

**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: 97/RPR/2025**

(निर्धारण वर्ष Assessment Year: 2016-17)

Neelam Rai, Kududand, Vishnunagar, Bilaspur-495001, C.G.	v s	Income Tax Officer, Ward-1(1), Aayakar Bhawan, Shriram Plaza, Vyapar Vihar Road, Opp. Hotel Ananda, Bilaspur-495001, C.G.
<b>PAN: BSSPR0265F</b>		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Ravi Agrawal, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	05.06.2025
घोषणा की तारीख/Date of Pronouncement	:	18.06.2025

**आदेश / ORDER**

**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 17.12.2024, for the Assessment Year 2016-17, which in turn arises from the order passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 29.01.2024, passed by Assessment Unit, Income Tax Department (in short "Ld. AR").

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

1. *That, order passed by Ld. ITO, Ward-1(1), Bilaspur is illegal and bad in law and therefore, the impugned order is liable to be quashed.*
2. *That, on the facts and in law, order passed u/s 148A(d) dt. 26/03/2023 is invalid as sanction u/s 151 has not been taken from the appropriate authority for passing order u/s 148A(d) and for issuance of notice u/s 148, and therefore, consequential order passed u/s 147 rws 144 rws 144B dt. 29/01/2024 thereunder, is also invalid and illegal, and hence liable to be quashed.*
3. *That, on the facts of the case, it is apparent that notice u/s 148 dt. 26/03/2023 has been issued by the Jurisdictional Assessing Officer (JAO), i.e., Sri Anjani Kumar Singh, ITO-1(1), Bilaspur, and not under 'automated allocation system' and therefore, the impugned notice is invalid and bad in law being issued by the JAO as the same is not in accordance with section 151A of the Income Tax Act. Therefore, the assessment order passed u/s 147 r.w.s. 144 read with section 144B dt. 29/01/2024, pursuant to such invalid notice, is also invalid and bad in law and the order is liable to be quashed.*
4. *That, on the facts and in law, the Ld. CIT(A) did not give any opportunity to the appellant to represent its case as the appellant did not receive any notice in the e-mail address provided in Form 35 or any hardcopy notice of hearing either by post or otherwise, from the office of Ld. CIT(A). The appellate order is bad in law and liable to be set aside.*
5. *That, on the facts and circumstances of the case and in law, addition of Rs. 40,00,000.00 u/s 69 is not justified and it is liable to be deleted.*

6. *That, on the facts and circumstances of the case and in law, addition of Rs. 13,17,500.00/- under the head "Income from Other Source" is not justified and it is liable to be deleted.*
7. *That, on the facts and in law, addition of Rs. 10,40,000.00 u/s 69A is not justified and it is liable to be deleted.*
8. *That the appellant reserves the right to add, alter or modify any ground of appeal.*

3. The concise facts of the case are that the assessee is an individual employed as government schoolteacher on contractual basis. As per information flagged in NMS Module of Insight Portal in accordance with the risk management strategy formulated by CBDT and evidence in possession with the department, that the assessee has made following transaction during the FY 2015-16 relevant to the AY 2016-17:

Sr. No.	Information Description	Source	Amounts(Rs.)
1.	Purchase immovable property valued at Rs. 30,00,000 or more	Registration office Bilaspur	53,17,000/-
2.	Deposited Cash of Rs.10,00,000/- or more in saving bank account	State Bank of India	10,40,000/-
	Total		63,57,000/-

It is noticed by the department that the assessee has not declared any income nor had filed the ITR for the relevant year. In absence of return of income, the aforesaid transaction being above taxable limit for filing of return,

remained unverifiable *qua* the source of income of the assessee. Accordingly, a show cause notice u/s 148A(b) of the Income Tax Act was issued on 07.03.2023, however, the assessee did not make any compliance. Ld. AO had the belief that the assessee did not have sufficient source of income commensurate with purchase of immovable property and cash deposit into her bank account, therefore, the case of assessee has been reopened u/s 147 of the I.T. Act after obtaining necessary approval. Accordingly, notice u/s 148 was issued on 26.03.2023. Further, various opportunities were granted to the assessee to furnish explanation and necessary information to complete the assessment, however, the assessee remain non-compliant at every stage of the assessment proceedings. Finally, the Ld. AO, in absence of any explanation by the assessee had completed the assessment on best judgment basis have made additions (i) u/s 69, (ii) under the head 'income from other sources' and (iii) unexplained money u/s 69A, thereby, the assessed income of the assessee has been determined of Rs.63,57,500/-.

4. Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A), however, since the assessee stay non-compliant, while the case was fixed for hearing on 12.10.2024, 20.11.2024 and 05.12.2024, in absence of any compliance by the assessee, the Ld. CIT(A) had passed the appellate order and the appeal of assessee is dismissed with the following observations:

5.3 *During the appellate proceedings **no submission** has been made by the appellant whereas ample opportunities were provided.*

5.4 *Since during the assessment as well as the appellate proceeding the assessee has **not submitted any documents/material despite several opportunities** were provided to him. The assessee has failed any detail and documents related to the source of cash deposits, he has also not submitted any document in respect to purchase of the immovable property. It seems he has nothing to submit regarding the same. Therefore, after going through the assessment order and the materials available on the record, I am of the opinion that there is no reason to interfere with the order of the AO and the same is being upheld. Hence the relevant grounds of appeal are dismissed.*

5. Dissatisfied with the impugned order of First Appellate Authority, assessee preferred an appeal before this tribunal, which is under consideration in the present matter.

6. At the outset, it is observed that since the assessee was non-compliant / non-responded before the First Appellate Authority, the appellate order passed was an ex-parte order. In this matter, Ld. AR on behalf of the assessee had also submitted that the reason for non-appearance before the Ld. CIT(A) was that the assessee had furnished her email ID in Form 35 as [neelamrai1512@gmail.com](mailto:neelamrai1512@gmail.com), whereas all the notices were forwarded on the email ID '[ADDPI9063R@GMAIL.COM](mailto:ADDPI9063R@GMAIL.COM)', which was not a preferred email ID by

the assessee in the appellate proceedings. Under such facts and circumstances, the assessee remains oblivious about the notices issued, as the same were communicated on a different email-ID than the ID opted by the assessee, therefore, the service of notice to the assessee cannot be considered as a valid service, in accordance with the mandate of law. It was the request that the matter needs to be restored back to the file of Ld. CIT(A) to reconsider after providing adequate and reasonable opportunities of being heard to the assessee.

7. Considering the aforesaid facts and circumstances, the order passed by First Appellate Authority, violating the principle of natural justice as the assessee was not served with notices on her preferred email-ID, cannot be considered to be in adherence with the provisions of Section 250(4) & (6). Accordingly, it would be appropriate to set aside the matter back to the file of Ld. CIT(A) for *denovo* adjudication of the grounds of appeal raised.

8. On a thoughtful consideration of the matter of facts of the present case, we are of the considered opinion that a last and final opportunity shall be allowed to the assessee to represent its case before the Ld. CIT(A), we, therefore, direct to set aside the order of Ld. CIT(A) and restore this matter back to his file for fresh adjudication.

9. Our opinion is supported with the decision of ITAT, Raipur 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 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.*

**10.** In view of aforesaid facts and circumstances, respectfully following the aforesaid decision in the case of **Brajesh Singh Bhadoria (supra)**, also as agreed by the assessee/petitioner and revenue/respondent of the present appeal, 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.

**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 before us, 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 case in accordance with the mandate of law.

11. In result, appeal of the assessee is **allowed for statistical purposes**, in terms of over aforesaid observations

Order pronounced in the open court on 18/06/2025.

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

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

**रायपुर/Raipur; दिनांक Dated 18/06/2025**  
Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Neelam Rai, Bilaspur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Ward-1(1), Bilaspur, C.G.
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