

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

BEFORE SHRI.NARENDER KUMAR CHOUDHRY (JUDICIAL MEMBER)  
AND  
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A. No.2581/Mum/2023  
(Assessment year : 2011-12)

Sampat Haribhau Bharat  
B/152, Kalpataru Sparkle  
MIG C0-op Housing Society,  
Gandhi Nagar, Bandra-East,  
Mumbai-400 051

vs The Income Tax Officer-  
23(3)(2), Mumbai,  
Matru Mandir,  
Mumbai-400 007

**PAN : AAUPB9754G**  
**APPELLANT**

**RESPONDENT**

Present for the Assessee	None
Present for the Department	Shri.V.K. Chaturvedi SR AR

Date of hearing	14/11/2023
Date of pronouncement	23/11/2023

**O R D E R**

**Per N.K. Choudhry (JM):**

This appeal has been preferred by the Assessee against the order dated 27/05/2023 impugned herein passed by the National Faceless Appeal Centre (NFAC) Delhi / Ld. Commissioner of Income Tax (Appeals) [in short, Ld. Commissioner] under section 250 of the Income-tax Act, 1961 (in short, the Act) for the A.Y. 2011-12.

**2.** In the instant case, the Assessee had shown its total income of Rs.5,14,600/- by filing its return of income on 28/11/2011. Subsequently, on the information received from the ITO-23(2)(3), Mumbai vide letter dated 15/09/2018 to the effect that during the financial year 2010-11, the Assessee has received Rs. 53,50,000/- along with flat in a newly developed building admeasuring 1,070.00 sq.ft. in lieu of his old flat admeasuring 660.59 sq.ft. from M/s Kalpataru Properties Ltd. Consequently, after recording the reasons for reopening and taking necessary approvals, notice dated 23/03/2018 under section 148 of the Act was issued to the Assessee; the Assessee, in response to the said notice informed that the return of income filed on 28/11/2011 may be treated as the return filed in response to notice under section 148 whereby the Assessee had shown total income of Rs.5,14,600/-. Subsequently, notice dated 25/10/2018 under section 142(1) of the Act was also issued to the Assessee in response to which, the Assessee filed its reply dated 09/11/2018 and mainly claimed that corpus fund could not be treated as revenue receipt. Though such claim was considered by the Assessing Officer, however, the Assessing Officer by holding that the Assessee being a member of the society had received Rs.53,50,000/- from the developer i.e. M/s Kalpataru Properties, treated the receipt of R.53,50,000/- as revenue receipt and consequently, added the same in the income of the Assessee.

**3.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner by filing first appeal, however, inspite of sending notices for the dates of hearing on 13/01/2021, 20/04/2023 and 26/05/2023 neither appeared nor furnished any reply/document and, therefore, in the constrained circumstances, the Ld. Commissioner by holding "that the Assessee is not aggrieved by the assessment order and is not interested in prosecuting the same, therefore, he is left with no option but to dismiss the appeal", consequently, dismissed the appeal of the Assessee.

**4.** Against the dismissal of the appeal, the Assessee is in appeal before us. Though the Assessee has sought adjournment; however, we, by realizing that the Ld. Commissioner in the absence of any reply / documents, which the Assessee failed to file, decided the appeal in limine but not on merit; hence, we, for the proper adjudication and just decision of the case, are inclined to remand the instant case to the file of the Ld. Commissioner but subject to deposit of Rs.2,000/- in the Prime Minister's National Relief Fund (PMNRF) within 30 days on receipt of this order. The Assessee is also directed to appear if necessitates, and to file the relevant documents before the Ld. Commissioner which would be essential for proper adjudication of the case. The case is remanded accordingly.

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

**Order pronounced in the open Court on 23/11/2023.**

**Sd/-**

**sd/-**

<b>(GAGAN GOYAL)</b>	<b>(NARENDER KUMAR CHOUDHRY)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Pavanoan

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private  
Secretary

**ITAT, Mumbai**