

**IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT
(HYBRID HEARING)**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 601/SRT/2024
(Assessment Year: 2018-19)

Shree Infra, River View Heights, Mota Varachha, Nr. Valkeshwar Society, Padder Road, Surat-395006	Vs.	Principal Commissioner of Income Tax-1, Surat
[PAN No.ABIFS0698F]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Suresh K Kabra, CA
Respondent by:	Shri Aashish Pophare, CIT DR

Date of Hearing	10.07.2025
Date of Pronouncement	22.07.2025

O R D E R

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax, Surat-1 (in short “Ld. PCIT”), Surat vide order dated 23.02.2024 passed for A.Y. 2018-19.

2. At the outset, we observe that the appeal is time barred by 22 days. The delay of 22 days is condoned on due consideration of facts and owing to smallness of delay causing no perceptible prejudice to other side.

3. The assessee has raised the following grounds of appeal:

“1. The Ld. PCIT-I has erred and was not just and proper on the facts of the case and in law in considering the Assessment Order dated 13/04/2021 passed u/s 143(3) as erroneous and prejudicial to the interests of revenue and passing order u/s 263, directing to pass fresh Assessment Order in the case.”

4. The brief facts of the case are that the assessee filed its return of income for the Assessment Year 2018-19 on 27.09.2018, declaring 'Nil' income. The case was subsequently selected for complete scrutiny with the specific parameter of "Income from Real Estate Business." The assessment was completed under section 143(3) of the Act by the Assessing Officer, who accepted the returned income without making any additions. However, on examination of the assessment records and submissions made by the assessee, particularly a letter dated 27.01.2021, Principal CIT observed that the assessee had undertaken a real estate project called 'River View Heights' consisting of three phases. Construction of Phase-1 was completed during the financial year 2014–15 and the Building Use Certificate (BUC) had been obtained. As per further submissions dated 03.04.2021, out of 260 flats in Phase-1, 230 were sold by 31.03.2018, leaving 30 flats unsold as of that date. Despite the fact that Phase-1 construction was completed and the flats were part of the assessee's closing stock, the assessee had not offered any notional rental income on the unsold flats as required under section 23(1) of the Act, which mandates the taxation of the deemed annual value of property held as stock-in-trade beyond one year from the end of the year in which construction is completed. Principal CIT noted that although the AO had called for details such as the opening and closing stock and the list of units sold and unsold during the assessment proceedings, no inquiry or verification was made regarding the applicability of notional rent on unsold flats under the amended provisions of section 23(5), which came into effect from 01.04.2018. According to PCIT, this failure to examine and apply the correct provisions of law was considered as an omission by AO, especially since the issue of income from real estate business was the specific reason for which the case

was selected for scrutiny. Based on the balance sheet dated 27.01.2021, the total value of the 30 unsold flats in Phase 1 was reported as Rs. 5,68,25,456/-. Applying a deemed rental yield of 8.4% as per the decision of the Hon'ble Gujarat High Court in the case of Shri Bipinbhai Vadilal Family Trust vs. CIT (1994) 208 ITR 1005, the notional rent was computed by PCIT at Rs. 47,73,338/-. The PCIT, after examining the records, held that the AO failed to make proper inquiries and passed the assessment order without applying his mind or the correct legal provisions, rendering the order erroneous and prejudicial to the interest of the Revenue within the meaning of section 263 of the Act.

5. The assessee is in appeal before us against the aforesaid order passed by the PICT under Section 263 of the Act. Before us, the Counsel for the assessee submitted that the Mumbai ITAT in the case of **Pegasus Properties Pvt. Ltd. vs. DCIT 135 taxmann.com 294 (Mumbai – Trib.)**, while dealing with a similar issue had held that no addition on account of deemed rental income could be made in respect of unsold stock of flats held as “stock-in-trade” for the assessment year 2018-19. Accordingly, in view of the aforesaid decision, there is no infirmity in the order of the Assessing Officer and the 263 order passed by Ld. PCIT is liable to be set-aside.

6. In response, Ld. DR placed reliance on the observation made by Ld. PCIT in the 263 order.

7. We have heard the rival contention and perused the material on record.

8. On going through the rival contention of the instant case, we note that firstly, no specific inquiry relating to applicability of Section 23(5) of the Act was made by the Assessing Officer. From the assessment records we note that neither any specific query regarding the deeming provisions of Section 23(5) of the Act was put to the assessee nor was any reply filed by the assessee in this regard. Section 23(5) of the Act is a deeming provisions which states that where a property (consisting of any building etc.) held as stock-in-trade was not let out, then the annual value of such property for a period of up to two years from the end of the Financial Year in which the certificate of completion of construction from the concerned authorities was obtained, shall be taken to be nil. From bare reading for the provision, it is seen that if any property is held as stock-in-trade by the assessee which is lying vacant i.e. has not been let out, then after the period of two years from the end of the Financial Year in which the certificate of completion of construction for the property has been obtained from the competent authority, the assessee would be required to compute annual value of such property which has not been let out. In the instant case we observe that admittedly there was an unsold stock of flats, for which completion of certificate had been obtained in the prior years and which were lying vacant, for which annual letting value was required to be computed in terms of Section 23(5) of the Act, which came into effect from A.Y. 2018-19 i.e. the impugned assessment year. Further, we note that no inquiry with regards to applicability of Section 23(5) of the Act was made by the Assessing Officer, during the course of assessment proceedings. Accordingly, we are of the considered view that there was lack of inquiry by the Assessing Officer on this aspect, at the time of framing of assessment order. Further, with regards to the alternate contention of the

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Counsel for the assessee that in view of Mumbai Tribunal decision in the case Pegasus Properties Pvt. Ltd. supra, Section 23(5) of the Act would not be applicable for A.Y. 2018-19 is concerned, then applicability of such decision to assessee's set of facts needs a closer analysis which was not done by any of the Tax Authorities. Accordingly, we find no infirmity in the order of Ld. PCIT so as to call for any interference.

9. In the result, the appeal of the assessee is dismissed.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 22/07/2025

Sd/-

(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 22/07/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/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, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat