

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.257/RPR/2025

निर्धारण वर्ष /Assessment Year : 2017-18

Rajkumar Thadwani
1-Raju Krishi Kendra,
Amardeep Talkies Road,
Banstal, Raipur (C.G.)-492 001
PAN: ADBPT0267A

.....अपीलार्थी / Appellant

बनाम / V/s.

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

.....प्रत्यर्थी / Respondent

Assessee by : Shri Moolchand Jain, Advocate
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 04.06.2025
घोषणा की तारीख / Date of Pronouncement : 06.06.2025

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 27.09.2023 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee submitted that the captioned appeal is time barred by 515 days. Elaborating the reasons leading to the impugned delay, the assessee has filed condonation application a/w. affidavit. It was submitted by the Ld. Counsel that the assessee got electric shock and admitted in hospital and thereafter, he was suffering since last 10 years. The Ld. Counsel further submitted that the assessee was not well conversant with the taxation matter and due to change of Counsel, the delay has been caused. For the sake of clarity, the Paras 2, 3, 4 & 5 of the said condonation application are culled out as follows: (relevant extract)

“2) That on 08.05.2015 I got electric current in my hands and was admitted in Patel Nursing Home and since then I am suffering since last 10 years and am unable to attend my day to day business, which is being managed by my daughter, who is my only issue. Copies of my medical papers all enclosed herewith as.

3) That she is also not conversant with the taxation matters and its compliances. We were fully dependent upon our accountant Jitendra Sharma, who handed over the papers to

tax consultant Sunil Keshwani to file appeal against the order passed by the CIT(Appeals) NFAC.

4) That recently on cross verification of the records of the department it came to the knowledge of my new consultant that my the then counsel has not filed appeal, hence I approached Mr. Moolchand Jain, Advocate, Durg through my present counsel Mr. Ashok Verma, Adv. of Raipur on 15.04.2025 to file appeal before this Hon'ble Tribunal. I was not aware to check the details on I.T. Portal.

5) Sir, I had no malafide intention and have not gained any undue advantage on account of the delay in submitting the appeal before this Hon'ble Tribunal. I am not guilty of laches as there is no deliberate delay.”

On a 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 purely circumstantial and there was no deliberate or malafide conduct on the part of the assessee. That at the same time in the issue of delay a liberal and judicious approach must be adopted also as has been held 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 515 days involved in the captioned appeal is condoned.

4. It is noted that as per Paras 4, 5.3 to 7 of the impugned order, the Ld.CIT(Appeals)/NFAC vide an ex-parte order had dismissed the appeal of the assessee due to non-compliance by the assessee. For the sake of clarity, the Paras 4, 5.3 to 7 of the Ld.CIT(Appeals)/NFAC's are culled out as follows:

“4. **NON-ATTENDANCE**:- In this case, it is seen that the appeal was filed on 30/01/2020 and the first notice of hearing was issued on 25/12/2020, fixing the date of hearing on or before 11/01/2021, but on the appointed date, no one attended or furnished submission. Also, several opportunities of hearing were given to the appellant as narrated below:-

Sr. No.	Date of Notice Issued	Date of Hearing	Particulars
1	25/12/2020	11/01/2021	Notice issued, but no response from the appellant
2	19/08/2021	02/09/2021	Notice issued, but no response from the appellant
3	08/08/2023	23/08/2023	Notice issued, but no response from the appellant
4	13/09/2023	18/09/2023	Notice issued, but no response from the appellant

As can be seen from the above table the appellant was given ample opportunities by way of notices issued as narrated above. However, the appellant/AR has refrained from attending the appellate proceedings and has not furnished any submission.

5.3 DECISION:- The Statement of Facts, Grounds of appeal and the material on record have been considered.

During the appellate proceedings, the appellant has not filed any written submission. In absence of the written submission and evidence, it remained to be unexplained as to how the AO's order is erroneous. The appellant in the statement of facts mentioned that he is a retailer and the money deposited was receipts from the customers. It pertinent to mention here the appellant was not allowed to accept cash after 09.11.2016 in old currency notes. The appellant have not produced any evidence that his line of business was exempt from the demonetization notification and was allowed to accept old Specified Currency Notes. The appellant has also not claimed or given evidence that the deposits were from his receipts prior to 09.11.2016. In such a scenario the appellant should have furnished details of stock and corresponding sales to have that cash balance on 09.11.2016. But the appellant have failed to produce such evidence. Also it was not explained the need to depositing money, if it was lying with him as on 09.11.2016, in 14 instances over the period of two months. There was no bar in depositing cash at once in the banks. The A.O. also had given the benefit of first deposits made by the appellant in three bank accounts. Considering all these facts, I found no infirmity in the action of the A.O. in treating the balance cash deposits as unexplained money u/s 69A. If the appellant claims that he is eligible for any claim he should have furnished supporting documents. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. From the assessment order, it is evident that there was non-compliance of notices before the AO as well and therefore, the AO had to pass the order. During the appellate proceedings also, the appellant has not availed of the opportunities given. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.

5.4 In the case of Anil Goel Vs CIT, [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:

"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorized representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 1TR 577, has been rightly relied upon wherein it has been observed that elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/re revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority”

5.5 Accordingly, I agree with the reasons given by the AO and confirm the addition made by the AO. The Ground No. 1 is hereby DISMISSED.

6. **GROUND NO.2:-** In this ground the appellant has requested to allow adding or amending any ground of appeal. No such option was exercised by the appellant and, as such, this ground is treated as dismissed.

7. In the result, the appellant's appeal is dismissed.”

5. The Ld. Sr. DR has fairly submitted that the matter may be adjudicated denovo on merits before the first appellate authority providing one final opportunity to the assessee.

6. I have carefully considered the contents in the documents/material available on record, submissions of both the parties. As per the aforesaid examination of the entire spectrum of the matter in the interest of natural justice, I deem it fit and proper to provide one final opportunity to the assessee to represent his case on merits before the Ld. CIT(Appeals)/NFAC.

7. At this stage, I herein observe that the ITAT, “Division Bench”, 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 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 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 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. Respectfully following the aforesaid order, I set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for

denovo adjudication while complying with the principles of natural justice as per similar terms. The Ld. Counsel for the assessee made a statement at bar that the assessee shall duly comply with the hearing notices from the Ld.CIT(Appeals)/NFAC. The Ld.CIT(Appeal) /NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act.

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

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

Order pronounced in open court on 06th day of June, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 06th June, 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