

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: 243/RPR/2025

(निर्धारण वर्ष Assessment Year: 2019-20)

M/s Isha Kitchens, 001, Kankali Hospital, Azad Chowk, Raipur- 492001, C.G.	v s	Assistant Commissioner of Income Tax, Circle-2, Raipur
PAN: AAEFI6157L		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	15.05.2025
घोषणा की तारीख/Date of Pronouncement	:	20.05.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), Raipur-3, [in short "Ld. CIT(A)"], under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 18.02.2025 for the Assessment Year 2019-20, which in turn arises from the order u/s 143(3) of the Act, dated 13.09.2021, passed by Assistant Commissioner of Income Tax, Central Circle-2, Raipur (in short "Ld. AR").

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

Gr. No. 1:

“On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.42,47,210 on the count of GP estimation of 14.97% on alleged unaccounted sales of Rs.2,83,71,444 (i.e., up to 19-2-19) which has been reconciled/ tallied in the regular books of account with accounted sales of Rs.10,08,01,782 (including GST) & Rs.8,50,00,713 (excluding GST) i.e., up to 19-2-19; addition is merely based on survey statement recorded on oath which had been retracted on 29-3-20 by way of reconciliation by pointing out defects therein; addition is unjustified & is liable to be deleted.”

Gr. No. 2:

“On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.42,47,210 on the count of GP estimation of 14.97% on alleged unaccounted sales of Rs.2,83,71,444 (i.e., up to 19-2-19) which has been reconciled/ tallied in the regular audited books of account with accounted sales of Rs.10,08,01,782 (including GST) & Rs.8,50,00,713 (excluding GST) i.e., up to 19-2-19; books of account not been rejected; sales of Rs.9,49,67,837 has been accepted; sec 145(3) not been applied; assessment made u/s 143(3); without rejecting books of account & framing assessment u/s 144, which is sine qua non for making 'best judgment assessment', any estimation of profit is not permissible in the eyes of law; addition is liable to be deleted, relied on Forum Sales (P) Ltd (2024) (Del HC); Marg Ltd (2017) (Mad HC); Anil Kumar & Co (2016) (Kar HC); Subhendu Kumar Subudhi (2022) (Ori HC).”

Gr. No. 3:

“The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.”

3. Brief facts of the case are that, survey action u/s 133A of the Act, was conducted on 19.02.2019. Thereafter, the assessee firm filed its Return of Income u/s 139 on 26.03.2020 for the Assessment Year 2019-20, and declared its total income at Rs.78,25,160/-. The case of assessee has been selected for scrutiny assessment on compulsory criteria. Accordingly, notice u/s 143(2) of the Act was issued on 29.09.2020. In due course, notice u/s 142(1) along with detailed questionnaire was issued to the assessee on 15.02.2021. In compliance, the assessee furnished written submission and supporting documents. On perusal of the Profit & Loss Account of the assessee, it is found by the Ld. AO that during the year under consideration, the assessee had earned income from business of Wholesale and Retail Sale of household goods and other household appliances. It is further observed by the Ld. AO that during the course of survey proceedings, the month wise sale data of the assessee were compile with the month wise POS entries. It is further observed that the total sales from 01.04.2018 till 13.02.2019 as per POS were found at Rs. 8,09,43,147/-, however, sales of only Rs.5,25,71,703/- were recorded in the books of account maintained in the tally software. Therefore, concealment of sales of Rs. 2,83,71,444/- was found during the survey. Assessee was asked to explain the same, in response, a partner of the assessee, Shri Rajiv Gupta admitted that the purchase and sales of Rs. 2,83,71,444/- were made completely out of books

of accounts and declared the said sum as income of the assessee firm for the current year over and above the normal business income.

4. Afterwards, during the assessment proceedings, the Ld. AO requested the assessee to reconcile the POS transactions with books of accounts along with supporting documents and have show caused that why the difference amount of Rs.2,83,71,444/- should not be treated as undisclosed income of the assessee. In response, assessee submitted that the amount surrendered during the survey proceedings was on the basis of POS sale which is primary entry and after due verification and checks, finally entered in the regular books of account as 'sales' and the alleged entry in POS software includes estimates and quotations, therefore, the surrendered has been made during the survey was under misapprehension of facts, which is contrary to the law itself, and more so, even without verifying and examining the entries in the regular books of account maintained in the regular course of business, which has duly been retracted through the sworn affidavit dated 29.03.2020. Such contention raised by the assessee are not found acceptable by the Ld. AO, therefore, he noted that Shri Rajiv Gupta / the assessee was failed to explain reasons of difference in sale data found in POS software and data maintain in Tally. Resultantly, on the basis of documents / loose papers found and seized from the business premises,

statement recorded during the survey and post survey proceedings investigation and reply submitted in reference of notices issued and considering the replies filed by the assessee during the assessment proceedings, Gross Profit @ 14.97% (i.e., 42,47,210/-) of total unrecorded sales of Rs. 2,83,71,444/- is added back to the total income of the assessee.

5. Aggrieved with the aforesaid addition, the assessee preferred an appeal before the Ld. CIT(A), however, there was no representation on behalf of the assessee on the dates of hearings fixed except requesting for adjournment on the last occasion. The Ld. CIT(A), thus, had dismissed the appeal of the assessee after discussing the merits of the case on the basis of material available on record.

6. The relevant observations of Ld. CIT(A) are reproduced hereunder for the sake of clarity and completeness of facts:

During the course of appeal proceedings, several notices u/s 250 were issued but the assessee firm never filed any evidence in support of issues raised in appeal. Last notice u/s 250 was issued on 09.07.2024 and hearing was fixed on 15.07.2024 but the assessee firm did not submit any further reply in support of appeal. Therefore, it is held that the assessee firm has no interest in this appeal.

Three notices are issued but the assessee firm did not file any submission in support of the grounds raised in the appeal.

The details of 03 notices issued to the assessee firm as reproduced here in below: -

<i>Sr. No.</i>	<i>Notice issued Under section</i>	<i>Date of notice</i>	<i>Hearing Date</i>	<i>Remarks</i>
1	250 of I.T. Act, 1961	11.11.2022	21.11.2022	No Reply
2	250 of I.T. Act, 1961	22.09.2023	12.10.2023	No Reply
3	250 of I.T. Act, 1961	09.07.2024	15.07.2024	Adjournment request submitted through ITBA portal on 02.08.2024. Further adjournment cannot be granted.

The assessee firm has failed to submit any evidence in support of its appeal despite given several opportunities being heard. Under these circumstances, in my opinion the appellant is not interest in the appeal.

During the course of appeal proceedings, I have gone through the entire facts of the assessment order, findings of the Assessing Officer. I find that during the course of survey operation many documents/loose papers were found and impounded from the business premises of the assessee. During the survey operation, month wise sales data was compared with the month wise POS entries and it was found that the total sales from 01.04.2018 till 19.02.2019 as per the POS were found at Rs.8,09,43,147/- while only sales of Rs.5,25,71,703/- was recorded in the books of account maintained in the tally software. Thus, concealment of sales of Rs.2,83,71,444/- was established during the course of survey operation and the partners of firm were asked to explain the issue. Shri Rajiv Gupta, partner of firm admitted

that the purchase and sales of Rs.2,83,71,444/- were not recorded in the books of account and offered the same for taxation. During the course of assessment proceedings, the assessee firm could not explain the issue accordingly the Assessing Officer has added a sum of Rs.42,47,210/- [GP i.e. 14.97% of total unrecorded sales of Rs.2,83,71,444/-]. During the course of appeal proceedings, several opportunities were granted to the assessee firm but it never filed any reply in favour of its appeal. I find that there is huge difference in the actual sales and sales recorded in books of accounts. I also find that Rs.2,83,71,444/- was difference between actual sales and sales showing in books of accounts and the same was accepted by the firm's partner Shri Rajiv Gupta. The assessee firm did not produce any supporting documents to substantiate its claim. On the basis of unrecorded sales found during the course of survey operation & statement of Rajiv Gupta (partner of firm) addition of Rs.42,47,210/- is hereby confirmed and this ground of appeal is hereby dismissed.

7. Aggrieved with the aforesaid order of Ld. CIT(A), the assessee preferred an appeal before the ITAT, which is under consideration in the present case.

8. At the outset, Ld. AR on behalf of the assessee have submitted that in this case further time may be allowed, accordingly, an adjournment application was placed on record, however, since it is noticed that the decision of Ld. CIT(A) was on ex-parte basis, whereas, the assessee had sought for adjournment which were not granted by the Ld. CIT(A) as the

matter was pending before him since almost last two years. Ld. AR submitted that, following the principle of nature justice, one more opportunity needs to be granted to the assessee and he declared on behalf of the assessee that all the requisite compliances, submissions and explanations shall be furnished with no further lapse or excuses on the part of the assessee.

9. Per contra, Dr. Priyanka Patel, Ld. Sr. DR vehemently supported the order of revenue authorities, however, did not object if the matter is restore back to the file of Ld. CIT(A) for fresh adjudication.

10. We have considered the rival submission and perused the material available on record. Admittedly, the matter has been decided by Ld. CIT(A) on ex-parte basis, wherein the assessee was unable to represent its case and had sought further time to represent. Under such facts and circumstances, as we have held in various cases, the matter needs to be restore back to the file of Ld. CIT(A) with the direction to the assessee to act vigilantly and mark it's presence during the appellate proceedings, to which Ld. AR on behalf of the assessee has stated at bar that necessary appearance shall be made before the Ld. CIT(A) and requisite details shall be furnished without fail.

11. Considering the totality of facts and circumstances of the present case, we find it appropriate to set aside the matter to the file of Ld. CIT(A) for *denovo* adjudication. Our aforesaid view is duly fortified and in conformity with our earlier 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 it has been decided to restore the matter back to the file of Ld. CIT(A), for the sake of clarity the relevant observations in the case of **Brajesh Singh Bhadoria (supra)**, are extracted hereunder:

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.

12. In view of aforesaid facts and circumstances, respectfully following the aforesaid decision in the case of **Brajesh Singh Bhadoria (supra)**, as fairly conceded by both the parties herein, 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.

13. 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.

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

Order pronounced in the open court on 20/05/2025.

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

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

रायपुर/Raipur; दिनांक Dated 20/05/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- M/s Isha Kitchens, Raipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-2, Raipur
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