

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, 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. 224/RPR/2024
(निर्धारण वर्ष Assessment Year: 2017-18)

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| Shri Pratik Shah, Qtr. No. 52, R S S Market, Opposite Bank of India, Post Powerhouse, Bhilai 490011, CG | V ITO, Ward-2(1), S Civic Center, Bhilai, CG |
| PAN: CDGPS8516L | |
| (अपीलार्थी/Appellant) | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : Shri Yogesh Sethia, CA |
| राजस्व की ओर से /Revenue by | : Dr. Priyanka Patel, Sr. DR |
| सुनवाई की तारीख / Date of Hearing | : 06.05.2025 |
| घोषणा की तारीख/Date of Pronouncement | : 07.05.2025 |

आदेश / ORDER

Per Arun Khodpia, AM:

The Captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeal), NFAC, Delhi [for short, "Ld. CIT(A)"], u/s 250 of the Income Tax Act, 1961 (for short, "The Act"), for the Assessment Year (AY) 2017-18, dated 12.01.2024. Resulted, from the order passed by the Income Tax Officer, Ward 1(5), Bhilai (for short, "The Ld. AO"), U/s 144 of the Income Tax Act, dated 19.12.2019.

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

1. *In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals), NFAC has erred in deciding the appeal ex-parte without proper service of the notice as per provisions of the Act and without following the principles of natural justice.*
2. *In the facts and circumstances of the case and in law, learned Commissioner of Income Tax (Appeals), NFAC has erred in upholding order of learned Assessing Officer making addition of Rs. 45,00,000/- being cash deposits made in Bank Account during demonetization period as unexplained money u/s 69A of the Income-tax Act, 1961 despite accepting the fact that Appellant is engaged in the business of petrol pump operations and separately estimating profit by applying comparable cases engaged in petrol pump operations overlooking the fact that petrol pump operators were allowed to accept cash in Specified Bank Notes during demonetization period.*
3. *In the facts and circumstances of the case and in law, learned Commissioner of Income Tax (Appeals), NFAC has erred in confirming the addition of Rs. 5,02,431/- made by estimating G.P. 2.82% of the gross receipts.*
4. *The impugned order is bad in law and on facts.*
5. *The appellant reserves the right to add, alter, omit all or any of the grounds of appeal with the permission of the Hon'ble appellate authority.*

3. Briefly stated, the assessee is an individual, who had not filed his return of income for the AY 2017-18. As per statement of financial transaction retrieve from the system, it is noticed by the department that the assessee had deposited cash amounting to Rs. 48,18,500/- in his A/c No. 15560210002414 maintained with the United Commercial Bank of India, Bhilai, during the demonetization period. Accordingly, the case of the assessee was selected for scrutiny assessment, notice u/s 142(1) was

issued and served upon the assessee. However, the assessee failed to furnish ROI in response to notice u/s 142(1) of the Act. Further, notices were issued to the assessee on regular intervals as emanating from the assessment order i.e., on 02.07.2019, 05.07.2019 and 16.09.2019. Later on, through an email dated 20.09.2019 the assessee has made a request for some time due to medical emergency, and the time was granted. But the assessee remains unresponsive, therefore, a show cause notice was issued to the assessee on 20.11.2019, proposing the addition u/s 69A for SBN deposited by the assessee. However, no compliance was made by the assessee again. Ld. AO, further in order to gather the information have initiated action u/s 133(6), have collected the information from the concerned bank and have completed the assessment under best judgment assessment following the manner provided u/s 144(1) of the Act. Another addition was made *qua* the credit entries in the bank accounts of the assessee to the tune of Rs. 1,78,16,711/- on which a GP rate 2.82% was applied taking the average of other 3 assessee's in the same trade in which the assessee in present case was engaged and an addition of Rs. 5,02,431/- was made. The assessment u/s 144 was culminated with addition of Rs. 50,02,931/-.

4. An appeal was preferred by the assessee before the Ld. CIT(A) against the aforesaid order of Ld. AO, wherein again the assessee was

found to be of a non-complaint, as discernible from the order of Ld. CIT(A) that the assessee was not responsive on 8 occasions, as under:

| S. No. | Date of hearing notice | Date of hearing fixed | Response of the appellant | Remarks |
|--------|------------------------|-----------------------|-----------------------------|---|
| 1 | 07/01/2021 | 11/01/2021 | No Response | Hearing notice was delivered on the available email address |
| 2 | 06/01/2022 | 14/01/2022 | No Response | -do- |
| 3 | 03/08/2023 | 11/08/2023 | 20/08/2023 (adjournment) | -do- |
| 4 | 22/08/2023 | 01/09/2023 | No Response | -do- |
| 5 | 08/09/2023 | 18/09/2023 | No Response | -do- |
| 6 | 02/11/2023 | 13/11/2023 | No Response | -do- |
| 7 | 30/11/2023 | 12/12/2023 | No Response | -do- |
| 8 | 20/12/2023 | 29/12/2023 | No Response | -do- |

5. In view of aforesaid non-compliances by the assessee, the appeal of the assessee was dismissed by the Ld. CIT(A), describing his decision as under:

6. Decision on merits of the Case: -

Though I have dismissed the appeal due to non-prosecution by the Appellant, the grounds raised by the Appellant are adjudicated on merits as under: -

6.1 In the grounds of appeal No. 1 & 2 the appellant has contended that all the credits appearing in the bank accounts are part of turnover and cash deposited during demonetization period is out of sale of petrol and not unexplained cash.

