

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: 239/RPR/2024

(निर्धारण वर्ष Assessment Year: 2012-13)

Vineet Singh Construction Company Private Limited, Shop No. 3, Kashyap Complex, Indu Udyan Chowk, Jarhabhata, Bilaspur-495001, C.G.	V s	Joint Commissioner of Income Tax, Range-1, Aayakar Bhawan, Vyapar Vihar, Bilaspur, C.G.
PAN: AABCV7141D		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Nikhilesh Begani, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	02.06.2025
घोषणा की तारीख/Date of Pronouncement	:	18.06.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), NFAC, Delhi, [in short "Ld. CIT(A)"], under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 20.03.2023, for the Assessment Year 2012-13, which in turn arises from the penalty order passed by Joint Commissioner of Income Tax, Range-1, Bilaspur, (in short "Ld. AR"), u/s 269SS / 271D of the of the Act, dated 26.03.2017.

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

1. *In the facts and circumstances of the case and in law, Ld. Commissioner of Income- tax (Appeals), National Faceless Appeal Centre (NFAC) is not justified in upholding the penalty order when the Ld. Assessing Officer did not record satisfaction in the assessment order.*
2. *In the facts and circumstances of the case and in law, Ld. Commissioner of Income- tax (Appeals), National Faceless Appeal Centre (NFAC) is not justified in upholding the penalty order which is illegal, bad-in-law and without jurisdiction as penalty proceedings was barred by limitation as prescribed u/s.275(l)(c) of the Income-tax Act, 1961.*
3. *In the facts and circumstances of the case and in law, the Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) has erred in confirming imposition of penalty of Rs.31,00,000/- under section 271D of the Income-tax Act,1961, for which there is no satisfaction recorded in the assessment order.*
4. *The impugned order is bad in law and on facts.*
5. *The appellant reserves the right to add, alter or omit all or any of the grounds of appeal in the interest of justice.*

3. At the inception of the hearing, it was noticed that the present matter was deliberated upon and heard earlier by this tribunal, and thereby have dismissed the appeal of the assessee being barred by limitation, rejecting the assessee's plea for condonation of delay involved therein of 371 days.

4. Aggrieved with the tribunal's aforesaid order, the assessee preferred an appeal before the Hon'ble Jurisdictional High Court wherein the assessee's request for condonation of delay has been allowed by the Hon'ble Jurisdictional High Court with the directions to remit back the appeal to ITAT for deciding the same on merits in accordance with law. The observations of

the Hon'ble High Court while granting the aforesaid order are extracted as under:

6. *We have heard learned counsels for parties, considered their rival submissions and also perused the record of the case with utmost care and circumspection.*
7. *Admittedly, there is a delay of 371 days' in filing the appeal before the ITAT and for which the appellant/assessee has assigned the reason that the appellant came to knowledge about the impugned order on 02.05.2024 and immediately, thereafter he filed the appeal before the ITAT on 23.05.2024.*
8. *The Supreme Court vide its Order dated 31.1.2025 passed in the matter of **Vidya Shankar Jaiswal** (supra) while setting aside the order of this court rejecting the appeal on the ground of delay has held that the High Court ought to have adopted justice oriented and liberal approach by condoning the delay of 166 days.*
9. *In view of above and also for the reason shown by the appellant/assessee. coupled with the fact though the application of the appellant was supported by the affidavit, but the revenue did not file any counter-affidavit controverting the reason assigned by the assessee and, as such, the delay of 371 days occurred in filing the appeal remained uncontroverted, therefore, the delay of 371 days occurred in filing the appeal being bonafide and unintentional deserves to be and is hereby condoned subject to payment of cost of 5,000/- by the appellant to the High Court Legal Services Committee and the appellant is also directed to file proof thereof within 15 days from today. The substantial question of law is answered accordingly.*
10. *The matter is remitted back to the ITAT for deciding the appeal on merits, in accordance with law, at the earliest.*

5. In terms of aforesaid directions of Hon'ble jurisdictional High Court, the appeal of assessee in ITA No. 239/RPR/2024 has been fixed for hearing and the matter has been taken up for adjudication.

6. At the outset, it is observed that in the aforesaid matter, assessment of the assessee was completed u/s 143(3) of the Act on 19.01.2025 for the AY

2012-13, enhancing the assessee's income by making an addition of Rs. 19,25,539/-. While passing the aforesaid order, it is observed by Ld. AO that the assessee had accepted received unsecured loans from M/s D.A. Enterprises of Rs. 31,00,000/- but not through account payee cheque or account payee bank draft which is duly recorded by the statutory auditor of the assessee in form 3CD Audit report in Annexure 'C' at Clause No. 24(a) of the said report, the assessee, therefore, was considered to be liable for penalty u/s 271D of the I. T. Act. Based on aforesaid observations, penalty proceedings u/s 271D are initiated and order u/s 269SS has been passed on 26.03.2017, imposing therein a penalty of equivalent amount of the default i.e., for Rs.31,00,000/-.

7. Being Aggrieved with the aforesaid penalty order, assessee preferred an appeal before the Ld. CIT(A), however, with no success, the appeal of assessee has been dismissed and penalty imposed by the Ld. AO has been confirmed by the Ld. CIT(A).

8. Aggrieved with the order of Ld. First Appellate Authority, assessee carried the matter before tribunal, which is under consideration in the present case.

9. While hearing on the facts of the present case, on perusal of the order of Ld. CIT(A), it is noticed that it was passed on ex-parte basis, as the assessee has not responded before the Ld. CIT(A). While confirming the order by Ld. CIT(A), he observed that

“However, the appellant is not responded during the appellate proceedings despite ample opportunities having been given to him. This proves that the appellant has nothing to offer on the issue involved. Yet, it is clear from the penalty order that appellant stated in his written submission during penalty proceedings that the amount in contention was accepted in account payee cheque. But, during verification u/s 133(6) of the Act made by the JCIT, it was informed by the concerned banks that the amount was received through RTGS.”

10. In terms of aforesaid observations, Ld. CIT(A) had adjudicated the grounds of appeal raised by the assessee, upholding the findings by the Ld. AO on the issues such as (i) that the order passed u/s 269SS was barred by limitation and without jurisdiction and (ii) the Ld. JCIT, Range-1, Bilaspur erred in imposing penalty of Rs. 31,00,000/- u/s 271D of the I. T. Act, 1961.

11. At the outset, Ld. Authorized Representative on behalf of the assessee Shri Nikhilesh Begani, Advocate, submitted that the First Appellate Authority in the appellate order was not justified in upholding the penalty order as certain aspects *qua* the penalty u/s 271D had left his attention such as no

satisfaction recorded by the Ld. AO in the assessment order and the penalty proceedings are bad in law being without jurisdiction as well as barred by limitation. Ld. AR further submitted that the order of Ld. CIT(A) was without considering the issues on legal as well as merits of the case, therefore, the order of Ld. CIT(A) deserves to be set aside and the penalty imposed by the Ld. AO is liable to be vacated.

12. Per contra, Ld. Sr. DR, Dr. Priyanka Patel, representing the revenue vehemently supported the orders of revenue authorities.

13. We have considered the rival submissions, perused the material available on record and the judgment of Hon'ble High Court of Chhattisgarh at Bilaspur in assessee's own case vide Taxc No. 190/2024 dated 10.03.2025 remitting the present matter back to the ITAT for deciding the appeal on merits. Respectfully following the directions of Hon'ble High Court in the present case, to deal with the contention raised by the assessee, which could not be substantiated or raised before the Ld. CIT(A) due to non-representation / non prosecution by the assessee. In absence of any response by the assessee during the appellate proceedings before the First Appellate Authority, the decision was granted based on material available and in accordance with the findings arrived at by the Ld. AO. As Ld. AR on behalf of the assessee has emphasized to decide the issue on merits after discussing the legal issue as

well as merits of the case, however, we find ourselves unable to pursue and to subscribe with such contention of the Ld. AR, as all such contentions / explanations / clarifications which should have been furnished before the First Appellate Authority could not be submitted by the assessee. Under such circumstances, the First Appellate Authority was deprived of all such facts/ explanations to the contentions of the assessee in the form of submission or explanation before him, therefore, the Ld. CIT(A) had decided the issue in terms of material available before him. Since the assessee could not represent its case before the First Appellate Authority, following the principle of natural justice, also in terms of the directions of Hon'ble Jurisdictional High Court to decide the matter on merits in accordance with law, we find it appropriate to restore this matter back to the file of Ld. CIT(A) for decide the same on merits, in accordance with the provisions of Section 250(4) and (6) with due consideration to the submissions of the assessee, at the earliest.

14. Apropos, non-prosecution by the assessee before the First Appellate Authority, we are of the opinion that the necessary facts, explanations, submissions, evidence or contentions requisite to decide the issue by the First Appellate Authority which are not furnished by the assessee, debars the authority to decide the issue justifiably, in turn the order appeal before us lacks the vital and essential factual information as well as supporting explanations to the legal contentions raised by the assessee,

therefore, the matter needs revisit by the Ld. CIT(A) to decide the issues raised after hearing both the parties. Our view is in conformity with the decision of this tribunal 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**, wherein under identical facts and circumstances the matter is restored back to the file of Ld. CIT(A) for fresh adjudication, 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 taxpayer 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 mala fide 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.

15. In view of the aforesaid facts and circumstances, respectfully following the directions of **Hon'ble Jurisdictional High Court in assessee's case(supra)** and the decision in the case of **Brajesh Singh Bhadoria (supra)**, the matter is restored back to the file of Ld. CIT(A) for *denovo* adjudication, at the earliest.

16. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard, in the set aside appellate proceedings. The assessee is 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 on its merits, in accordance with the mandate of law.

17. In result, appeal of the assessee in ITA No. 239/RPR/2024 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

रायपुर/Raipur; दिनांक Dated 18/06/2025

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

Vaibhav Shrivastav

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

1. अपीलार्थी / The Appellant- Vineet Singh Construction Company Private Limited
2. प्रत्यर्थी / The Respondent- JCIT, Range-1, Bilaspur
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