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**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI S.V.MEHROTRA, ACCOUNTANT MEMBER  
AND  
SHRI C.M.GARG, JUDICIAL MEMBER**

**I.T.A .No.-5253/Del/2010  
ASSESSMENT YEAR - 2007-08**

ACIT,  
Circle-23(1), Room No-190,  
C.R.Building, I.P.Estate,  
New Delhi  
(APPELLANT)

Vs.

Shabnam Sachdev,  
M-25, Greater Kailash-II,  
New Delhi  
**PAN-AAWPS6666A**  
(RESPONDENT)

**I.T.A .No.-5254/Del/2010  
ASSESSMENT YEAR - 2007-08**

ACIT,  
Circle-23(1), Room No-190,  
C.R.Building, I.P.Estate,  
New Delhi  
(APPELLANT)

Vs.

Sharda Sachdev,  
M-25, Greater Kailash-II,  
New Delhi  
**PAN-ABIPS0833N**  
(RESPONDENT)

**Appellant by: Smt. Shumana Sen, Sr. DR  
Respondent by: Sh. Atul Puri, CA.**

**Appeal heard on-07.11.2012  
Order pronounced on-14.12.2012**

**ORDER**

**PER S.V.MEHROTRA, AM**

**I.T.A .No.-5253/Del/2010**

These appeals filed on 30-11-2010 by the revenue are against the order dated 31-08-2010 of the Ld. CIT(A), XXII for AY 2007-08.

2. The assessee had filed a return of income declaring total income of Rs.59,08,331/- from house property, capital gain and other sources. The AO noticed that assessee had shown Long Term Capital Gain on sale of capital asset held by her in the name of M/s Godawari Shilpkala Pvt Ltd. with the following computation :-

Full Value of consideration	:	Rs.45,00,000/-
Less: Cost of acquisition	:	Rs.22,36,676/-
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Long Term Capital Gain	:	Rs.22,63,324/-

3. The AO noticed that assessee had reserved a suite in hotel complex at village-Lakkar Pur, Near Suraj Kund, Faridabad, Haryana on 04.02.1993. As per the agreement, the company M/s Godawari Shilpkala Pvt Ltd. had accepted deposit and made an agreement for long term reservation. As per the agreement, the hotel company agreed to keep a suite No-404 of Karan Block in Western Wing of the hotel complex permanently reserved for the use and benefit of the assessee, as long as the agreement subsist. He noted that in clause-9 of the agreement, it was also mentioned that the health club, swimming pool, sport, games and other recreational facilities will be available at concessional rate. Thus, assessee had reserved a room/suite in a hotel for her use for a period of time and for use of other facilities available in the hotel/resort, the assessee had to make payment as per the prevailing rates. The assessee had sold this suite for a consideration of Rs.45,000/- and had reduced indexed cost of acquisition at Rs.22,36,676/-. As regards, the cost of acquisition claimed by the assessee, the AO noticed that the same had two parts:- one, the installment which she had paid during the period from FY 1992-93 to FY

1995-96 and two, the maintenance charges which the assessee had paid in FY 1998-99 to 2003-04. The AO required the assessee to furnish computation of income for AYs 2005-06 & 2006-07 and noticed that assessee had shown rental income from the suite under the house property and also claimed deduction u/s 24(a) on account of maintenance expenses. He, therefore, observed that assessee had claimed both the benefit of deduction u/s 24(a) of the Income Tax Act, 1961 at the time of offering income under the head income from house property and when she offered the profit under long term capital gain, she had also claimed the maintenance expenditure as capital expenditure. The AO further observed in para 4 as under :-

*“However, a major question arises as to whether the reservation of a suite can be treated at par with owning of a capital asset. If a person books a room in hotel for long period of time by making advance payment, he does not become owner of the capital asset or to say owner of the room which he booked in the hotel. Same is the case of assessee. This is a benefit/booking of a time share in a hotel and on surrender of such time share, the assessee has received a certain premium. The reservation of suite for a long period of time cannot be equated with right of tenancy under a tenancy act. As per the transfer application, the assessee has surrendered her reservation/booking of suite in favour of M/s Godawari Shilpkala Pvt Ltd. for a consideration of Rs.45,00,000/-. The assessee never enjoyed right of tenancy under a tenancy act. More-so-over, the assessee in her letter dated 05.11.2009 has also admitted that “these rights in a room in a small hotel, measuring appx. 750 sq. ft. in a property which were sold for a lump-sum as the entire property was being taken over by a third party. This itself shows that assessee was not an owner of capital asset and was enjoying right to use of one suite room in the hotel complex and as such the profit earned on transfer of right to use of a room in Godavari Shilpkala is not an income taxable under the head capital gain. I, therefore, treat this profit as income from other sources earned by assessee on account of compensation/premium on the surrender of the reservation she made in booking of the hotel room.”*

