

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.3304/M/2024
Assessment Year: 2010-11**

| | | |
|---|-----|---|
| Mr. Muhammad Shakeel Tanwar 901/ A-Wing G N Tower, Chunawala Compound, Opp Andheri Subway, Andheri West, Mumbai - 400058 PAN: AAAPT9816B | Vs. | Income Tax Officer 41(4)(1) Erstwhile ITO 24(1)(1), Room No. 623, Kautalya Bhavan, Bandra Kurla Complex, Bandra (E) Mumbai - 400051 |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Ms. Angel More, (Virtually appeared)
Revenue by : Shri Sunny Kachhwaha, Sr D.R

Date of Hearing : 08.10.2024
Date of Pronouncement : 23.10.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 30.04.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ 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. 2010-11.

2. In the instant case, the Assessing Officer (AO) vide assessment order dated 28.03.2013 u/s 143(3) of the Act has disallowed the claim of exemption of Rs.49,16,630/- as claimed u/s 54F of the Act and added the same as deemed capital gains in the income of the Assessee.

3. The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, who vide impugned order affirmed the aforesaid addition and dismissed the appeal by holding that the Assessee has not responded to the multiple opportunities being granted by way of issue of hearing notices and from the non-responding conduct of the Assessee, it may be concluded that he is not interested in completing the appeal proceeding. Considering the records and merits of the case he is left with no option but to dismiss the appeal.

4. We have given thoughtful considerations to the peculiar facts and circumstances of the case. From the impugned order, it nowhere appears that on which dates the Ld. Commissioner has issued any notices for the dates of hearing to the Assessee. Even otherwise the Ld. Commissioner decided the appeal of the Assessee in limine but not on merits. Hence, for the just decision of the case and for substantial justice, we are inclined to remand the instant case to the file of the Ld. Commissioner for decision on merits, suffice to say by affording reasonable opportunity of bearing heard to the Assessee. The Assessee is also directed to comply with the notices and to file the relevant details/documents as would be required by the Ld. Commissioner for proper and just decision of the case. In case of default, the Assessee shall not be entitled for any leniency.

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

Order pronounced in the open court on 23.10.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.