

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

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

**श्री पार्थ सारथी चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.78/RPR/2025

निर्धारण वर्ष / Assessment Year : 2017-18

Shri Vinod Kumar Agrawal
Post Box No.21 Sardar Road,
Ambikapur Surguja-497 001 (C.G.)
PAN: ACHPA7066M

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : None (petition filed)
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 10.03.2025
घोषणा की तारीख / Date of Pronouncement : 10.03.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

This appeal filed by the assessee is directed against the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 13.12.2024 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee and an adjournment application has been filed. On a perusal of the order of the CIT(Appeals)/NFAC, it is evident from Para 4.1 to 4.4 onwards that the first appellate authority had disposed off the appeal vide an ex-parte order. There has been sufficient opportunities provided to the assessee, however, no compliance was made by him. For the sake of completeness, the Para 4.1 to 4.4 of the CIT(Appeals)'s order is culled out as follows:

“4. Determination:-

I have considered the facts of the case, the submission of the assessee and the order of the A.O.

4.1. I have carefully perused the assessment order and the grounds of appeal submitted by the appellant. During the appellate proceedings, the following opportunities of being heard were granted to the appellant vide notices u/s. 250 of the Act issued through the ITBA portal which are summarized below:

Sr. No.	Date of notice	Date of compliance	Remark
1.	18.11.2024	25.11.2024	Non compliance
2.	26.11.2024	03.12.2024	Non compliance

3.	04.12.2024	11.12.2024	Non compliance
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The above table clearly demonstrates that the appellant has been allowed several opportunities to explain the contentions of this appeal but to no avail as the appellant has remained not-forthcoming and has not responded on the ITBA portal.

4.2 The aforesaid mentioned circumstances show that the appellant is not interested in pursuing its appeal and has no documentary evidence in support of the grounds of appeal filed by the appellant. The maxim 'vigilantibus non-dormientibusjurasubvenunt' i.e. the law assists those who are vigilant and not those who sleep over their right, is applicable in this case.

4.3 The Hon'ble ITAT in ITA No. 1025-1027/CHD/2005 for the AY 2002-03 in the case of M/s Chhabra Land & Housing Ltd, after following the decision of Hon'ble Supreme Court in the case of B.N. Bhattacharjee & other 118 ITR 461 [SC] held that the appeal does not mean merely filing of the appeal but effectively pursuing the same.

4.4 Considering the above facts and the records available, it is established that the appellant was provided many opportunities of being heard. However, the appellant has remained noncompliant. No material fact has been brought on record in support of the grounds of appeal or to rebut the findings of the Assessing Officer (AO). The appellant in spite of being given ample opportunities during appellate proceedings, failed to offer any explanation/supporting documents in respect of grounds of appeal raised by the appellant. I have carefully considered the assessment order and since the appellant has not furnished any documentary evidence in support of the grounds of appeal filed by the appellant, I do not find any reason to interfere with the order of the AO. Hence, the Assessment Order of the AO stands confirmed. Accordingly, all the grounds of appeal taken by the appellant are dismissed.

5. In result, the appeal is dismissed.”

3. At the very outset, I find that there is an ex-parte order passed by the Ld. CIT(Appeals)/NFAC wherein rights and liabilities of the assessee were not adjudicated substantially by the Ld.CIT(Appeals)/NFAC. Therefore, one final opportunity should be provided to the assessee to represent his case on merits before the Ld. CIT(Appeals)/NFAC in the interest of natural justice.

4. The Ld. Sr. DR did not raise any objection if the matter is remanded back to the file to the Ld. CIT(Appeals)/NFAC.

5. On careful perusal of the case record, I take cognizance of the fact that the Ld. CIT(Appeals)/NFAC has passed an ex-parte order wherein rights and liabilities of the assessee were not adjudicated upon. Therefore, I am of the considered view that one final opportunity should be provided to the assessee so that he can represent his case on merits before the Ld. CIT(Appeals)/NFAC. It is also evident from Para 4.1 to 4.4 of the Ld. CIT(Appeals)'s order that several opportunities were provided to the assessee however, due to non-appearance, the Ld. CIT(Appeals)/NFAC dismissed the appeal of the assessee by passing an ex-parte order. If one final opportunity is provided to the tax-payer assessee, the position of the revenue shall not be jeopardized. There may be a possibility that the assessee was prevented from justifiable reasons for non-compliance before the first appellate authority and there emerges doubt in the given facts

and such benefit of doubt should be provided to the taxpayer assessee within the ambit of law and facts. That the Income Tax Legislation is welfare legislation and not penal legislation, the rights and interest of the tax payer assessee should be safeguarded. From a perusal of the order of the Ld. CIT(Appeals)/NFAC, it is correct that several opportunities were provided to the assessee, however, whether there was deliberate non-compliance by the assessee or not, nothing has been brought on record.

6. In view thereof, in the principles of natural justice, the matter ought to have been re-adjudicated at the level of the Ld.CIT(Appeals)/NFAC substantially on merits. Due to these reasons, already the Bench has taken a view and remanded the matter to the Ld.CIT(Appeals)/NFAC in similar situation and, therefore, no purpose shall be served in keeping the matter pending before the Tribunal and thus, the adjournment petition is rejected. Accordingly, I set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to his file for de-novo adjudication while complying with the principles of natural justice. At the same time, I hereby direct the assessee that this being the final opportunity, he should represent before the Ld. CIT(Appeals)/NFAC on the dates of hearing providing relevant documents/evidences to represent his case on merits before the said authority.

7. As per the above terms the grounds of appeal stands allowed for statistical purposes.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 10th day of March, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 10th March, 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, "एक-सदस्य" बेंच,
रायपुर / DR, ITAT, "SMC" Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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