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: 238/RPR/2025

(**निर्धारण वर्ष** Assessment Year: 2013-14)

Gursukh Energy India Pvt. Ltd., Gur Shukh Tower, Katora Talab, Raipur-492001, Chhattisgarh	v s	Income Tax Officer, Ward-3(1), Raipur
PAN: AAECG2799R		
(**अपीलार्थी/Appellant**)	. .	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri Hardik Jain, 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 / O R D E R

Per Arun Khodpia, AM:

The captioned appeal filed by 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 08.03.2025, for the Assessment Year 2013-14, which in turn arises from the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 30.03.2022 passed by Addl./ Joint/ Deputy / Asstt. Commissioner of Income Tax/ 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. *The Ld. AO erred in law as well as in fact while making an addition of Rs.34,53,025/- under estimated 8 percent profit of gross receipt irrespective of the fact that the assessee was maintaining day to day books of accounts, books of accounts were duly audited and balance sheet and audit report was submitted before the AO. The addition is bad in law and is liable to be deleted.*
2. *The Ld. AO erred in law as well as in fact while making an addition of Rs.74,04,172/- out of interest paid to Bank on adhoc basis without bringing any material evidence on record. The addition is bad in law and is liable to be deleted.*
3. *The appellant reserves the right to add, amend or alter any ground or grounds at the time of hearing.*

3. Brief facts of the case are that the assessee has not filed its Return of Income for the assessment year 2013-14, whereas certain information was available with the department in the Multi Year Non-Filers Monitoring System (NMS) regarding assessee's financial transactions during the FY 2012-13 relevant to AY 2013-14, detailed as under:

Financial Transaction	Amount (in Rs.)
Purchase Mutual Fund	Rs. 2,50,00,000/-
Contract Receipt	Rs.1,89,38,497/-

4. In view of aforesaid information available with the department, considering the fact that assessee has not filed its Return of Income u/s 139(1) of the Act, the case of assessee was selected for reopening assessment u/s 147 of the Act and a notice u/s 148 of the Act was issued to file return of

income in response to said notice within 30 days. However, the assessee had not filed any return in response to notice u/s 148. Further, the assessee has been served with notices u/s 142(1) and was requested to furnish certain details for verification pertaining to the transactions undertaken by it in the year under consideration. However, no reply or request for adjournment was filed by the assessee. Further opportunities were provided to the assessee by issuance of notice u/s 142(1) on 22.12.2021, 04.01.2022 & 21.01.2022, but again assessee chose not to respond, therefore, a show cause notice dated 02.03.2022 along with draft assessment order and computation sheet was issued and served on the assessee through email on assessee's email ID on record i.e., joglekarmaitra@gamil.com. In response to the show cause, the assessee uploaded its submissions dated 27.03.2022. The submission of the assessee has been taken into consideration by Ld. AO and after deliberation, it was observed by Ld. AO that the assessee had deliberately not responded to the notices issued by the department. It was further observed by the Ld. AO that at the fag-end of the assessment, assessee complied to show cause notice only but remain non-compliant towards the notices issued earlier. It is noted that the assessee had not filed its Return of Income and audit report for the year under consideration as per provisions of section 139(1) of the Act, but had filed its return of income on 26.03.2022 in response to notices u/s 148, which was beyond the time provided in the notices dated 31.03.2021,

therefore, the return filed by the assessee has been treated as invalid. Accordingly, the assessment of the assessee has been completed in the manner prescribed u/s 144 on best judgment assessment basis. Finally, the assessment was completed with certain additions by estimating the profit of assessee @ 8% of Gross receipts at Rs.34,53,025/-, another disallowance was made by disallowing proportionate interest expenses for Rs.74,04,172/-, since the loan being availed by the assessee was not entirely used for business purposes. In aggregate, total disallowances were for Rs. 1,08,57,197/-.

5. Aggrieved with the aforesaid additions/ disallowance in the assessment u/s 147 by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), however, during the appellate proceedings, there was no response by the assessee, therefore, the appeal of assessee has been dismissed on ex-parte basis with certain observations on merits of the issues. The relevant observations of Ld. CIT(A) showing the ex-parte dismissal of the assessee's appeal, are extracted as under for the sake of completeness of facts:

> ***4.*** *During the course of appeal proceedings, notices u/s 250 of the Act were issued to the appellant requesting to furnish written submissions along with supporting documentary evidence in support of the grounds of appeal. The appellant has been provided opportunities through the following notices detailed below:*

Date of Issue of Notice	*Date fixed for compliance*	*Mode of service*	*Remarks*
16.11.2022		*E-Mail and communication in registered account of the appellant on e-filing portal*	*Enablement of communication window was intimated to the appellant. But no submissions have been uploaded by the appellant till date.*
16.01.2023	*31.01.2023*	*E-Mail and communication in registered account of the appellant on e-filing portal*	*No response has been received.*
04.04.2024	*15.04.2024*	*-do-*	*-do-*
	25.04.2024	*-do-*	*-do-*
	13.06.2024	*-do-*	*-do-*
	08.11.2024	*-do-*	*-do-*
	18.11.2024	*-do-*	*-do-*
26.11.2024	*06.12.2024*	*-do-*	*-do-*

*** In the final opportunity notice, the appellant was specifically conveyed that "Please note that considerable time has already been granted to you since the issue of first notice u/s 250 dated 16.01.2023. Thereafter, notices have been sent on 04.04.2024, 18.04.2024, 05.06.2024, 01.11.2024 & 11.11.2024. However, no submissions have been made by you till date in support of your grounds of appeal. It is important to note that your non-compliance to notices reflects that you are not interested in pursuing with the appeal proceedings. lnspite of your non-compliance till date you are given a final opportunity to furnish our submissions with complete supporting documents by* ***06.12.2024****, failing which the appeal shall be decided on the basis of details available on record without any further notice. The decision under such circumstances may not go in your favour. This opportunity may be treated as the final opportunity."*

4.1 *Notices u/s 25 of the Act were sent to the appellant on the emails found in the Income Tax database along with the email id provided in Form No. 35. Despite sufficient opportunities no submission on merits, substantiating its claim, has been received from the appellant.*

4.2 *The non-compliance of the appellant despite receiving the notices shows lack of interest and seriousness of the appellant. This kind of attitude makes judicious decision making meaningless. The delaying tactics of the appellant and non-responsive attitude indicate that the appellant's claims lack factual ground and legal support. Because of the foregoing facts, the appellant has not been pursuing the appellate proceedings at all despite despite provision of several opportunities through service of notices as mentioned above. It is pertinent to understand that once the appeal is filed, it is obligatory on the appellant's pa to purposefully and co-operatively pursue the same in a worthwhile manner, which in this case the appellant has evidently and for reasons best known to itself failed to perform. From non-compliance of the appellant to various statutory notices issued, it is evident that the appellant prima facie is delaying the payment of due taxes and apparently proves that the appellant's claim lacks the force of law and hence the non-compliance of notices. It can also be presumed that the non-serious attitude of the appellant speaks of scant respect for statutory notices and also at the same time shows the extent of use of recourse to legal remedies to possibly delay payment of due taxes. Suffice to say that the appellant has not even bothered to pursue its own appeal in any manner. Summarising the non-compliance it can be said that the appellant has failed to display any action that can lead to considered and justified decision based on relevant evidence. In these circumstances, it has to be believed the the appellant is not interested in pursuing its own case and has failed to discharge the primary onus statutorily & judicially cast upon it to substantiate the claims made in the grounds of appeal inspite of more than adequate time and opportunities given as brought out above. The considerate action on the part of the appellate authority is evident from the number of opportunities provided despite non-receipt of any substantive response. There is a well-known Latin dictum – "**law vigilant bus non dormientibus jura subveniunt**", which means that the law assists only those who are vigilant and not those who are careless of their right. In order to claim one's right, one must be watchful of one's right. Only those persons who are watchful and careful of using their rights are entitled to benefits of law. In other words law confers rights on persons who are vigilant of their rights. In this case the appellant has miserably failed to discharge his duty.*

6. As the aforesaid order of Ld. CIT(A) has been passed on ex-parte basis, in our considered opinion, the matter should be restored back to the file of Ld. CIT(A) with granting of a final opportunity to the assessee

to represent its case before the Ld. CIT(A), as has been admitted and conceded by the Counsel of the assessee before us.

7. Our aforesaid view is identical to the view taken by us 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**. The relevant observations in the case of **Brajesh Singh Bhadoria (supra)**, are extracted hereunder for the sake of reference and support:

> *"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."

8. In view of aforesaid observations, facts and circumstances of the present case which are identical to the facts of the **Brajesh Singh Bhadoria (supra)**, respectfully following the same, also as fairly conceded by both the parties herein, in the interest of justice, we find it appropriate to restore the

present appeal back to the files of Ld. CIT(A) for fresh adjudication within a period of 3 months from receipt of this order.

9. 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.

10. 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/-	**Sd/-**
(PARTHA SARATHI CHAUDHURY)	**(ARUN KHODPIA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

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

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

1. अपीलार्थी / The Appellant- Gursukh Energy India Pvt. Ltd., Raipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward-3(1), 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