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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ ITA 557/2016 & CM No. 27847/2016  
THE PRINCIPAL COMMISSIONER OF INCOME TAX-02

..... Appellant

Through: Mrs. Husual Syali, Advocate along  
with Mr. Aditya Raj Singh, Advocate.

versus

M/S C.J. INTERNATIONAL HOTELS LTD. .... Respondent  
Through: appearance not given.

And

+ ITA 558/2016  
THE PRINCIPAL COMMISSIONER OF INCOME TAX-02

..... Appellant

Through: Mrs. Husual Syali, Advocate along with  
Mr. Aditya Raj Singh, Advocate.

versus

M/S C.J. INTERNATIONAL HOTELS LTD. .... Respondent  
Through: appearance not given.

**CORAM:**  
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**  
**HON'BLE MS. JUSTICE DEEPA SHARMA**

**ORDER**  
**27.09.2016**

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The question of law arises from the common order of the ITAT  
for assessment years i.e. AY 2008-2009 and 2009-2010.

The question of law urged is that the ITAT and a CIT (A) fell into error in deleting ` 69,649,795/- for the concerned period. The AO had sought to bring that amount to tax.

The assessee *inter alia* had constructed a hotel and some commercial space. The latter was located in “West Tower”. The allotment to the assessee was in the form of a lease by the NDMC, the owner/paramount lessor. In terms of the lease deed executed by the assessee, NDMC permitted it to sub-lease the premises, which it did. The amounts received by the sub-licencees who in turn rented out the premises under their occupation were sought to be taxed by the revenue in these proceedings. In rejecting the revenue’s contention and upholding the findings of the CIT(A), the ITAT was guided by those issues and also took note of the fact that in those previous years, the court had consistently held that the income received by such sub-licencees was not taxable in the hands of the assessee.

The revenue had adopted the methodology of arriving at a rental value for the sub-licensed premises which the assessee should have got but did not due to the fact that it received interest free deposit. This contention was concurrently rejected.

Learned counsel for the revenue urges that ITAT fell into error in overlooking Section 27 (iiib) of the Income Tax Act which provides that acquisition of any right (excluding rights by way of lease from month to month period or for a period not exceeding one year) in respect to any building or part thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be

the owner of that building or part thereof. It is highlighted that by virtue of Section 269 UA(f), any right or interest in property which is for a period of 12 years or more is deemed to be one of ownership.

This court is of the opinion that the revenue's contentions cannot be accepted. Firstly, the question of ownership was gone into in all the previous assessment years. Therefore, the treatment of escape rent as it were and the deemed substituted rental income on the basis that the deposit received by the assessee in the initial year did not carry any condition is untenable, if the revenue did want to treat such income, in any manner that it chose, at the relevant period it could have and one assumes that it did by bringing it to tax. Having done that, it cannot now contend that the independent rights of the sub-lessee to rent out the premises and receive its own income should become a subject matter of the deemed income under Section 27(iia). What is important is that in fact the assessee concededly does not receive any amounts as income for those premises- rather it is that what is received is in the hands of the sub-licensee.

For the above reasons, following the decision in the previous years, **Commissioner of Income Tax vs M/s C.J. International Hotels**, (2010) 197 Taxmann 230, the present appeal does not raise any question of law which is accordingly dismissed.

**S. RAVINDRA BHAT, J**

**DEEPA SHARMA, J**

**SEPTEMBER 27, 2016**

*Sapna*