

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

**माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री जगदीश, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER
AND HON'BLE SHRI JAGADISH, ACCOUNTANT MEMBER**

**आयकरअपील सं./ ITA Nos.2860, 2861, 2862 and 2863/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2013-14, 2014-15, 2015-16
and 2016-2017)**

Shanmugam Arivazhagan,
50A, 8th Street,
Vembuliamman Koil Street,
Selaiyur, Kanchipuram 600 073.

Vs. The Income Tax Officer,
Non Corp ward 22(6)
Tambaram.
Chennai.

[PAN: AACPA 1677R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri D. Anand, Advocate
: Ms. Pushpa Hemachand, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 22.01.2025

घोषणा की तारीख /Date of Pronouncement

: 23.01.2025

आदेश / ORDER

MANU KUMAR GIRI (Judicial Member)

These four appeals filed by the assessee are directed against the orders of the Ld. Commissioner of Income Tax (Appeals)(NFAC) Delhi [CIT(A)] even date 28.10.2024 for Assessment Years 2013-14, 2014-15, 2015-16 and 2016-17.

2. Brief facts of the case are that the assessee is a senior citizen and retired govt. employee who is earning mere pension income and small salary income. The assessee is incapable of understanding and using the income tax portal to submit

his reply, if any. The Appellant did not file the return of Income for the relevant assessment year. The case of the Appellant was reopened and notices were issued u/s 148 of the Act. In response of the same, the Appellant filed his return of Income on 03-02-2022 declaring a total income of Rs. 17,07,265/-, However, the Appellant did not pay the tax on the date of filing the return. Subsequently, the case was picked by the National Faceless Assessment Centre and the assessment completed u/s 147 r.w.s.144 r.w.s.144B of the Act. Thereafter, penalty proceedings u/s 271(1)(b) has been initiated by the AO for non-compliance of notices dated 13.11.2021 and 17.02.2022 u/s 142(1) of the Act for Assessment Years 2013-14, 2014-15, 2015-16 and 2016-17. Subsequently penalty orders are passed levying penalty u/s 271(1)(b) of the Act. (Covid-19 pandemic period was between 15.03.2020 to 28.02.2022).

3. Against the penalty orders u/s 271(1)(b), the assessee filed appeals before the CIT(A) who dismissed the appeals invoking section 249(3) of the Act on account of the delay of 15 days in filing appeals. At the outset, the Id. counsel for the assessee pointed out that no opportunity was given by the Id.CIT(A) to address the issue of delay in filing appeal or rectify such defect in the Form 35, if any. Per contra, the Id. DR, Ms. Pushpa Hemachand, JCIT strongly supported the orders of the Id.CIT(A) and read out paras No.6.1 & 6.2 of the impugned order. The Id.DR further pleaded for the dismissal of the appeals.

4. We have heard the both parties and perused the orders of the lower authorities and find that the Id.CIT(A) nowhere has given specific notice or opportunity to the assessee explain the reasons for delay in filing appeals.

Section 249(3) of the Act reads as under:

*'The Joint Commissioner (Appeals) or the Commissioner (Appeals)] may, admit an appeal after the expiration of the said period if he is satisfied that the appellant had **sufficient cause** for not presenting it within that period'.*

Section 249 speaks of Form of appeal and limitation. We gather from section 249 that once an order is passed by the Assessing Officer, assessee may decide to file an appeal before the Commissioner of Income-tax (Appeals). The procedure for filing an appeal by the assessee before the CIT(A) is laid out in Section 249 of Act and Rules 45 and 46 of the Income Tax Rules, 1962. The procedure, in short, is that the appeal is to be filed in Form No. 35 within 30 days of the receipt of the order being contested. However, if the appellant fails to file appeal within the prescribed 30 days, Section 249(3) empowers the CIT (A) to admit a belated appeal if there was '**sufficient cause**' for the delay.

5. On the vital issue of natural justice, the full bench of the Hon'ble Delhi High Court in the case of M/S J.T. (India) Exports And Another vs Union Of India And Another [2003] 262 ITR 269 (DELHI)(FB) opined as under:

'4. The expression 'natural justice and legal justice' do not present a water-tight classification. it is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from

unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law.

5. The adherence to principle of natural justice as recognised by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties. These principles are well-settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that none should be condemned unheard. Notice is the first lib of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed against the person in absentia becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.

6. Principles of natural justice are those rules which have been [laid down by](#) the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial quasi-judicial authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

7. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in Ray v. Local Government Board (1914) 1KB 160 at p.199:83 LKKB 86) described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Sanckman (1943 AC 627: (1948) 2All ER 337), Lord Wright observed that it was not desirable to attempt 'to force it into any procustean bed' and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give a full and fair opportunity' to every party of being heard.

8. Lord Wright referred to the leading cases on the subject. The most important of them is the [Board of Education v. Rice](#) (1911 AC 179: 80 LKKB 796), where Lord Loreburn, L.C. observed as follows:

"Comparatively recent statutes have extended, if they have originated, the practice of imposing upon departments or offices of State the duty of deciding or determining questions of various kinds. it will, I suppose usually be of an administrative kind, but sometimes, it will involve matter

of law as well as matter of act, or even depend upon matter of law alone. In such cases, the Board of Education will have to ascertain the law and also to ascertain the facts. I need not and that in doing either they must act in good faith and fairly listen to both sides, for that is a duty lying upon everyone who decides anything. But I do not think they are bound to treat such a question as though it were a trial... The Board is in the nature of the arbitral tribunal, and a Court of law has no jurisdiction to hear appeals from the determination either upon law or upon fact. But if the Court is satisfied either that the Board have not acted judicially in the way I have described, or have not determined the question which they are required by the Act to determine, then there is a remedy by mandamus and certiorari."

