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:326/RPR/2025

(**निर्धारण वर्ष** Assessment Year: 2019-20)

Arihant Agencies, Main Hospital Road, Rajnandgaon-491441, C.G.	Vs	Deputy Commissioner of Income Tax, Central Circle-1,C03, Income Tax Building Tower A 8th & 9th Floor, Tuta, Sector 21, Naya Raipur, Raipur
PAN: AAMFA7021P		
(**अपीलार्थी/Appellant**)	..	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से /Assessee by	:	Shri Rakesh Dhody, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	03.06.2025
घोषणा की तारीख/Date of Pronouncement	:	05.06.2025

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal of the assessee is filed against the order of the Commissioner of Income Tax (Appeal), Raipur-3, [in short "Ld. CIT(A)"], passed on 27.03.2025, u/s 250 of the Income Tax Act, 1961 (in short "the Act"), for the Assessment Year 2019-20, which in turn arises from the order u/s 143(3) of the Act, dated 30.09.2021 passed by Assistant Commissioner of Income Tax, Central Circle-1, Raipur (in short "Ld. AR"),.

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

1. *In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals)-3 has erred in deciding the appeal ex-parte and passing the order on 27-03-2025 without considering the detailed written submission filed by the appellant on 20-03-2025.*

2. *In the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals)-3 is not justified in confirming the action of Ld. Assessing Officer of passing order u/s 154 of the act without issuing notice to the appellant of its intention so to do and has not allowed the appellant a reasonable opportunity of being heard.*

3. *The Ld. Commissioner of Income-tax (Appeals)-3 is not justified m confirming action of the ld. Assessing Officer in making addition of Rs. 50,79,850/- to the returned income ignoring the fact that the returned income already comprises of income from stock surrendered at the time of survey amounting to Rs 50,79,850/-. Thus making a double addition to the returned income.*

4. *The Ld. Commissioner of Income-tax (Appeals)-3 is not justified in confirming action of the ld. Assessing Officer in applying section 69 of the Act on stock surrendered in survey of Rs. 50,79,850/- and charging the same to higher rate of tax under sec. 115BBE of the Act.*

5. *The appellant reserves the right to addition, after or omit all or any of the grounds of appeal in the interest of justice.*

3. The Brief facts of the case are culled out from the order of Ld. CIT(A) are as under:

"*The brief facts of the case are that the assessee is a resident partnership firm and engaged in the business of trading of sanitary fittings plastic tank pipe fittings etc. The assessee firm filed its return of income on 30.10.2019 declaring total income of Rs. 40,46,330/- for the year under consideration. In this case, survey u/s 133A of the Income Tax Act, 1961 [herein after referred as the Act] was conducted on 06.03.2019 at the business premises of the assessee. Consequently, the case was selected for the scrutiny. Thereafter, all the statutory notices were issued in due course and accordingly served to the assessee in the manner and procedures provided in the Act. During the course of survey proceedings difference of stock amounting to Rs. 50,79,850/- was found. While recording the final statement, the assessee was asked to explain the reasons for difference of stock. In response, the assessee expressed its inability to explain the same and offered Rs.50,79,850/- for taxation as its income for the year under consideration. The excess stock found during the survey was not found recorded in the books of accounts. During the course of assessment proceedings, the assessee submitted its reply before the AO. The relevant part of the reply is given as under: -*

> *"The additional income agreed for the year under consideration was the stock surrendered. That during the course of income tax survey assessee has agreed to surrender a sum of Rs.50,79,850/- on account of purchase/stock which were acquired from business income of the firm and was not considered in the regular books of accounts of the assessee."*

The explanation offered by the assessee, that this unrecorded stock is acquired from business income is not satisfactory. No supporting evidences are produced to show that the excess stock found was the profit of regular business. The assessee has failed to prove that it was acquired out of business income, as the supporting evidences like the purchase bills relating to the excess stock were not produced for verification. The onus was not discharged, which was on the assessee. This excess stock is therefore treated as income u/s 69 of the Act and charged to tax u/s 115BBE of the Act. Therefore, the AO completed assessment u/s 143(3) of the Act and charged to tax u/s 115BBE of the Act on the surrendered income of Rs. 50,79,850/-. Since, the surrendered income of Rs. 50,79,850/- was not considered for tax purpose in computing the tax for the order issued under section 143(3) of the Act on 30.09.2021, therefore the AO passed a rectification order u/s 154 r.w.s. 143(3) on 14.12.2021 and tax calculated as per provision of section 115BBE of the Act surrendered income of Rs.50,79,850/-.

4. Being aggrieved with the rectification order u/s 154 r.w.s. 143(3) dated 14.12.2021, the assessee preferred an appeal before the Ld. CIT(A), however, the assessee remains non-compliant before the Ld. CIT(A), but had sought adjournments time and again, which is a fact emerging from the observations of the Ld. CIT(A), culled out as under:

*The appeal was fixed for hearing on **21.11.2022**. After lapse of hearing dt. **21.11.2022**, the assessee has submitted a request for adjournment on **31.12.2022**. The request for adjournment is as under: -*

Due to the return filing deadlines we are unable to provide a response, kindly grant us an adjournment.

*The request of the assessee was considered. Hence, the case was adjourned till the next hearing date and the next hearing date was fixed for hearing on **17.10.2023** vide notice dt. **25.09.2023**. **Again, no reply was received from the assessee** on the due date. Again, the next hearing date was fixed for hearing on **17.03.2025** vide this office notice dt. **11.03.2025**. **Again, no reply was received from the assessee** on the due date. Therefore, on last opportunity is being given and the final opportunity is accorded by fixing the hearing of the case on **17.03.2025** vide this office notice dt. **20.03.2025**. In response to the hearing dt. **20.03.2025**, the assessee has submitted a request for adjournment on **20.03.2025**. The request for adjournment is as under:*

> *Due to some unavoidable circumstances we are unable to submit he response at the given date an time. Please grant us an adjournment, we shall submit the response at the earliest. Any inconvenience caused to your honorable authority is deeply regretted.*

*Due to huge pendency of old appeals & Hon'ble Board's guidelines for prompt disposal of appeals pertains to various category, further adjournment cannot, be granted. **It is quite evident from the chronology of event that despite several opportunities being granted from time to time, there has been absolutely no compliance on part of the appellant to give detailed explanation regarding ground of appeal taken for the year under consideration. This clearly shows that the appellant is not keen to pursue the above-mentioned appeal.***

5. With aforesaid observations, the appeal of the assessee has been dismissed by the Ld. CIT(A).

6. Dissatisfied with the impugned order of Ld. CIT(A), assessee preferred an appeal before the tribunal, which is under consideration in the present case.

7. Ostensibly, the aforesaid appeal of the assessee before the Ld. CIT(A) has been decided on ex-parte basis, without hearing the assessee on account of non-prosecution, we find that under similar facts and circumstances, we have adopted a view to set aside the matter to the files of Ld. CIT(A) for one last and final opportunity to the assessee, accordingly, this matter is covered by our 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**, 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 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 the aforesaid facts and circumstances, respectfully following the decision in the case of **Brajesh Singh Bhadoria (supra)**, as 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.

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 before us through its authorized representative 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 appeal in accordance with the mandate of law.

10. In result, appeal of the assessee in ITA No. 326/RPR/2025 is **allowed for statistical purposes**, in terms of over aforesaid observations.

Order pronounced in the open court on 05/06/2025.

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

रायपुर/Raipur; दिनांक Dated 05/06/2025
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Arihant Agencies, Raipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-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