

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.181/RPR/2025

निर्धारण वर्ष / Assessment Year : 2011-12

Nelson Yona
Near Shiv Mandir,
Avanti Vihar, Raipur (C.G.)-492 006
PAN: ADBPY8725E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer
Ward-4(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praveen Goyal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 13.05.2025

घोषणा की तारीख / Date of Pronouncement : 29.05.2025

आदेश / ORDER**PER PARTHA SARATHI CHAUDHURY, JM**

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 27.01.2023 for the assessment year 2011-12 as per the following grounds of appeal:

“1. That on the facts and in the circumstances of the case and in law, the order u/s. 147 r.w.s. 144 of the Act passed by the assessing officer dated 08/11/2018 and order u/s. 250 of the Act passed by Id. CIT(A), NFAC dated 27/01/2013 is illegal and void ab initio.

2. That on the facts and in the circumstances of the case and in law, the assessing officer erred in making an addition of Rs.2,17,330/- u/s 68 of the Act.

3. The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.”

2. At the very outset, the Ld. Counsel for the assessee submitted that the appeal is time barred by 741 days. Elaborating the reasons leading to the impugned delay, the Ld. Counsel has filed condonation application a/w. affidavit. It was submitted by the Ld. Counsel that the assessee is a senior citizen aged 79 years and is suffering from prolonged illness and that also he is not well versed with the digital format regarding notices/orders being served digitally by the Ld. CIT(Appeals)/NFAC at the email id. For the sake of clarity, the relevant contents of the condonation application are culled out as follows:

“c. That the appellant being aged about 79 Years is suffering from prolonged illness.

d. That the originally notice u/s.148 of the Act was issued to the appellant for the AY 2011-12 and 2012-13, when the same came to the knowledge of appellant, the assessing officer has already passed assessment order for the AY 2011-12 u/s.144 of the Act and the appellant complied for the AY 2012-13 with the help of tax consultant and assessing officer has accepted the returned income of the appellant.

e. The appellant relied on the consultant who made submissions for the AY 2012-13 and filed appeal before the Hon'ble CIT-Appeals on 10.12.2018 for the year under consideration i.e. AY 2011-12.

f. That the appellant was not well versed with the income tax portal and also was not operating mail id frequently due to old age and medical issues.

g. That as submitted in point no. 'f' above, the notices issued by CIT-appeals were overlooked without any intention of non-compliance and the appellant was not in touch with the consultant who filed the appeal before the CIT(A).”

On perusal of the condonation application a/w. affidavit, I am of the considered view that the reasons for delay involved in the captioned appeal are circumstantial and there is no evidence placed by the department demonstrating any deliberate or malafide conduct of the assessee, for causing such delay. At the same time in the issue of delay a liberal and judicious approach should have to be adopted as has been directed by the Hon'ble Apex Court in a recent judgement. 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.

3. 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 741 days involved in the captioned appeal is condoned.

4. That on merits as emanating from the assessment order, the assessee had deposited an amount of Rs.2 lacs in his bank account and since the source of such cash deposits remained unexplained, the A.O added the said amount u/s.68 of the Income Tax Act, 1961 (for short 'the Act') as unexplained cash credit in the hands of the assessee.

5. I have carefully considered the facts emanating from the records, heard the parties herein and analyzed the facts and circumstances. In this case, the addition has been made u/s. 68 of the Act as unexplained cash credit but the ground of the department as emanating in the assessment order is that there was cash deposit of Rs.2 lacs in the bank account of the assessee which remained unexplained, therefore, the said cash should be taxable as unexplained money in the hands of the assessee and the correct provision therefore is Section 69A of the Act and not Section 68 as had been invoked by the A.O.

6. Be that as it may, it is also noted at Para 5.1 of the Ld. CIT(Appeals)/NFAC that an ex-parte order has been passed by the said authority due to non-compliance by the assessee. For the sake of completeness, Para 5.1 is extracted as follows:

“5.1. It is pertinent that in order to decide this appeal in a timely manner a number of notices /communications through ITBA portal were sent to the appellant, viz. communications dated 07.01.2021, 26.08.2022, 19.09.2022 and 03.01.2023. However, there evidently has been no response from the appellant till date. There is no gainsaying that once the appeal is filed by the appellant, it is obligatory on its part to 'purposefully and co-operatively pursue the same in a worthwhile manner, which the appellant has evidently failed to do. It clearly appears that the appellant's compliance or rather lack of it, the appellant has not even bothered to pursue this appeal in any productive manner. Hence, in view of the aforesaid total non-compliance/non prosecution of the instant appeal on the part of the appellant, the instant appeal is adjudicated and disposed of, as under, ex-parte, primarily on the basis documentation available on record.”

7. In the same set of parameters the ITAT, 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 observed and held 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 aforesaid, 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 appellants. 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. 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. Respectfully following the aforesaid decision on the same parity of reasoning the order of the Ld. CIT(Appeals)/NFAC is set-aside and matter remanded back to its file for denovo adjudication as per law also considering the observation of this Bench regarding applicability of correct provision of law in the facts of the case also while complying with the principles of natural justice. The assessee is also directed that this being the final opportunity he shall comply with all the hearing notices issued from the office of Ld. CIT(Appeals)/NFAC.

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

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

Order pronounced in open court on 29th day of May, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 29th May, 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