

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

**BEFORE SHRI BR BASKARAN, AM &  
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 1728/Mum/2023  
Assessment Year: 2011-12)

Kamlesh Ashok Jain  
C/o. 402, Chalet Amar,  
Above Renault Car show  
Room, C.D. Barfiwala Lane, Vs.  
Juhu Scheme, Mumbai-  
400049

ITO 24(2)(1)  
Piramal chambers, Lal Baug  
Mumbai- 400012

PAN No. **AFWPJ3565N**

**Appellant)** : **Respondent)**

**Appellant by** : None  
**Respondent by** : Shri. Surendra Kumar Meena

Date of Hearing: 16.08.2023

Date of pronouncement : 31.08.2023

ORDER

**Per N. K. Choudhry, JM:**

The Assessee/Appellant herein has preferred this appeal against the order dated 17.03.2023 impugned herein passed by Ld. Commissioner of Income Tax/National Faceless Appeal Centre {in short 'Ld. Commissioner')} u/s 250 of the Income Tax Act 1961 (in short 'the Act').

**2.** In this case, the assessing officer vide assessment order dated 26.12.2018 u/s 143(3) r.w.s. 147 of the Act, ultimately, made the additions of Rs. 2,14,526/- and Rs. 6,435/- respectively, on account of sale proceeds of sale u/s 68 of the Act and commission expenses u/s 69C of the Act.

**3.** The Assessee being aggrieved challenged the said addition before the Ld. Commissioner, who though afforded four opportunities by sending notices to the Assessee through E-Mail, however, the Assessee failed to file any written submissions/documents and therefore the Ld. Commissioner by construing that the Assessee is not interested in perusing his appeal and therefore it cannot be kept pending adjudication for indefinite period, dismissed the appeal of the Assessee without touching the merits of the case. Considering the peculiar facts and circumstances as the Ld. Commissioner failed to decide the appeal on merit because of non-filing of reply/documents by the Assessee, hence, we for proper and just decision of the case and for the ends of substantial justice, are inclined to remand to 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, hence ordered accordingly.

**4.** The Assessee is also directed to appear and file the relevant document(s) whatsoever would be needed by the Ld. Commissioner for proper and just decision of the case.

**5.** In the result, appeal filed by the Assessee stands allowed for statistical purpose.

*Order pronounced in the open court on 31.08.2023.*

**Sd/-**  
**(B R BASKARAN)**  
**Accountant Member**

**Sd/-**  
**(N. K. CHOUDHRY)**  
**Judicial Member**

Mumbai, Dated 31./08/2023  
Shubham Lohar

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)

**ITAT, Mumbai**