**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.36/RPR/2024**

**निर्धारण वर्ष / Assessment Year : 2014-15**

Ravikumar Kumhar
Ward No.02, Darri Road,
Naila, Jangir-Champa-495668
PAN: JFYPK3987N

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,
Ward-2(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 18.03.2025
घोषणा की तारीख / Date of Pronouncement : 21.03.2025

## आदेश / ORDER

## PER PARTHA SARATHI CHAUDHURY, JM

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 08.12.2023 for the assessment year 2014-15 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assesse though hearing notices have been sent through registered email id as brought on record before the Tribunal. This matter has been going on since long and as per the order sheet entries, the matter was heard and again released for clarification and again posted for hearing. Even before this bench, this is the second time, the matter has come up for hearing. Still there is no appearance from the assessee's side. The submissions of the Ld. Sr. DR are recorded, the documents and material are perused and the matter is taken as heard.

3. That as is evident from Para 4 and 5 of the Ld. CIT(Appeals)/NFAC order that since there was no compliance from the assessee, therefore, the Ld. CIT(Appeals)/NFAC dismissed the appeal vide an ex-parte order. For the sake of completeness, Para 4 and 5 of the Ld. CIT(Appeals)/NFAC are culled out as follows:-

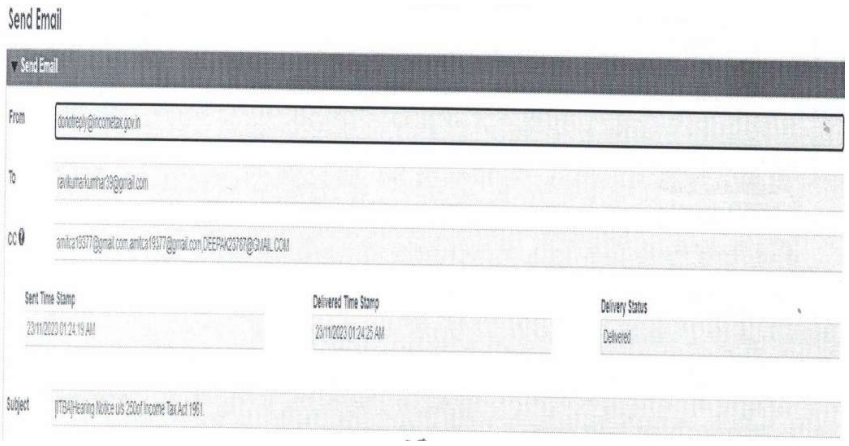
"**4. Appellate findings**:

I have carefully considered the facts of the case, assessment order dated 31.03.2022 passed under section 147 of Income Tax Act, 1961 by the A.O for the A.Y.2014-15. The appellant has remained non-complaint in the present appellate proceedings.

**4.1** In order to give proper opportunity to the appellant to present its case and to defend the grounds of appeal taken by the appellant, the case was posted for hearing on various dates, the details of which are as under:

| Date of compliance | Status |
|---|---|
| 29.09.2023 | No compliance |
| 13.10.2023 | No compliance |
| 20.11.2023 | No compliance |
| 29.11.2023 | No compliance |

5. A final opportunity was given to the appellant to file/furnish reply by 29.11.2023. The said notice was served to the appellant on all available email ids with the help of Carbon Copy (CC) option of Send Mail Window pane in the Generate Hearing Notice of the ITBA, screenshot substantiating the fact of service of notice is given below:




It may also be noted that the appellant has given the same mail idson which notices were served, as his primary mail id

as per the e-filing Profile as well as the primary mail id as per the latest return filed and as per PAN database. The same mail id has been given on Form 35 as well while filing the present appeal and the appellant has provided consent to send notices/communication on the same mail id. Therefore, there is no excuse for the appellant, for not responding, once notices were served on each of the said mail ids, not once but multiple times.

