

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 576/Ahd/2019
(Assessment Year: 2013-14)

SRPL Infrastructure Pvt. Ltd. House No. 1, Sigma Commerce Zone, B/h. Gallops Mall, Ambli – Bopal, Ahmedabad-380015	Vs.	ITO Ward-4(1)(2), Ahmedabad
[PAN No.AAMCS8867J]		
(Appellant)	..	(Respondent)

Assessee by :	Ms. Nupur Shah, AR
Revenue by :	Shri R. R. Makwana, Sr. DR

Date of Hearing	10.03.2022
Date of Pronouncement	16.03.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 01.02.2019 passed by the Commissioner of Income Tax (Appeals)-8, Ahmedabad arising out of the order dated 09.03.2016 passed by the ITO, Ward-4(1)(2), Ahmedabad under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2013-14.

2. Addition on account of the rent income treating the same earned as income from business against the income from house property of Rs. 5,15,900/- is the subject matter before us.

3. The contention of the assessee is this that the Ld. CIT(A) has erred in law and on facts in failing to consider the fact that the scheme developed by the appellant company is not the property / fixed assets of the appellant

company, but the same is in the nature of stock in trade and the same has been rightly disclosed by the appellant company in the tax audit report furnished by the Statutory Auditor for the year ended on 31.03.2013. It was further contended that the provisions of section 22 of the I.T. Act, 1961 specifically excludes property which is occupied for the purpose of business or profession.

4. At the very threshold of the matter the Ld. Counsel appearing for the assessee submitted before us that the issue is squarely covered by the judgment passed in the matter of Vyapti Infrabuild Pvt. Ltd. vs. DCIT in ITA No. 2120 & 2505/Ahd/2017 for A.Ys. 2013-14 and 2014-15 a copy whereof has also been submitted before us.

5. The Ld. DR relied upon the order passed by the authorities below.

6. We have heard the respective parties and also perused the relevant materials available on record.

7. The judgment relied upon by the Ld. AR is to certain extent not found to be relevant in the present facts and circumstances of the case in view of the particular fact that in those cases the assessee has not actually earned any rental income rather the AO has considered notional rental income in respect of unsold units of the scheme whereas the case in hand before us that the assessee has already received rental income from the property being Shop No. 301, first floor and shop no. 2 GF of Sigma Esquire, Maninagar to the tune of Rs. 12,03,767/-. Since the fact is different from that of the fact available in the judgment cited by the Ld. AR it would not be fit to be applied in its entirety as covered in favour of the assessee's case.

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8. However, the unsold flat has been shown in the stock in trade of the assessee. In the event such rental is allowed as the business income; then the assessee is also entitled to claim depreciation of the property. No such finding and/or benefit to the assessee has been extended by the Revenue is appearing in the order impugned before us. In the absent of such finding in our considered opinion the assessee's income should have been held as "income from house property" and "not the business income".

With that observation we are deciding the appeal in favour of the assessee.

9. In the result, the appeal preferred by the assessee is allowed.

This Order pronounced in Open Court on	16/03/2022
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 16 /03/2022

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

Sd
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad