

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**

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

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

**आयकर अपील सं. / ITA No: 117/RPR/2025**

(निर्धारण वर्ष Assessment Year: 2011-12)

Mahesh Prasad Singh, Sector-3, Vidya Nagar, Besides Sant Harkewal School, Ambikapur-497001, C.G.	V s	Income Tax Officer 1, Income Tax Office, Kharsiya Marg, Near Ambika Petrol Pump, Ambikapur, C.G.
<b>PAN: BBVPS9072H</b>		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri G.S Agrawal, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	01.04.2025
घोषणा की तारीख/Date of Pronouncement	:	02.04.2025

**आदेश / ORDER**

**Per Arun Khodpia, AM:**

The captioned appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"] passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 12.12.2024, for the Assessment Year 2011-12, which in turn arises from the consequential assessment order u/s 147 r.w.s. 263 r.w.s. 144B of the Act, dated 31.03.2022 passed by Income Tax Officer, National Faceless Assessment Centre, Delhi, (in short "Ld. AR").

2. The grounds of appeal raised by the assessee are as under:

1. *That under the facts and the law, the appellant denies his liability to be assessed at Rs.43,25,400/-. Prayed to delete the addition of Rs.38,10,000/-.*
2. *That under the facts and the law, the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi erred in passing the order ex-parte and also erred in not considering the explanation for source of cash deposited in his bank account explained during assessment proceedings. Prayed that deposits in bank a/s was explained before the Ld. AO with supporting viz. Balance Sheet, Trading a/c, Bank statement as explained that deposit is from coal & transportation business, provision of section 69A are not applicable. Addition of Rs.38,37,522/- be deleted.*
3. *That under the facts and the law, the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi, erred in passing the order ex-parte without considering the facts available on record. Notices issued by Ld. CIT(A) did not come to the knowledge of appellant and he is not computer savvy. Prayed that addition of Rs.38,37,522/- is arbitrary & be deleted.*

3. At the outset, it is noticed that the appeal filed by the assessee is delayed by 02 days, for which an application seeking condonation of delay is filed by the assessee along with an affidavit. The main reason assigned by the assessee towards the delay in filing of the appeal is delay in delivery of documents by the courier agency through which the appellant has couriered the relevant documents to his counsel from Ambikapur to Raipur for submissions of the same before the ITAT. The delay in service of the courier was also on account of certain Holidays in between the date of despatch and date of receipt, these holidays are Mahashivratri (26.02.2025), Saturday (02.03.2025) and Sunday (03.03.2025). It was the submission by Ld. AR representing the assessee that the delay was not extra ordinary and not attributed towards any

careless approach or negligence on the part of assessee, therefore, the same may kindly be condoned. On the other hand, Ld. Sr. DR had not objected to the condonation of delay since the same is not for an inordinate period. After considering the overall facts and circumstances, we find that there was no intentional action of the assessee due to which the delay is occasioned, therefore, it would be appropriate to condone the delay and allow the appeal for adjudication.

**4.** The brief facts of the case are that the assessee is an individual having Income from sale & purchase of Coal and transporting of coal with his own trucks. The assessee did not file the Return of Income u/s 139(1) for the AY 2011-12. As per information received from ITS module, the assessee has deposited cash of Rs.38,10,100/- in his bank account, thus, in absence of Return of Income, the source of capital deposit could not be verified by the revenue. Accordingly, case of assessee was reopened and after getting approval from the Commissioner of Income Tax, Bilaspur. In due course, notice u/s 148 was issued but assessee did not comply. Further notice u/s 142(1) and show cause were issued. In response to the said notice assessee filed his Return of Income declaring taxable income at Rs.5,15,300/- under presumptive income scheme and other relevant documents are also furnished before the Ld. AO. After deliberating upon the documents furnished by the assessee, Ld. AO

accepted the Return of Income of Rs.5,15,300/- and assessment order was passed on 13.12.2018. Subsequently, the case of assessee was taken up for revisionary proceedings u/s 263 and the assessment order dated 13.12.2018 was set aside by the Ld. Pr. Commissioner of Income Tax, Raipur-1 with the direction to initiate fresh assessment proceedings. In consequential proceedings, the assessee was requested to furnish his nature of business, source of cash deposit during the FY 2011-12, cash flow statement for 2010-11, P & L account and Balance sheet for the FY 2010-11. In response to the said notices, assessee furnished ITR, Computation sheet, P & L Account and Balance sheet along with reply. Another notice u/s 142(1) issued by the Jurisdictional Assessing Officer for furnishing appropriate reply with narration, thereafter the case was transferred to NFAC on 13.01.2022. Again notice u/s 142(1) issued on 15.03.2022 & 17.03.2022, but assessee failed to reply. In absence of any submission by the assessee after considering the facts and the details earlier furnished by the assessee, Ld. AO observed that the assessee failed to substantiate about the source of cash deposit in the bank account, also there were no supporting / corroborative documents regarding receipts of cash from plying of trucks, no registration certificates of trucks or any other details of plying of truck business could be furnished by the assessee, therefore, it is concluded by the Ld. AO that the amount deposited in bank account for Rs.38,10,100/- is unexplained money of the assessee, therefore, the same is

liable to be added in the income u/s 69A of the Income Tax Act. Accordingly, the addition was made, and the total assessed income of the assessee was determined at Rs.43,25,400/-.

**5.** Aggrieved with the aforesaid addition, assessee preferred an appeal before the Ld. CIT(A), however, the assessee remain non-compliant before the Ld. CIT(A), therefore, the appeal of the assessee is dismissed in absence of any explanation by the assessee towards the grounds of appeal raised before the Ld. CIT(A).

**6.** Dissatisfied with the order of Ld. CIT(A), assessee preferred an appeal before the ITAT, which is under consideration.

**7.** At the outset, Shri G.S. Agrawal, Authorized Representative (in short "Ld. AR") on behalf of the assessee submitted that the order of Ld. CIT(A) is an exparte order without considering the facts available on record and notice issued by the Ld. CIT(A) did not come to the knowledge of the assessee as he is not computer savvy. Therefore, it is prayer that the matter may be restore back to the file of Ld. CIT(A) for considering the explanations which the assessee could not furnished because of unawareness about the notices and proceedings. Ld. Counsel also assured that the assessee would be compliant before the First Appellate Authority if another opportunity is granted.

8. Per contra, Dr. Priyanka Patel, (in short "Ld. Sr. DR"), objected to the contentions of the Ld. AR and have vehemently supported the orders of revenue authorities.

9. We have considered the rival submissions, perused the material available on record and the contentions raised by the parties. Admittedly, in the present case, the order passed by Ld. CIT(A) is an ex parte order, wherein the facts are picked up from the assessment order and material available on record. We find substance in the submission of Ld. AR that due to lack of computer literacy the assessee could not get information about notices issued from the Ld. CIT(A) and, therefore, was unable to attend and respond towards such communications. In all fairness following the principle of natural justice, we are of the considered view that one more chance should be allowed to the assessee to represent its case for the sake of substantial justice and to decide the matter on its merits. Accordingly, we find it appropriate to restore the matter to the First Appellate Authority for fresh adjudication. Our view is supported with our recent decision in the case of **Brajesh Singh Bhadoria Vs. Dy./ Asstt. Commissioner of Income Tax, Central Circle-2, in IT(SS) No. 1 to 6,8 & 9/RPR/2025 dated 20.03.2025**, wherein under identical facts and circumstances, findings of this Tribunal were as under:

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 assessee, 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.*

*14. As per the above terms, all the grounds of appeals stands allowed for statistical purposes.*

**10.** In view of aforesaid facts and circumstances, respectfully following the aforesaid decision in the case of **Brajesh Singh Bhadoria (supra)**, the matter is restored back to the file of Ld. CIT(A) for *denovo* adjudication, within a period of 3 months from the receipt of this order.

11. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings. The assessee is also directed to cooperate and assist proactively in the set aside proceedings, failing which the Ld. CIT (A) would be at liberty to decide the case in accordance with the mandate of law.

12. In result, appeal of the assessee is **partly allowed for statistical purposes**, in terms of over aforesaid observations.

Order pronounced in the open court on 02/04/2025.

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

Sd/-  
**(ARUN KHODPIA)**  
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर/Raipur; दिनांक Dated 02/04/2025  
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Mahesh Prasad Singh
2. प्रत्यर्थी / The Respondent- ITO-1, Ambikapur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

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