4. He also required the assessee to explain as to how the expenses incurred on maintenance and up-keep of the hotel suite was an expenditure for an improvement of a capital asset and why it should not be disallowed. After considering the assessee's reply that the payment during earlier year made pertaining to the property at Godavari Shilpkala were never claimed as expenses and had been capitalized because the payments were necessary for preserving and safeguarding the property, the AO observed as under :-

*“Even if the assessee's contention is accepted, the capitalization of expenses incurred on payment of Municipal Tax/charges levied by local authorities or expenses incurred on preserving and safeguarding the property are considered as cost of acquisition or improvement. In fact by no stretch of imagination, the expenses incurred on regular up-keep or even payment of statutory dues are part of the cost of acquisition. Even otherwise, the deduction @ 30% is allowed U/s 24(a) of the Income Tax Act, 1961. I hold that neither the expenses incurred on regular up-keep and maintenance of a suite of a hotel or even a house property (though not accepted) are part of original cost nor can be considered as cost of improvement of the property. In view of this, I hold that (indexed) amount of Rs.2,32,993/- included by assessee in the cost of acquisition are not to be considered while working out the profit from surrendered of reservation of the suite in hotel.”*

5. He, accordingly, computed profit from transfer of booking as under without allowing any benefit of indexation :-

<i>Sale consideration</i>	:	<i>Rs.45,00,000/-</i>
<i>Less:</i>		
<i>Amount paid by assessee to Godavari Shilpkala as per following details :-</i>		
<i>1992-93</i>	<i>Rs.1,25,000/-</i>	
<i>1993-94</i>	<i>Rs.4,75,000/-</i>	
<i>1994-95</i>	<i>Rs.1,51,000/-</i>	
<i>1995-96</i>	<i>Rs.2,55,000/-</i>	<i>: Rs.10,06,000/-</i>
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<i>Profit from surrender of reservation of room</i>	:	<i>Rs.34,94,000/-</i>

6. Ld. CIT(A) while partly allowing the assessee's appeal held that the assessee was in possession of a capital asset in the form of a suite in a hotel and the sale consideration received was taxable under the head long term capital gain and the assessee was entitled to benefit of indexation of cost. He, however, accepted the AO's contention that assessee was not entitled to benefit of indexation on sum of Rs.2,32,993/- included by the assessee in the cost of acquisition, being the maintenance charges paid by the assessee to the hotel. Being aggrieved with the order of Ld. CIT(A), the department is in appeal before us and has taken following grounds of appeal :-

*“(i) On the facts and circumstances of the case the Ld. CIT(A) has erred in law and on the facts in allowing the relief to the assessee on profit on surrender of booking in Godavari Shilpkala of Rs.34,94,000/- assessed by AO as against Long Term Capital Gain offered by the assessee of Rs.22,63,324/-.*

*(ii) The appellant craves leave to add, alter or amend any of the grounds of appeal before of during the course of hearing of the appeal.*

*(iii) On the facts and circumstances of the case the Ld. CIT(A) has erred in law and on the facts in allowing the relief to the assessee on profit on surrender of booking in Godavari Shilpkala of Rs.34,94,000 assessed by AO as against Long Term Capital Gain offered by the assessee of Rs.22,63,324/-.*

*(iv) The appellant craves leave to add, alter or amend any of the grounds of appeal before of during the course of hearing of the appeal.”*

7. Ld. DR referred to page 2 to 5 of paper book wherein the agreement of assessee with M/s Godawari Shilpkala Pvt Ltd. dated 04.02.1993 is contained and referred to page 3 of paper book to demonstrate that long term advance booking was done for the use and benefit of the assessee which reservation continued as long as

agreement subsisted. He submitted that it is a case of long term advance booking only and assessee did not acquire any capital asset.

8. Ld. Counsel for the assessee referred to page 4 of paper book to demonstrate that as per covenant 4 of agreement government municipal and other taxes or levies in relation to the suite were to be paid by the assessee. He further referred to covenant 7 of the agreement and pointed out that the agreement/advance booking was transferable when so desired by the assessee. Ld. Counsel further pointed out that department has computed the income in respect of this property as income from house property in AY 2006-07 as assessee had let out the suite. Ld. Counsel submitted that assessee was entitled to perpetual possession. Thus, in sum and substance, Ld. Counsel submitted that the assessee was having a capital asset in the form of right to use suite No-404 on 3<sup>rd</sup> floor of Karan Block in Western Wing at the hotel at concessional rate. On sale of it, she earned long term capital gain and, therefore was entitled to indexation benefit u/s 48 for computing capital gains as held by Ld. CIT(A).