I find from the assessment order that the appellant had deposited cash of Rs. 48,00,500/- in bank account during demonetization period but the return of income for AY 2017-18 was not filed. Therefore, AO had issued notice u/s 142(1) requesting the appellant to file the return of income by 31/03/2018, however again there was no response from the appellant. The subsequent notices issue u/s 142(1) were also not responded by the appellant. Therefore, the AO had collected the information from banks u/s 133(6) of the act which revealed that there were total credits of Rs. 2,23,17,211/- during FY 2016-17 including cash deposits of Rs. 48,38,500/- during demonetization period. Considering the non-cooperative attitude of the appellant the AO had issued show cause notice proposing to complete the assessment u/s 144, however again their appellant failed to submit any reply/explanation. Therefore, the AO treated the cash deposited during demonetization period in SBN of Rs. 45,00,500/- as unexplained money and made addition of Rs. 45,00,500/-. Regarding other credits of Rs. 1,75,89,904/-, the estimated the GP at the rate of 2.82% on the basis of average GP of last 3 years shown by 3 third parties engaged in the similar line of business that of the appellant and made the addition of Rs. 5,02,431/-. Thus total income was determined at Rs. 50,02,930/- u/s 144 rws 115BBE of the Act.

*During the course of appellant proceedings, the appellant failed to submit the ground wise written submission with supporting evidences in spite giving 8 opportunities of being heard. The appellant vide office letter dated 20/12/2023 was clearly informed that this is **FINAL OPPORTUNITY** given for submission of the ground wise written submission and if the appellant fails to comply, the appeal would be decided on merits of the case and submissions filed so far. However the appellant did not file any response till the date. Since the appellant failed to controvert the action of the AO with supporting evidences, the additions made by the AO are confirmed and the grounds of appeal raised by the **appellant are dismissed**.*

6. In ground No. 3, the appellant has contended that if anything is left then assessee has right to modify, addition or deletion in this appeal,. However, this option is not exercised by the appellant during the appellate proceedings. Therefore, the ground of appeal raised by the appellant is dismissed.

6. Aggrieved with the aforesaid order of Ld. CIT(A), the matter is being carried before us for our consideration.

7. Earlier, this matter has been heard and decided by the tribunal vide its order dated 25.10.2024 by dismissing the appeal of assessee, treating the same as not maintainable on account assessee's failure in substantiating the sufficient reasons / cause for occurrence of delay in filing of appeal by 66 days, which was later recalled by the order in MA No, 04/RPR/2025 dated 25.03.2025 and the delay in filing of appeal was also condoned respectfully following Judgment by Hon'ble Apex Court in the case of **Vidya Shankar Jaiswal Vs. the Income Tax Officer, Ward-2, Ambikapur, SLP (Civil) Nos. 268310-26311/2024, dated 31.01.2025.**

8. Under the fresh proceedings after recalling the matter, apparently, it is emanating from the order of Ld. CIT(A) that the assessee's appeal has been disposed of on Ex-parte basis. In such a situation, as we have held that, in a matter for which there was no compliance / representation by the assessee before the first appellate authority, for which no deliberate negligence on the part of assessee is proved by the revenue, the assessee should be provided with one last opportunity to represent his case and the matter should be restored back to the file of Ld. CIT(A) for fresh adjudication after hearing the assessee. Both the parties agreed to the

aforesaid view and accordingly the matter is directed to set aside to the file of Ld. CIT(A) for *denovo* adjudication.

9. Our aforesaid vide is duly supported with the decision of coordinate bench of this tribunal in the case 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**, wherein it 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 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 subordinate 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.”

10. Respectfully following the aforesaid order, we set-aside the orders of the Ld. CIT(Appeals)/NFAC and remand the matters back to his 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 assessee at the time of denovo proceedings shall be at liberty to file documentary evidence, if any, before the first appellate authority to substantiate his claim. 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.

11. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings. The assessee as conceded through its authorized representative before us, 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 **allowed for statistical purposes**, in terms of over aforesaid observations.

Order pronounced in the open court on 07/05/2025.

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

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

रायपुर/Raipur; दिनांक Dated 07/05/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Shri Pratik Shah, Bhilai
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Bhilai
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