

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI NARENDER KUMAR CHOUDHRY  
JUDICIAL MEMBER

**ITA No. 781/Mum/2023**  
**(A.Y. 2013-14)**

**Tushar Jayantilal lakhani Versus CIT(A) -28,**  
32/5, Swadin Sadan,  
"C" Road, Churchgate,  
Mumbai-400020.  
**PAN: AAAPL4784A**

401, 4<sup>th</sup> Floor, Earnest  
House, NCPA Marg,  
Nariman Point,  
Mumbai-400021

**Appellant**

**Respondent**

Appellant/Assessee by : Sh. Sunil Hirawat, Ld. CA  
Respondent/Department by : Ms. Mini Vinod, Ld. DR

Date of hearing : 01/06/2023  
Date of pronouncement : 29/06/2023

**ORDER**

**N.K. CHOUDHRY, J.M:**

This Assessee/Appellant herein has preferred this appeal against the order dated 06.03.2023 impugned herein passed by Ld. Commissioner of Income Tax (Appeals)-28, Mumbai / NFAC, Delhi {in short 'Ld. Commissioner'} u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for AY 2013-14.

**2.** In the instant case, the assessee declared its total income at Rs. 2,64,980/- by filing its return of income on dated 01.10.2013, which was processed under section 143(1) of the Act and subsequently selected for scrutiny through CASS and therefore, the statutory notices have been issued to the assessee. In response, the assessee attended the assessment proceedings and filed the details. The Assessing Officer considering the same, ultimately made the following disallowances/additions:

<b><i>Particulars</i></b>	<b><i>Amount</i></b>
<i>Disallowance on non-payment of VAT liability</i>	5,84,841/-
<i>Addition on account of LTCG on sale of flat treated as STCG</i>	8,40,375/-
<i>Disallowance of Depreciation</i>	1,65,814/-

**3.** The assessee being aggrieved against the aforesaid disallowances/additions, preferred first appeal before the Ld. Commission on 26.04.2016 and claimed that though the notices were sent by the Ld. Commissioner at emails, however, the same went into junk/spam folders, hence, remained unnoticed. However lateron the assessee received a notice dated 24.02.2023, by which it was asked to make its

submission by 22.03.2023 and in response to which the Assessee requested for an adjournment on 27.02.2023, however, the Ld. Commissioner neither accepted nor rejected the request for adjournment, but passed the impugned order on dated 06.03.2023. Therefore the Assessee being aggrieved is in appeal before this tribunal.

**4.** Heard the parties and perused the material available on record and given thoughtful consideration to the rival claims of the parties. Though the Assessee demonstrated its case on merit, however as the impugned order is ex-parte and not on merit, hence at this juncture I am inclined not to dwell into the merits of the case but has to consider whether the impugned order is otherwise sustainable or not. I observe as it appears from the impugned order, that the Ld. Commissioner specifically noted in its order that the assessee was afforded reasonable opportunity through notices dated 25.09.2018, 26.10.2018, 08.01.2021 and 08.12.2021, but no reply/submission was received, nor any adjournment was requested. Further, the assessee was also afforded final opportunity on 24.02.2013 but no reply/response was received from the assessee.

**4.1** From the aforesaid observation made by the Ld. Commissioner, the claim/contention of the assessee for non attending the appellate proceedings and filling of adjournment application dated 27-02-2023 is untenable and therefore I am inclined not to accept the same, however, considering the peculiar facts, as the Ld. Commissioner failed to pass the impugned order on merit and the Assessee has filed various documents before this Bench, which requires elaborate discussion/verification, hence, for just decision of the case and for the ends of justice, I deem it appropriate to remand the instant case to the file of the Ld. Commissioner for decision afresh, suffice to say by affording reasonable opportunity of being heard to the assessee.

The assessee is also directed to co-operate with the Appellate proceedings and to file the relevant documents as filed before this Bench and any other documents which would be required for real adjudication of the issues under consideration by the Ld. Commissioner. The assessee shall be at liberty to raise all the issues, as involved in the instant case.

**5.** In the result, appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 29.06.2023.

Sd/-  
(N K CHOUDHRY)  
JUDICIAL MEMBER

SK, Sr.PS

**Copy of the Order forwarded to:**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Dy. /Asstt.Registrar)  
**ITAT, Mumbai**