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.71/RPR/2025

निर्धारण वर्ष /Assessment Year : 2017-18

Late Shanti Mohta
15/391, Jawahar Nagar,
Ravigram S.O
Chhattisgarh- 492 001
PAN: ALDPM6184F

.......अपीलार्थी / Appellant

बनाम / V/s.

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

......प्रत्यर्थी / Respondent

Assessee by	:	Shri Mahendra Kumar Agrawal, CA
Revenue by	:	Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing	: 15.04.2025
घोषणा की तारीख / Date of Pronouncement	: 16.04.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

This appeal preferred by the assessee emanates from the order of the Ld.ADDL/JCIT(A)/NFAC, Prayagraj, dated 25.10.2024 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the very outset, it has been pointed out by the Ld. Counsel for the assessee that the registry has calculated the delay in this case for 46 days. However, explaining the reasons for the said delay, the Ld. Counsel has filed condonation application as well as affidavit, wherein it is stated as follows:

> "The present appeal has been filed against the order of the Ld. ADDL/JCIT (A) PRAYAGRAJ, which was passed ex-parte due to non-compliance. Such order was passed on a deceased person expired on 25.07.2023. The notices were sent on e-mail in spite of specific denial of notices/ communication to be sent on e-mail in the Form No. 35. Due to absence of notices/ order from the appellate authority on physical mode, the legal heir also got the information of such order very late.
>
> The delay in filing this appeal has occurred due to the unfortunate demise of the original appellant, which caused disruption in legal matters. The legal heirs were not aware of the ongoing proceedings, leading to an unintended delay in filing the present appeal.
>
> The delay was neither deliberate nor intentional, but due to circumstances beyond the control of the legal heirs. In view of the above, it is humbly prayed that the Hon'ble Tribunal may kindly condone the delay and admit the appeal for hearing in the interest of justice."

Further, the Ld. Counsel contended that in Form 35, there is specific column on the personal information mentioning "whether notices /communication may be sent on email?" and the assessee has given reply as "No" which means there is an option given to the assessee for receiving of the notice/communication through email or not. In this case, the order of the Ld. CIT(Appeals)/NFAC was sent by the department through registered email id but since the assessee has opted as "No", therefore, there was no checking of such mail and therefore consequent non receipt of the said order resulting in the delay.

3. The Ld. Sr. DR in this regard submitted that the department is in the process of amending this provision in Form 35.

4. Having heard the submissions of the parties herein on the ground of limitation, I am of the considered view that such delay has been caused due to technical issue arising from Form 35 itself and it cannot be attributed for any deliberate or malafide conduct on the part of the assessee since there was no receipt of the order of the Ld. CIT(Appeals)/NFAC by the assessee physically while the assessee has already opted as "No" as observed herein before and for that reason, the said delay has occurred. In so far the delay is concerned, it would be relevant to point out that the Hon'ble Supreme Court in the case of **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal**

Nos................/2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025, had observed that a justice oriented and liberal approach ought to be adopted while considering the aspect of condoning the delay involved in filing of the appeal. Also, the **Hon'ble High Court of Chhattisgarh** in the case of **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025**, after relying on the judgment of the Hon'ble Supreme Court in the case of Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur (supra) had held that a justice oriented and liberal approach be adopted while considering the application filed by the assessee for condonation of delay.

5. That in the recent judgment of the **Hon'ble Supreme Court** in the case of **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No.........../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025**, the Hon'ble Apex Court while interpreting Section 5 of the Limitation Act, 1963 regarding the condonation of delay in respect of case of land acquisition has observed and held on the aspect of delay that although the delay cannot be condoned without sufficient cause, the merits of the case could not be discarded solely on the ground of delay. A liberal approach, therefore, should be taken in condoning the delay when limitation ground undermines the merits of the case and

obstructs the substantial justice. In other words, the objective of the court should be to deliver substantial justice coupled with liberal and judicious approach while deciding the issue of limitation and whenever it is found that the case has merits which needs to be addressed substantially, in such case, the delay should be condoned. Accordingly, the said delay of 46 days involved in the present appeal is condoned.