9. Lord Wright also emphasized from the same decision the observation of the Lord Chancellor that "the Board can obtain information in any way they think best always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view". To the same effect are the observations of Earl of Solbourne, LO in *Spackman v. Plustead District Board of Works* (1985 (10) AC 229:54 LJMC 81), where the learned and noble Lord Chancellor observed as follows:

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, law will imply no more than that the substantial requirements of justice shall not be violated. he is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. he must give notice when he will proceed with the matter and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There would be no decision within the meaning of the statute if there were anything of that sort done contrary to the essence of justice."

10. Lord Selbourne also added that the essence of justice consisted in requiring that all parties should have an opportunity of submitting to the person by whose decision they are to be bound, such considerations as in their judgment ought to be brought before him. All these cases lay down the very important rule of natural justice contained in the oft-quoted phrase 'justice should not only be done, but should be seen to be done'.

11. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the

statue under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses in fraction of not merely property or personal rights but of civil liberties, material deprivations, and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

12. *Natural justice has been variously defined by different Judges. A few instances will suffice. In Drew v. Drew and Lebura (1855(2) Macg.1.8, Lord Cranworth defined it as 'universal justice'. In James Dunber Smith v. her majesty the Queen (1877-78(3) App. Case 614, 623 JC) Sir Robert P. Collier, speaking for the judicial committee of Privy Council, used the phrase 'the requirements of substantial justice', while in Arthur John Specman v. Plustead District Board of Works (1884-85(10) App. Case 229, 240), Earl of Salbourne, S.C. Preferred the phrase 'the substantial requirement of justice'. In Vionet v. Barrett (1885(55) LJRD 39, 41) Lord Esher, MR defined natural justice as 'the natural sense of what is right and wrong'. While, however, deciding Hookings v. Smethwick Local Board of Health (1890(24) QBD 712), Lord Fasher, M.R. instead of using the definition given earlier by him in Vionet v. Barret (supra) chose to define natural justice as 'fundamental justice'. In Ridge v. Baldwin (1963(1) WB 569, 578) Harman LJ, in the Court of Appeal described natural justice as 'fairplay in action'. This was noted in [Maneka Gandhi v. Union of India](#). In re R.N. (An Infaot) (1967(2) B617, 530), Lord Parker, CJ. preferred to describe natural justice as 'a duty to act fairly'. In Fairmount Investment Ltd. v. Secretary to State for Environment (1976 WLR 1255) Lord Russel of Willowdown somewhat picturesquely described natural justice as 'a fair crack of the whip' while Geoffrey Lane, LJ. in Regina v. Secretary of State for Home Affairs Ex parte Hosenball (1977(1) WLR 766) preferred the homely phrase 'common fairness'.*

13. *How then have the principles of natural justice been interpreted in the Courts and within what limits are they to be confined? Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair-play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is nemo judex in causa sua' or nemo debet esse judex in propria causa sua' as stated in (1605) 12 Co. Rep. 114, that is, 'no man shall be a judge in his own cause'. Coke used the form 'aliquis non debet esse judex in propria causa quia non potest esse judex at pars' (Co. Litt. 1418), that is, 'no man ought to be a judge in his own cause, because he cannot act as Judge and at the same time be a party;. The form 'nemo potest esse simul actor*

et judex', that is, 'no one can be at once suitor and judge' is also at times used. The second rule and that is the rule with which we are concerned in this case is 'audi alteram partem', that is, 'hear the other side'. At times and particularly in continental countries, the form 'audietur at altera pars' is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely 'qui aliquid statuerit parte inaudita alteram actquam licet dixerit, haud acquum facerit' that is, 'he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right' (See Bosewell' case: (1605) 6 Co.Rep. 48-b, 52-a) or in other words, as it is now expressed, 'justice should no only be done but should manifestly be seen to be done'.

14. Even if grant of an opportunity is not specifically provided for it has to be read into the unoccupied interstices and unless specifically excluded principles of natural justice have to be applied. Even if a statute is silent and there are no positive words in the Act or Rules spelling out the need to hear the party whose rights and interests are likely to be affected, the requirement to follow the fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise. Reference is accordingly disposed of.

6. Now, we have to see whether the principles of natural justice has been observed in this case. We inferred from the above referred guiding judgments of the Hon'ble Courts, section 249(3) of the Act pre-supposes that the Id.CIT(A) is duty bound to see the 'sufficient cause' for not presenting the appeal within the period prescribed. Therefore, in our considered view the word 'sufficient cause' gives indication that the Id.CIT(A) ought to have given an opportunity to the assessee to explain the reasons for the delay in filing appeals. Even if grant of an opportunity is not specifically provided for it has to be read into the unoccupied interstices and unless specifically excluded principles of natural justice have to be applied. Even if a statute is silent and there are no positive words in the Act or Rules spelling out the need to hear the party whose rights and interests are likely to

be affected, the requirement to follow the fair procedure before taking a decision must be read into the statute, unless the statute provides otherwise.

7. Therefore, in the light of settled principles of the law, we direct the Id.CIT(A) to condone the delay 15 days in filing appeal and hear the appeals on merit after providing an adequate opportunity of hearing to the assessee.

8. In the result, the appeal filed by the assessee in ITA Nos. 2860, 2861, 2862 and 2863/Chny/2024 are allowed for the statistical purposes.

Order pronounced in the open court on 23rd day of January, 2025 at Chennai.

Sd/-
(जगदीश)
(JAGADISH)

लेखा सदस्य / ACCOUNTANT MEMBER
चेन्नई Chennai:

दिनांक Dated :23-01-2025

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

Sd/-
(मनु कुमार गिरि)
(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER