

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: 237/RPR/2025

(निर्धारण वर्ष Assessment Year: 2014-15)

Sandeep Kaur Gill, 26/102, Shukla Colony Ravi Shankar Shukla Ward, Raipur-492001, C.G.	v s	Income Tax Officer, Ward-3(1), Raipur, C.G.
PAN: ADCPG7812K		
(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	:	21.05.2025

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) 2014-15, dated 15.09.2022. Resulted, against the penalty order passed by the Income Tax Officer, Ward-3(1), Raipur, (for short, "The Ld. AO"), u/s 271(1)(c) of the Act, dated 29.05.2018.

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

1. *The Assessing Officer erred in law as well as in fact while imposing penalty u/s. 271(1)(c) of the act amounting to Rs.3,17,452/- against the assessee by holding that the assessee had concealed his income and has furnished inaccurate particulars of income. The order of the Assessing Officer is not in accordance with the provisions of law and is therefore liable to be deleted.*
2. *The appellant reserves the right to add, amend or alter any ground or grounds at the time of hearing.*

3. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation being delayed by 873 days, therefore, a condonation petition has been filed by the assessee elaborating the reasons for delay and explanations clarifying that there were no intentional laps on the part of assessee for such default. After going through the condonation petition along with the affidavit of the assessee, it is observed that there are sufficient reasons which are beyond the control of appellant with no deliberate negligence or mala-fide conduct of the assessee, therefore, in the interest of justice to adopt a justice oriented and liberal approach in deciding the appeal, respectfully following the decision of 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**, wherein the observation of Hon'ble Apex Court are as under:

3. *An appeal was preferred by the appellant before the Income Tax Appellate Tribunal, Raipur Bench, wherein there was a delay of 166 days. The Tribunal declined to condone the delay. An appeal was preferred against the said order by the appellant before the High Court and has been dismissed. Even the appeal*
4. *In our view, both **the Tribunal and the High Court ought to have adopted a justice-oriented and liberal approach by condoning the delay of 166 days.***

4. In view of the aforesaid principle laid down by Hon'ble Apex Court, we are of the considered view that the delay in filing of appeal before the Ld. CIT(A) for 873 days deserves to be condoned and the matter should be adjudicated afresh based on merits of the case and facts available on record.

5. Brief facts of the case are that the assessee had filed his return of income declaring total income at Rs. 9,08,810/-. Thereafter, the case of assessee has been taken up for scrutiny u/s 147 of the Income Tax Act. In culmination of the proceedings u/s 147 and assessment u/s 143(3) r.w.s. 147 has been passed with the addition of Rs. 10,57,752/- and consequently, penalty proceedings u/s 271 was initiated, but during the penalty proceedings, there was no appropriate response by the assessee *qua* the issue of penalty, therefore, a penalty u/s 271(1)(c) vide order dated 29.05.2018 for Rs.3,17,452/- was imposed. Against the impugned penalty order the assessee preferred an appeal before the Ld. CIT(A), however, as there was no representation by the assessee on the dates of hearing fixed by the Ld.

CIT(A). The matter is being decided on ex-parte basis by dismissing the appeal of the assessee.

6. 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:

3. Appellate findings:

I have carefully considered the facts of the case, penalty order dated 29.05.2018 u/s 271(1)(C) from the ITO, Ward 3(4), Raipur. The appellant has not filed any the reply during the appellate proceedings despites providing several opportunities by this office.

3.1 *Grounds of appeal No. 1 to 2:- Vide these grounds of appeal the appellant has challenged the penalty order u/s 271(1)(c) of the IT Act by the AO Wherein he has imposed concealment penalty of Rs. 3,17,452/- u/s 271(1)(c) of the IT Act.*

3.2 *In order to give proper opportunity to the appellant to present its case and to defend the grounds of appeal taken by the appellant, the case was posted for hearing on various dates, the details of which are as under:*

<i>Date of Notice</i>	<i>Date of compliances</i>	<i>Status</i>
<i>05.01.2021</i>	<i>08.01.2021</i>	<i>No compliance</i>
<i>24.12.2021</i>	<i>31.12.2021</i>	<i>No compliance</i>
<i>30.06.2022</i>	<i>15.07.2022</i>	<i>No compliance</i>
<i>24.08.2022</i>	<i>08.09.2022</i>	<i>No compliance</i>

4. *The aforesaid notice also remains uncomplied with. As can be seen from the above details, the appellant has been provided reasonable number of opportunities but appellant has chosen not to avail any of these. No written submission has been made by the appellant in support of the grounds taken during the appeal. It appears that the appellant is not keen to pursue the appeal and no material/argument has been brought on record by the appellant against the order of the AO's and in support of the grounds taken in appeal.*

4.1 Reference is made to the decision of Hon'ble Supreme Court in the case of **CIT vs. BN Bhattacharya (1997)118 ITR 461(SC)**, in which the Hon'ble Apex Court while dealing with the issue of persuasion of appeal has stated that-

“Preferring an appeal means more than formally filing it but effectively pursuing it”

4.2 The Delhi Tribunal in **CIT vs. Multiplan India Pvt. Ltd. as reported in 38 ITD 320 (Delhi)** when faced with a similar situation of non-persuasion of appeal, dismissed the appeal of revenue.

4.3 In view of these facts, I am of the opinion that no interference is called for in the AO's order and therefore, the grounds of appeal are dismissed.

5. In result, the appeal of the appellant is hereby dismissed.

7. On perusal of the order of Ld. CIT(A), it is clearly transpires that there was no deliberation by the Ld. CIT(A) on the merits of the issue raised by the assessee, neither there was any discussion regarding the facts and material available on record nor the statement of facts furnished by the assessee. The matter has been decided on ex-parte basis and the appeal has been dismissed *in limine*.

8. Considering the overall facts and circumstances, which are identical to be facts of the decision 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**, it would be appropriate to restore this matter back to the files of Ld. CIT(A) for *denovo* adjudication for which a last and final opportunity is being granted to the assessee to represent his case before the Ld. CIT(A). 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 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.”*

9. The aforesaid case also falls within the scope of interpretation of law as observed by Hon’ble Mumbai High Court in the case of **CIT vs. Premkumar Arjundas Luthra (HUF) reported in [2016] 240 taxman 133**; the relevant observations were produced hereunder for the sake of reliance and applicability in the present case:

“.....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 Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 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. Section 251(1)(a) and (b) 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-section (2) of Section 251 of the Act also makes it dear 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 Section 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, with effect from 1st June 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore, just as it is not open to the Assessing Officer 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 dear from the Section 251(l)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to at 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. Respectfully following the aforesaid cases, after a thoughtful consideration of the totality of facts and circumstances of the present case and as fairly conceded by both the parties herein, the matter merits to be restored back to the file of Ld. CIT(A) fresh adjudication within a period of 3 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 21/05/2025.

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

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

रायपुर/Raipur; दिनांक Dated 21/05/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Sandeep Kaur Gill, 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