

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

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

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.531/RPR/2024

निर्धारण वर्ष / Assessment Year : 2011-12

Vijaykant Khedulkar
Q. No.3, Ananthalaya Colony,
Handi Chowk, Raigarh (C.G.)-496 001
PAN : BBUPK5167Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1, Raigarh (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Yogesh Sethia, CA
Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 06.01.2025

घोषणा की तारीख / Date of Pronouncement : 08.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 28.08.2024, which in turn arises from the order passed by the A.O under Sec. 144 r.w.s.147 of the Income-tax Act, 1961 (in short 'the Act') dated 14.12.2018 for the assessment year 2011-12. The assessee has assailed the impugned order on the following grounds of appeal:

“1. In the facts and circumstances of the case and in law, the ld., Commissioner of Income-tax (Appeals), NFAC has erred in deciding the appeal ex-parte without providing proper opportunity and without following the principle's of natural justice.

2. In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals), NFAC has erred in deciding the appeal ex-parte without determining grounds of appeal as .required u/s.250(6) of the Income-tax Act, 1961 which is against the principles of law decided in the case of Commissioner of Income-tax (Central) Nagpur Vs. Premkumar Aijundas Luthra MUT) [2016] 69 taxmann.com 407 (Bombay).

3. In the facts and circumstances of the case and in law, initiation of re-assessment proceedings is illegal and without jurisdiction being initiated without fulfilling all the requisite conditions specified in section 147 r.w.s. 148, 149, 151 of the Act.

4. In the facts and circumstances of the case and in law, learned Commissioner of Income Tax (Appeals), NFAC has erred in upholding addition of Rs.11,30,000/- treating it as unexplained money.

5. The impugned order is bad in law and on facts.

6. The appellant reserves the right to add, alter, omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.”

2. Shri Yogesh Sethia, Ld. Authorized Representative (for short 'AR') for the assessee, at the threshold of hearing of the appeal, submitted that the present appeal involves a delay of 50 days. Elaborating on the reasons leading to the delay, the Ld. AR submitted that though the assessee in Form 35 had for communication of all notices from the office of the CIT(A) provided his email id i.e. vijayantkhedulkar@gmail.com but all the notices as well as the order of the CIT(Appeals) was sent to email id of assessee's previous counsel, Shri Sourabh Goel, Chartered Accountant i.e. skgrgh16@gmail.com. The Ld. AR further submitted that as the order passed by the CIT(Appeals), NFAC dated 28.08.2024 was sent/dropped in skgrgh16@gmail.com i.e. the email id of his previous counsel, therefore, the assessee had remained unaware about the disposal of his appeal by the first appellate authority, which, thus had resulted to the impugned delay. The Ld. AR in support of his aforesaid contention had filed an 'affidavit', dated 01.01.2025. For the sake of clarity, the "affidavit" dated 01.01.2025 is culled out as under:

Name of the Appellant	Vijayant Khedulkar
PAN No.	BBUPK5167Q
Assessment year	2011-12
Date	/01/2025
ITA No.	531/RPR/2024

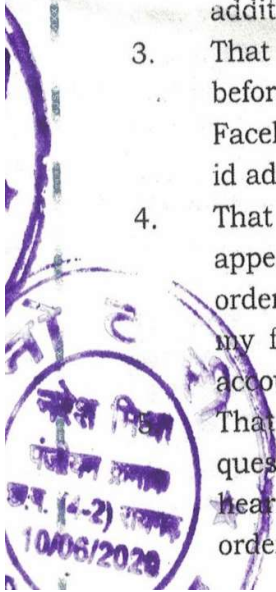
AFFIDAVIT

I, Vijayant Khedulkar S/o Late Shri M.K. Khedulkar, aged about 45 Years, resident of Q.No.3, Anathalaya Colony, Handi Chowk, Raigarh 496001 Chhattisgarh do hereby state on oath as under:-

1. That I am the appellant in aforementioned appeal and aware of facts of my case and competent to swear the affidavit.
2. That assessment for assessment year 2011-12 was completed on 14/12/2018 u/s.147 r.w.s. 144 of the Income-tax Act, 1961 and total income was assessed at Rs.11,30,000/- after making addition of entire amount of cash deposit of Rs.11,30,000/-.
3. That aggrieved by the assessment order, I have filed appeal before Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi inter-alia declaring e-mail id address for communication *vijayantkhedulkar@gmail.com*.
4. That the Ld. Commissioner of Income Tax (Appeals) decided the appeal *ex-parte* on 28/08/2024 and it appears that the appellate order was sent on e-mail id *skgrgh16@gmail.com* belonging to my former consultant CA Sourabh Goel and uploaded on my account in Income tax portal.

That despite providing my e-mail id against the relevant question stated in Appeal Memo in Form No. 35, neither the hearing notices mentioned in the order u/s.250 of the Act nor order u/s.250 were sent on my e-mail id which is

(श्री)
श्री
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IN 2025



- vijayantkhedulkar@gmail.com*. It appears both the notices as well as order u/s.250 of the Act was sent on e-mail id of my previous counsel *skgrgh16@gmail.com*, hence I could not get any intimation about these developments.
6. That I received telephone from Income Tax Officer, Ward-1, Raigarh in the last week of November, 2024 and it was informed that my appeal has been dismissed and some letter was also sent to me regarding recovery and that is how I came to know about *ex-parte* order passed in my appeal.
 7. Immediately thereafter I am filing the appeal within the shortest time possible.
 8. That as per my humble understanding there is no delay in filing the appeal from the date when I came to know of the passing of appeal order. However, considering date of passing of order u/s.250, there will be delay of 50 days. However, as a matter of abundant precaution, I am filing present application for condonation of delay.
 9. That in view of facts and circumstances, it is humbly submitted that the delay occurred, if any, was for reasons beyond my control and I am filing the present appeal with prayer for condonation of delay considering the peculiar facts and circumstances of the case.
 10. That as per my understanding there are fair chances of substantial relief in further appeal.
 11. That in view of above facts and circumstances it is humbly prayed that the Hon'ble Tribunal may be pleased to condone the delay and admit the appeal for adjudication in the interest of justice.
 12. This affidavit is being sworn with prayer for condonation of delay in filing appeal before Hon'ble Income-tax Appellate Tribunal, Raipur Bench, Raipur.


(Vijayant Khedulkar)
Deponent

It was submitted by the Ld. AR that as the delay had occasioned for no fault on his part but for bonafide reasons, therefore, the same in all fairness be condoned.

3. Smt. Anubhaa Tah Goel, Ld. Sr. Departmental Representative (for short 'DR') submitted that as the delay involved in filing of the present appeal is inordinate, therefore, the same does not merit to be condoned.

4. I have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties as regards the delay involved in filing of the present appeal. Admittedly, it is a matter of fact borne from record that though the assessee had specifically mentioned his email id i.e. vijayantkhedulkar@gmail.com for all correspondence from the office of the CIT(Appeals) but all the notices intimating the fixation of hearing of the appeal as well as the order of the CIT(Appeals) was dropped in the email id of assessee's previous counsel, Shri Sourabh Goel, Chartered Accountant i.e. skgrgh16@gmail.com. I am of the view that as the assessee for no fault on his part had remained unaware about the dismissal of his appeal by the CIT(Appeals)/NFAC, therefore, the impugned delay of 50 days involved in filing of the same merits to be condoned.

5. Succinctly stated, the A.O based on information that though the assessee had made cash deposits of Rs.11,30,000/- in his savings bank account with State Bank of India, Branch : Raigarh, but had not filed his return of income, initiated proceedings u/s. 147 of the Act. Notice u/s. 148 of the Act, dated 26.03.2018 was issued to the assessee.

6. As the assessee despite having been afforded sufficient opportunities had failed to participate in the assessment proceedings, therefore, the A.O was constrained to proceed with and frame the assessment to the best of his judgment u/s. 144 of the Act. As the assessee had failed to come forth with any explanation as regards the source of the cash deposits of Rs.11,30,000/-, therefore, the A.O held the same as the assessee's unexplained income. Accordingly, the A.O vide his order passed u/s. 144 r.w.s. 147 of the Act, dated 14.12.2018 determined the income of the assessee at the same amount.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). As the assessee despite having been afforded five opportunities i.e. on 22.01.2021, 03.11.2022, 19.04.2024, 27.05.2024 and 21.06.2024 had failed to participate in the proceedings before the first appellate authority, therefore, the latter finding no infirmity in the view taken by the A.O upheld his order and dismissed the appeal. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“3. During appeal proceedings this office issued the following notices but the appellant did not respond to any of them:

Sr. No.	DIN	Date of Notice	Remarks
1	BBUPK5167Q Hearing Notice u/s 250 102999827(1) 22012021	22/01/2021	No response
2	BBUPK5167Q Enablement of Communication Window 1046858759(1) 03112022	03/11/2022	No response
3	BBUPK5167Q Hearing Notice us 250 1064232629(1) 19042024	19/04/2024	No response
4	BBUPK5167Q Hearing Notice u/s 250 1065151258(1) 27052024	27/05/2024	No response

5	BBUPK5167Q Hearing Notice u/s 250 1065916960(1) 21062024	21/06/2024	No response
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This appeal is pending since 2019. Till date, the appellant could not submit any explanations/details to substantiate the grounds of appeal. Hence, it is presumed that either the appellant is not getting the notices or is not pursuing the appeal due to some other reasons. In the absence of any response, there is no way to adjudicate this appeal. Madhya Pradesh High Court in the case of Estate of Late Tukojirao Holkar vs. C\NT (223 ITR 480) has held as under: "if the party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of the paper books so as to enable hearing of the reference, the court is not bound to answer the reference." Similarly, Hon'ble Punjab & Haryana High Court in the case of New Diwan Oil Mills vs. CIT(2008) 296 ITR 495) returned the reference unanswered since the assessee remained absent and there was not any assistance from the assessee. Supreme Court in the case of CIT vs. B. Bhattachargee & Another(118 ITR 461 at page 477-478) has held that the appeal does not mean mere filing of the memo of appeal but effectively pursuing the same. However, the Income Tax Act requires the CIT(Appeal) to apply mind and decide on merit all the issues which arise from the impugned order whether or not the same has been pursued by the appellant.

4. The assessing officer held that the assessee had deposited cash of Rs.11,30,000/- in his saving bank account maintained with State Bank of India, Raigarh during the F.Y.2010-11. Since the assessee had failed to explain the source of such cash deposits by furnishing the documentary evidence and valid explanation, his net income was assessed at Rs.11,30,000. The appellant mentioned in form 35 that during the relevant assessment year the Appellant used to derive income from salary from Magma Finance/ Fullerton Finance company and his income from salary

was much below the maximum amount not chargeable to tax. Therefore, he was not required to file return u/s 139(1) of the Act and was accordingly not filed. The Appellant could not make compliances to the notices as same were given to an advocate who kept mum without informing the Appellant as he was stated to be engaged in practicing civil court. Though the Appellant maintained saving A/c No. 00000053034476771 with State Bank of India, Raigarh, there were no transactions made in the said account therefore the addition made is without any basis and arbitrary, hence the appeal. The assessee denied outright that there was any cash deposit in his bank account. Unfortunately, the assessee did not upload his bank statement to substantiate his claim. The appellant could not submit supporting evidences to substantiate his claim during assessment and appeal proceedings. Without necessary inputs, this appeal cannot be decided on merits. As a result, the appeal is dismissed.”

8. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before the Tribunal.

9. I have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

10. Shri Yogesh Sethia, Ld. AR for the assessee submitted that the assessee had been visited with an ex-parte order without having been put to notice about the fixation of hearing of the appeal. Elaborating on his contention, the Ld. AR submitted that the assessee in the memorandum of appeal i.e. in “Form 35” had categorically provided his email id for receiving notices/communications from the office of the CIT(Appeals) i.e. vijayantkhedulkar@gmail.com but no notice was ever dropped in the

said email account. The Ld. AR to fortify his aforesaid contention had placed on record an “affidavit”, dated 01.01.2025 of the assessee. The Ld. AR to dispel any doubt had also placed on record a “screen shot” of the e-filing portal account of the assessee. The Ld. AR submitted that on a bare perusal of the aforesaid “screen shot”, it transpired that except for on 03.11.2022 wherein copy of window enablement was dropped in the email account of the assessee i.e. viyantkhedulkar@gmail.com, on no other date any notice/correspondence intimating the fixation of the hearing of appeal was ever dropped in the said email account. Elaborating further, the Ld. AR submitted that all the notices intimating the fixation of hearing of the appeal had been dropped in the email account i.e. skgrgh16@gmail.com which was neither provided by the assessee either in the memorandum of appeal/Form 35 or thereafter to the office of the CIT(Appeals). The Ld. AR submitted that as the assessee had remained divested of an opportunity to put up his case before the CIT(Appeals), therefore, the latter’s order cannot be sustained and is liable to be set-aside on the said count itself.

11. Smt. Anubhaa Tah Goel, Ld. Sr. DR submitted that as the assessee was validly put to notice about the fixation of hearing of the appeal on five occasions, therefore, he could not now claim that the appeal had been disposed off without affording a sufficient opportunity of being heard to him. The Ld. DR further submitted that as the appellate proceedings in the

present case were spread over a period of more than three years i.e. 23.01.2022 to 21.06.2024, therefore, it was incomprehensible as to how the assessee would have remained unaware about the said ongoing proceedings.

12. Admittedly, it is a matter of fact discernible from the order of CIT(Appeals) that as the assessee despite having been afforded five opportunities had failed to participate in the proceedings before the first appellate authority, therefore, the CIT(Appeals) was constrained to dispose of the appeal vide an ex-parte order. At this stage, I may herein observe that as has been brought to my notice by the Ld. AR the CIT(Appeals) had also issued a notice dated 05.08.2024 intimating the fixation of hearing of the appeal which, however, does not find any mention in the body of the appellate order, Page 1 of APB/compilation.

13. Be that as it may, I find that despite the fact that the assessee had specifically mentioned in the memorandum of appeal i.e. in "Form 35" that all the notices/communications from the office of the CIT(Appeals) be dropped in the email account i.e. vijayantkhedulkar@gmail.com, but strangely neither of the notices intimating the fixation of hearing of the appeal (except for, communication of window enablement dated 03.11.2022) was dropped in the email account so provided by the assessee. The aforesaid factual position is evidenced from a perusal of the

“screen shots” of the e-filing portal as had been placed on record by the Ld. AR.

14. Considering the aforesaid factual position, I am of a firm conviction that the assessee had remained divested of an opportunity to put up his case and assail the addition made by the A.O before the CIT(Appeals). As the assessee had not been validly put to notice about the fixation of hearing of the appeal by dropping the notices on either of the five occasions in the given email account, therefore, I am of the view that the disposal of the appeal without affording any opportunity of being heard to him clearly militates against the principle of natural justice i.e. *audi alteram partem*. I am of the view that the order passed by the CIT(Appeals) at the back of the assessee without validly putting to notice about the fixation of hearing of the appeal cannot be sustained. Accordingly, in all fairness, I restore the matter to the file of the CIT(Appeals) with a direction to re-adjudicate the same afresh. Needless to say, the CIT(Appeals) shall in the course of the set-aside proceedings afford a reasonable opportunity of being heard to the assessee who shall remain at a liberty to substantiate his claim on the basis of fresh documentary evidence, if any.

15. In the result, appeal of the assessee is allowed for statistical purposes in terms of the aforesaid observations.

Order pronounced in open court on 08th day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 08th January, 2025.

***SB, Sr. PS.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.