**Email Available In System**

| | Source | Email |
|---|---|---|
| 1 | Primary Email Id as per e-filing profile of Assessee | ravikumarkumhar39@gmail.com |
| 2 | Primary Email Id as per Latest Return filed | amitca19377@gmail.com |
| 3 | Email Id as per PAN database | DEEPAK23787@GMAIL.COM |

**FORM NO. 35 [See rule 45]**

**Appeal to the Commissioner of Income-tax (Appeals)**

e-Filing Anywhere Anytime
Income Tax Department, Government of India

| Personal Information : | |
|---|---|
| Name of Entity | RAVIKUMAR KUMHAR |
| PAN | JFYPK3987N |
| TAN | - |
| Address | WARD NO 02, DARRI PARA NAILABanari, Banari B.O, JANJGIR-CHAMPA, Chhattisgarh, INDIA, 495668 |
| Mobile No. | 8982532665 |
| STD code | |
| Landline No. | |
| Email Address | ravikumarkumhar39@gmail.com |
| Whether notices/communication may be sent on email? | Yes |

However, despite service of notice on appellant's primary mail id as per the e-filing Profile as well as the primary mail id as per the latest return filed and as per PAN database and the mail id present on Form 35, the appellant continues to be non responsive and did not even bother to request for an adjournment.

As can be seen from the above details, the appellant has been provided reasonable opportunities, but appellant has chosen not to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO's and in support of the grounds taken in appeal.

5.1 Section 114(g) of Indian Evidence Act, 1872 lays a presumption that evidence which could be and is not produced when, if produced, be unfavourable to the person who withholds it. In the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. If the assessee fails to disprove or rebut with cogent evidence such facts and findings, no interference is required. In this case, the assessee did not choose to avail several opportunities at the appellate proceedings, which entails conclusion that he had no, evidence or say or explanation against the order of the AO. Ex- parte assessment/other order have its own inherent limitations as to its scope and extent. Hence, the assessee should not be allowed to be enriched or benefited unjustly for act of his own wrongs i.e. non-compliance or non-attendance of hearings. The Hon'ble High Court of Delhi, had delivered a decision in the case of CIT v. Gold Leaf Capital Corporation Ltd. on 02.09.2011 (ITA No.798 of 2009) that a negligent assessee should not be given many opportunities just because that quantum of amount involved is high. Necessary course of action is to draw adverse inference; otherwise, it would amount to give premium to the assessee for his negligence. When the assessee is non-cooperative, it can naturally be safely concluded that the assessee did not want to adduce evidence, as it would expose falsity and non-genuineness. In this regards, the decision of the Hon'ble High Court of Mumbai in the case of M/s. Chemppol v/s Union of India Central Excise Appeal No.62 of 2009, clearly states that every court judicial body or authority, which has a duty to decide a dispute between two parties, inherently possesses the power to dismiss the case in default. For case of reference, relevant extract of the judicial pronouncement rendered by the Hon'ble High court of Mumbai in the said case is reproduced below:

(i). While not inclined to depart from the view taken by the two High Courts, reference must be made to Sunderlal vs. Nandramdas AIR 1958 MP 260 where it was observed that though the Act does not given any power of dismissal, it is

axiomatic that no court or tribunal is supposed to continue a proceedings before it when the party who has moved it has not appeared nor cared to remain present. The dismissal, therefore, is an inherent power, which every tribunal possesses. This was approved in Dr. P Nalla Thampy vs. Shankar 1984 (Supp) SCC 63). In new India Assurance vs. Srinivasan (2000) 3 SCC 242, it was held that every court or judicial body or authority, which has a duty to decide a case between two parties, inherently possesses the power to dismiss a case in default. Where a case is called up for hearing and the party is not present, the court or the judicial or quasi-judicial body is under no obligation to keep the matter pending before it or to pursue the matter in behalf of the complainant who had instituted the proceedings. That is not the function of the court or for that matter of a judicial or quasi-judicial body. In the absence of the complainant, therefore the court will be within the jurisdiction to dismiss the compliant for non-prosecution.

(ii). Accordingly, though the Rule conferring power on the Tribunal has been struck down, one cannot altogether lose sight of the rule that every court or tribunal has an inherent power to dismiss a proceeding for non-prosecution when the petition/appellant before it does not wish to prosecute the proceedings. In such a situation, unless the statute clearly requires the court or tribunal to hear the appeal/proceeding and decide it on merits it can dismiss the appeal/proceedings for non prosecution. The power must be exercised judiciously and taking into consideration all the facts and circumstances of the case."