9. We have considered the submissions of both the parties and have perused the record of the case. Facts are not in dispute. The assessee had entered into an agreement dated 04.02.1993 with M/s Godawari Shilpkala Pvt Ltd. and had made a long term advance booking for suite which entitled her to carry out her business programming and planning in a more efficient manner. The assessee had given a

non-interest bearing security deposit of Rs.7,50,000/- to the hotel company which security deposit was to be made in following installments :-

*“That a non-interest bearing security deposit of Rs.7,50,000/- (Rupees Seven Lakhs fifty thousand only) shall be made by the second party with the hotel company towards this agreement, which security deposit shall be made in the following installments :-*

- i. 20% at the time of signing of this agreement.*
- ii. 10% on laying of basement roof slab.*
- iii. 10% on laying of ground floor roof slab.*
- iv. 10% of laying of first floor slab.*
- v. 10% on laying of second floor roof slab.*
- vi. 10% on laying of third floor roof slab.*
- vii. 10% of plastering.*
- viii. 10% on flooring.*
- ix. 10% on possession.”*

10. The assessee became entitled to constant use of suite only in consideration of the agreement and the security deposit.

Further the agreement contained following covenants :-

- “4. That all government, municipal and other taxes or levies in relation to the suite will be paid by the Second party separately.*
- 5. That although the booking is in favour of the second party, it may occupy it itself or use the same for its family members or senior staff and bonafide personal and business guests.*
- 6. That Second Party shall comply with all rules and regulations of the Central Government, State Government, Ministry of Tourism as also other customs and conventions of the Hotel.*
- 7. That this agreement/advance booking is transferable when so desired by the Second Party in writing.”*

11. All these covenants make it abundantly clear that assessee had got right of residence/possession in the suite by virtue of this agreement. This right was transferable at the option of assessee. Thus this right was akin to the tenancy rights which is a valuable right in the property. Ld. CIT(A) has decided the issue in following words :-



*“I have carefully considered the above submissions. I am of the opinion that the AO has not correctly understood the position of law regarding definition of a capital asset. Section 2(14) of the Act defines capital asset as property of any kind held by an assessee. The Kerala High Court in the case of Syndicate Bank Ltd. v. Addl. CIT(1985) 155 ITR 681 held that the term ‘capital asset’ has an all embracing connotation and includes every kind of property as generally understood except those that are expressly excluded from the definition. So too, the meaning of the expression ‘property’. It includes every conceivable thing, right or interest. The Madras High Court in the case Madathil Brothers v. Dy. CIT (2008) 301 ITR 345 held that the definition of ‘capital asset’ under the Income Tax Act, referring to ‘property of any kind’ carries no words of limitation. The definition is of wide amplitude to include every possible interest that a person may hold and enjoy. The definition of ‘capital asset’ refers to property of any kind ‘held’ by an assessee. In contradistinction to the word ‘owner’ or ‘owned’, the definition uses the phrase ‘held’. I hold therefore that the appellant was in possession of a capital asset in the form of a suite in a hotel. The sale consideration received requires to be brought to tax under the head long term capital gains and the appellant entitled to the benefit of indexation of cost.”*

12. We are in full agreement with the findings of Ld. CIT(A). Section 2(14) defines ‘capital asset’ as property of any kind held by an assessee. The term ‘property’ encompasses in its ambit bundle of rights. This includes every conceivable species of valuable rights and interests. The right to dispose off a thing in every legal way, to possess it and to use and to exclude everyone from interfering with it, comes within the ambit of property. The exclusive right of possessing, enjoying and disposing off a thing comes within the term of ‘property’. The assessee had perpetual right of possession of suite and was entitled to transfer the same by virtue of seventh covenant noted above. Therefore, long term advance booking by virtue of which assessee got right to possession was ‘capital asset’



within the definition of section 2(14) and, therefore, on transfer of the same long term capital gain accrued to the assessee and assessee was, accordingly, entitled for indexation of cost of acquisition. We, therefore, uphold the order of Ld. CIT(A).

In the result, we dismissed the department's appeal.

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13. Facts are identical to the facts as in I.T.A .No.-5253/Del/2010. Therefore, for the reasons stated therein, the department's appeal is dismissed.

14. In the result, both department's appeals are dismissed.

**Order pronounced in the Open Court on 14.12.2012.**

**Sd/-  
(C.M.GARG)  
JUDICIAL MEMBER**

**Sd/-  
(S.V.MEHROTRA)  
ACCOUNTANT MEMBER**

Dated: 14/12/2012

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT NEW DELHI**