6. At the time of hearing Ld. Counsel for the assessee submitted that as evident from Para 7.1 to 8 of the impugned order, the Ld.CIT(Appeals) /NFAC vide an ex-parte order had dismissed the appeal of the assessee due to non-compliance by the assessee. For the sake of clarity, the Para 7.1 to 8 of the Ld.CIT(Appeals)'s order are culled out as follows:

> "7.1 Without prejudice to the above, during the appellate proceedings, the appellant was given the opportunity to present its case and submit documents/submission in support of its appeal. Notices u/s.250 of the Act were issued, however, the appellant did not comply with these notices. The details of notices issued u/s. 250 of the Act are as under:

Sr. No.	Date of Notice issued	Date of hearing	Remarks
1.	25.02.2021	12.03.2021	No compliance
2.	24.09.2024	01.10.2024	No compliance
3.	18.10.2024	24.10.2024	No compliance

> 7.2 There was no compliance to notices which were sent on the email ids available with the ITBA system/ Form 35 filed by the appellant. As per the delivery report to these email ids, the said notices have been duly served/ delivered upon the appellant. Despite given repeated opportunities of being heard, there has

been no compliance to these notices. It is apparent that the appellant is not interested in pursuing the appeal.

7.3 Throughout the appellate proceedings, the appellant only presented a 'Statement of Facts' as a submission. However, subsequent to that, there was no response to hearing notices, and no documentary evidence or information was provided to support the appellant's position. Ample opportunities were given to the appellant, as mentioned above, but no response or submission was received.

7.4 Based on the sequence of events, it is evident that the appellant did not respond to any of the notices issued, despite these notices being duly served on the provided email addresses. In light of the appellant's failure to utilize the opportunities granted for presenting their case, I am inclined to believe that the appellant has no interest in pursuing the appeal and has not offered any additional insights beyond the initially stated grounds of appeal.

7.5 The maxim 'vigilantibus non-dermientibus jura subvenunt' or 'the law assists those who are vigilant and not those who sleep over their rights' is deemed applicable in this context. In these circumstances, it seems that the appellant is uninterested in prosecuting the appeal, therefore, I find no reason to interfere with the orders of the Ld. AO. Thus, the action of the AO is confirmed and the grounds of appeal raised by the appellant are dismissed.

7.6 This perspective aligns with the decision of the Apex Court in the case of CIT v. B.N. Bhattachargee and another, reported in 118 ITR 461 [relevant pages 477 & 478], where it was held:

"The appeal does not mean merely filing of the appeal but effectively pursuing it."

8. In view of the above, I hereby dismiss the instant appeal filed by the appellant on merits and due to non-prosecution. As a result, the appeal filed by the appellant stands dismissed."

7. The Ld. Sr. DR has fairly conceded that the matter may be adjudicated denovo on merits before the first appellate authority providing one final opportunity to the assessee.

8. I have carefully considered the contents in the documents/material available on record, submissions of both the parties. 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.

9. On a perusal of the order of the Ld.CIT(Appeals)/NFAC, it is observed that the Ld.CIT(Appeals)/NFAC dismissed the appeal of the assessee in limine for non-compliance without dealing with the merits of the case. In my considered view, once an appeal is preferred before the CIT(Appeals), it becomes obligatory on his part to dispose off the same on merit and it is not open for him to summarily dismiss the appeal on account of non-prosecution of the same by the assessee. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(Appeals) remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the CIT(Appeals) is not vested with any power to summarily dismiss the appeal for non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom).** In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of s. 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under s. 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the s. 251(1)(a) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

10. 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.
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> 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."

11. Respectfully following the aforesaid orders, 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 directed that this being the final opportunity, the assessee shall duly comply with the hearing notices

from the Ld.CIT(Appeals)/NFAC. The Ld.CIT(Appeal)/NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act within three months from receipt of this order.

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

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

Order pronounced in open court on 16th day of April, 2025.

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

रायपुर / Raipur; दिनांक / Dated : 16th April, 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