9.2 The Hon'ble High Court of M.P. in the case of Tukojirao Holkar vs. CWT (223 ITR 480) had held that "if the party, at whose instance the reference is made at, fails to appear hearing... The court is not bound to answer the reference." Similarly their lordship, in case of CIT vs. B.N.Bhattacharya (118 ITR 461) (relevant pages 477 & 478) had held that appeal does not mean merely filing of appeal but effectively pursuing it". Recently Hon'ble ITAT Delhi (ITR No.2006/Del2011 dated 19.11.2011) in the case of Whirlpool of India Ltd. DCIT had dismissed appeal for not attending hearing inferring that the assessee is not interested in prosecuting of appeal. Therefore, in another decision in the case of Chadha Finlease Ltd. vs. ACIT(ITA No. 3013/Del/2011 date of order 20/12/2011) the Hon'ble ITAT had dismissed appeal for non-attending hearing inferring that the assessee is not interested in pursuing the appeal. In

this regard, I am also supported by the decision in the case of CIT vs. Multiplan India Pvt. Ltd. (38 ITD) 320(Del).

5.3. It is worth mentioning that the appellant has been habitually non-compliant. The appellant did not file any reply to the numerous notices u/s.142(1) and filed the reply only at the fag end of the assessment proceedings. Even in the present appellate proceedings, despite the service of repeated notices on the mail id given by the appellant himself in Form 35, while filing this appeal and also having confirmed that the notices/communication may be sent on this email, the appellant has remained non-compliant and has not filed even a letter seeking an adjournment.

5.4 Due to the non-compliant attitude of the appellant, the appeal has to be decided on merits and facts available on record. I have carefully perused the grounds of appeal, statement of facts and the assessment order to look for any fact which may be helpful in furthering the cause of the appellant, but could not find any. The A.O had made the addition specifically because the appellant failed to give any satisfactory explanation regarding the source of cash deposit, despite being provided with reasonable opportunity. Even during the present appellate proceedings, the appellant failed to give any submission/evidence whatsoever and chose to remain non-compliant. The facts stated in the Grounds of appeal are very cryptic, vague and general in nature and do not come to rescue of appellant. The appellant has claimed in the grounds of appeal and the statement of facts that he was engaged in cloth trading business but has not provided even a primary or basic evidence about his running any kind of business. This explanation is totally contradictory to the explanation given in the course of recording of statement u/s 131, where he said that he was engaged in labour work and never mentioned about his being a cloth trader. Such volte-face about nature of business carried out by him cannot be accepted or even considered without positive and clear evidence. Thus, the appellant has not discharged the primary onus of explaining his case. The appellant has not produced any material to controvert the finding of A.O. on merits. Further, from the above conduct of the appellant, it is clear that the appellant is not interested in pursuing his appeal. In the event, I have no reason to interfere with the findings of the AO. In view of these facts, I am of the opinion that no interference is called for in the AO's assessment order and therefore, the grounds of appeal are dismissed."

4. On perusal of the Ld. CIT(Appeals)/NFAC order, it is crystal clear that the assessee though had filed appeal but was not vigilant enough to take the matter to a logical end. The same applies even in the appellate forum before this bench. However, in this situation since the tax payer assessee contributes to the socio-economic well-being and development of the nation by paying taxes, the principles of natural justice demands that the rights and liabilities of such tax payer were needs to be protected and benefit of doubt given within the parameter of facts and law. Considering the totality of the facts, the Ld. Sr. DR fairly conceded that one final opportunity may be provided to the tax payer assessee to represent his case on merits before the Ld. CIT(Appeals)/NFAC.

5. I have carefully considered the contents in the documents/material available on record, submissions of the Ld. Sr. DR. As per the aforesaid examination of the entire spectrum of the matter in the interest of natural justice, I deem it fit and proper to provide one final opportunity to the assessee to represent his case on merits before the Ld. CIT(Appeals)/NFAC.

6. At this stage, I herein observe that the ITAT, "Division Bench", Raipur in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur, IT(SS)A Nos. 1 to 6, 8 & 9/RPR/2025, dated 20.03.2025** had dealt with similar issue on the same parameters of ex-

parte order passed by the Ld. CIT(Appeals)/NFAC and remanded the matter back to the file of the Ld. CIT(Appeals)/NFAC observing as follows:

> "7. We have considered the submissions of the parties herein and analyzed the facts and circumstances involved in all the captioned appeals. After careful perusal of the documents on record, we find that the assessee had assailed the legal ground as aforestated, however, the fact of the matter is that on perusal of the respective orders of the Ld. CIT(Appeals) for all the years before us, it is also evident from Para 3 that there has been no compliance by the assessee before the said authority and as such, an ex-parte order was passed for the concerned years in appeal. Admittedly, as per record, sufficient opportunities had been provided to the assesse, however, there was no compliance by the assessee. In effect, rights and liabilities of the parties herein are yet to be adjudicated substantially at the level of the first appellate authority. Though in the impugned orders, discussion has been done as per material available on record by the Ld.CIT(Appeals) but they are only Form 35, statement of facts, grounds of appeal and the assessment order. However, due to non-compliance by the assessee, there are no submissions, evidence and documents submitted for adjudication by the assessee before the Ld. CIT(Appeals). That as per Para 3 of the Ld. CIT(Appeals) order, there has been no compliance on the part of the assessee for submitting detailed explanations regarding the grounds of appeal for the years under consideration which clearly shows that the grounds of appeal raised before the first appellate authority has not been substantiated on merits through corroborative evidence /submissions.
>
> 8. That in such scenario we are of the considered view that the Income tax Act is within the ambit of welfare legislation which are completely different from that of the penal legislation, therefore, benefit of doubt whenever arises, it has to be interpreted in favour of the assessee tax payer within the parameters of law and facts. There may be circumstances beyond control of the assessee because of which, the assessee may not have been able to represent his case on the given dates of hearing before the Ld. CIT(Appeals). Though it is correct that there was no compliance from the side of the assessee, however, nothing is there on record which suggests any deliberate non-compliance or malafide conduct of the assessee. That further, if one final opportunity is provided to the assessee to represent his case before the first appellate

authority, the position of the revenue will also not be jeopardized.

9. Recently, the **Hon'ble High Court of Bombay** in the case of **Vijay Shrinivasrao Kulkarni Vs. Income-tax Appellate Tribunal (2025) 171 taxmann.com 696 (Bom.), dated 04.02.2025** observed that in the case the Assessing Officer had passed an ex-parte order and when the matter went on appeal before the Ld. CIT(Appeals)/NFAC, it had also dismissed the matter ex-parte due to non-compliance by the assessee's authorized representative, when the matter came up before the ITAT, it had failed to address the infirmity regarding the fact that the assessee was not afforded proper opportunity of being heard and the matter was dismissed ex-parte by the Ld. CIT(Appeals)/NFAC which amounted to violation of principles of natural justice, and instead ITAT decided the case on merits, in such circumstances, the Hon'ble High Court of Bombay held that passing of an order on merits by the ITAT even when the impugned order was passed ex-parte amounts to violation of principles of natural justice and accordingly, the said matter was remanded to ITAT for passing a fresh order in accordance with law after hearing the parties. The legal principle as enshrined in the present judgment is crystal clear that the principles of natural justice i.e. the right to be heard is to be provided and accordingly, the matter had to be substantially adjudicated by the appellate authority. Therefore, if the impugned order of the Ld. CIT(Appeals)/NFAC is an ex-parte order, the only recourse in conformity with the aforesaid judicial pronouncement is to remand the matter back to the file of the Ld. CIT(Appeals)/NFAC for fresh adjudication in terms with the principles of natural justice providing one final opportunity to the assessee.

10. In the aforesaid case, the Hon'ble High Court of Bombay had referred to a judgment of the Hon'ble **Supreme Court** in the case of **Delhi Transport Corporation vs. DTC Mazdoor Union AIR 1999 SC 564**, wherein the Supreme Court inter-alia held that Article 14 guarantees a right of hearing to a person who is adversely affected by an administrative order. The principle of audi-alteram partem is a part of Article 14 of the Constitution of India. In light of such decision, the petitioner ought to have been granted an opportunity of being heard which, partakes the characteristic of the fundamental right under Article 14 of the Constitution of India.

11. The Hon'ble High Court of Bombay in the aforesaid case had referred to a decision of the Hon'ble **Supreme Court**

in the case of **Commissioner of Income Tax Madras v. Chenniyappa Mudiliar 1969 1 SCC 591**, wherein the Supreme Court in interpreting the section 33(4) of the Income Tax Act, 1922 has held that the appellate tribunal was bound to give a proper decision on question of fact as well as law, which can only be done if the appeal is disposed off on merits and not dismissed owing to the absence of the appellant. Reverting to the facts of the present case the grounds of appeal were simply filed before the Ld.CIT(Appeals) they were not substantiated or corroborated through submissions and filing of documentary evidences since the assessee had not complied before the Ld.CIT(Appeals) on the dates of hearing. Therefore, as per framework of the Act there must be adjudication on merits by the first appellate authority and one final opportunity be provided to the assessee to represent his matter on merits in the interest of natural justice.

12. There may even be a situation where the Ld. Counsel for the assessee may assail a legal ground before the Tribunal following the decision of the Hon'ble Supreme Court in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC)** with a contention that irrespective of the order of the Ld. CIT(Appeals) being ex-parte, the Tribunal may decide the legal issue that has been raised by the Ld. Counsel. In our view, the decision of the Hon'ble Supreme Court in the case of **National Thermal Power Company Ltd. Ltd. Vs. CIT (supra)** provides that any legal issue which goes to the root of the matter and is established through legal principles, the assessee can take up and raise such legal issue at any appellate forum irrespective of whether the assessee had raised such legal issue at the sub-ordinate level or not, however, it always depends on facts and circumstances of each case whether the Tribunal would decide the legal ground or in a case where the question is of natural justice and ex-parte order by the Ld. CIT(Appeals) the Tribunal would remand it back to Ld.CIT(Appeals) providing final opportunity to a bonafide assessee. The Tribunal as the highest fact finding authority must be certain enough that the impugned order before it has been passed on merits and is a speaking order where the assessee has also complied during the process of litigation. In case, where the order of the Ld. CIT(Appeals) itself is ex-parte and some legal ground is raised and if the Tribunal decides such legal ground where in fact principles of natural justice is left unanswered due to the fact that the impugned order before the Tribunal is ex-parte and there was no compliance by the assessee in such scenario the Tribunal would also be usurping the power of the Ld. CIT(Appeals) which is also a statutory authority as per the Act. This is due to the

> reason that as per framework of the Act, Ld.CIT(Appeals) is the first appellate authority where an appeal by assessee it would be substantially decided through a speaking order by the Ld.CIT(Appeals). When this part is over and either party is aggrieved second appeal lies before the ITAT. Now if for every ex-parte order passed by the Ld. CIT(Appeals), of course due to non-compliance by the assessee, if the Tribunal adjudicates a legal ground, for instance validity of assessment or reassessment order and answers it in favour of the assessee then it would create an easy route for assessee getting redressal from Tribunal even without bothering to comply with hearing notices before the Ld. CIT(Appeals). This would dismantle the structure of the Act which is definitely not the intention of the legislature. Here in this situation, where the benefit of doubt is given to the assessee since he had not complied with the hearing notices before the Ld. CIT(Appeals) which resulted in passing of an ex-parte order by the Ld. CIT(Appeals), in such scenario, as per the scheme of the Act and following the principles of natural justice, the only course of action is to remand the matter back to the file of the Ld. CIT(Appeals) for adjudication on merits providing one final opportunity to the assessee.
>
> 13. In view thereof, we set aside the respective orders of the Ld. CIT(Appeals) for all the years and remand the same to their file for denovo adjudication on merits. At the same time, we direct the assessee that this being the final opportunity, there must be compliance on merits before the first appellate authority. Needless to say, the Ld. CIT(Appeals) shall provide reasonable opportunity of being heard to the assessee and pass an order in terms of Section 250(4) and (6) of the Act within three months from receipt of this order."

7. Respectfully following the aforesaid order, I set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication while complying with the principles of natural justice as per similar terms. At the same time, it is mentioned that this being the final opportunity, the assessee shall duly comply with hearing notices from the Ld. CIT(Appeals)/NFAC.

8. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.

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

Order pronounced in open court on 21st day of March, 2025.

Sd/-
(**PARTHA SARATHI CHAUDHURY**)
**न्यायिक सदस्य/JUDICIAL MEMBER**

रायपुर/ RAIPUR ; दिनांक / Dated : 21st 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,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.