54G makes it clear that the assessee is given a window of three years after the date on which transfer has taken place to 'purchase' new machinery or plant or 'acquire' building or land. The High Court has completely missed the window of three years given to the assessee to purchase or acquire machinery and building or land. This is why the expression used in section 54G(2) is 'which is not utilized by him for all or any of the purposes aforesaid...'. It is clear that for the assessment year in question all that is required for the assessee to avail of the exemption contained in the section is to 'utilize' the amount of capital gains for purchase and acquisition of new machinery or plant and building or land. It is undisputed that the entire amount claimed in the assessment year in question has been so 'utilized' for purchase and/or acquisition of new machinery or plant and land or building. Under sub-section (1), the assessee is given a period of three years after the date on which the transfer takes place to purchase new machinery or plant and acquire building or land or construct building for the purpose of his business in the said area. If the High Court is right, the assessee has to purchase and/or acquire machinery, plant, land and building within the same assessment year in which the transfer takes place. Further, the High Court has missed the key words 'not utilized' in sub-section (2) which would show that it is enough that the capital gain made by the assessee should only be 'utilized' by him in the assessment year in question for all or any of the purposes aforesaid, that is towards purchase and acquisition of plant and machinery, and land and building. Advances paid for the purpose of purchase and/or acquisition of the aforesaid assets would certainly amount to utilization by the assessee of the capital gains made by him for the purpose of purchasing and/or acquiring the aforesaid assets. Therefore on this ground also, the assessee is liable to succeed. The appeals are, accordingly, allowed and the judgment of the High Court is set aside. **Fibre Boards (P.) Ltd. v. Commissioner of Income-tax, [2015] 376 ITR 596 (SC).**
- 2. Where Assessing Officer found that assessee-society allowed certain outside parties to utilize premises of society for promotion of business activities of such outside parties for pecuniary consideration, but could not prove that assessee failed to disclose said income, reassessment was not justified.** There is not a whisper in the reasons that the petitioner failed to make full and true disclosure of any relevant facts or that the petitioner withheld such necessary facts, and therefore reopening of the assessment is necessary. Nor does the reading of the reasons as a whole indicate that it is being suggested that there was a failure on the part of the petitioner to disclose fully and truly all material facts necessary for assessment. Thus, firstly, there is no failure to make full and true disclosure of necessary facts which is the jurisdictional requirement for initiating reopening proceedings after period of four years as per the proviso to section 147. Secondly, the reasons do not show that there was any failure to disclose. **Panchratna Co-op. Housing Society Ltd. v. Assessing Officer [2015] 376 ITR 404 (Bombay)**