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.268/RPR/2025
निर्धारण वर्ष /Assessment Year : 2016-17

The Income Tax Officer-1(3),
Bhilai (C.G.)

.....अपीलार्थी / Appellant

बनाम / V/s.

Ramandeep Singh Sohi,
House No.6/10, Near St. Park,
Nehru Nagar (E), Bhilai
Durg-490 020 (C.G.)
PAN: EHQPS5607J

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 06.06.2025
घोषणा की तारीख / Date of Pronouncement : 18.06.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

This appeal preferred by the revenue emanates from the order of the Ld. CIT(Appeals)/NFAC, Delhi dated 19.02.2025 for the assessment year 2016-17 as per the grounds of appeal on record.

2. At the time of hearing none appeared on behalf of the assessee. The matter was heard after recording the submissions of the Ld. Sr. DR and on careful consideration of materials available on record.

3. At the very outset, it is noted that as per Paras 4 & 5 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, Paras 4 & 5 of the Ld.CIT(Appeals)/NFAC's order are culled out as follows:

> "4. Opportunity of hearing:
>
> In response to the hearing notices/opportunities provided to the appellant and in compliance to the notices, the appellant has not uploaded his submission in the appeal portal.
>
> 5. Findings and decision:
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> I have carefully considered Form 35, Statement of Facts, order u/s 147 r.w.s 144 r.w.s. 144B of the IT Act, details available in the system and the grounds of appeal raised. The present appeal is filed against the order u/s 147 r.w.s 144 r.w.s. 144B of the IT Act, dated 30/0'3/2022. The grounds raised are adjudicated as under:

> Further, against the assessment concluded the appellant has filed an appeal. Accordingly, this office has given 06 opportunities dated 27/07/2022, 02/12/2022, 23/0112624, .08108/2024, 19/12/2024 and 30/01/2025. For all the opportunities given to the appellant has neither responded, nor sought adjournment nor uploaded his submissions substantiating the ground raised with material evidence. Under the circumstances the pending appeal is decided on merit as per the details available in the system."

4. The fact shows that the return of income was filed by the assessee on 29-03-2017 declaring total income at Rs.3,24,980/-. The information was received in Insight Portal and uploaded by the Investigation Wing, Raipur based on which, it is found that the assessee is beneficiary of Rs.26,41,000/- on account of fictitious profits in sale of shares of a penalty scrip namely, Ejecta marketing Ltd., & Appu Marketing & Manufacturing Ltd. during the F.Y. 2015-16 relevant to the A.Y. 2016-17. Accordingly, the case of the assessee for relevant year was reopened u/s 147 of the Income Tax Act, 1961 (for short 'the Act') after obtaining prior approval from the appropriate authority. Notice u/s.148 of the Act was issued. Further notice u/s.142(1) dated 12-11-2021 was also issued. However; there was no response to said notices. Subsequently, the case got transferred to NFAC, therefore, a fresh opportunity was granted to the assessee by issue of notice u/s.142(1) dated 15-12-2021 and 02-02-2022. The response from the assessee was only on 02-02-2022 stating that the assessee has filed ROI and requested for reasons for reopening. Subsequently, vide notice u/s.142(1) dated 16-02-2022 and the same was

provided to the assessee. The assessee has not e-verified the return in response to notice u/s.148 of the Act and had filed the return of income in the month of March and the same is treated as invalid return in response to said notice. As per the reply submitted by the assessee, the assessee has filed return declaring total income at Rs.3,24,980/- and Long Term Capital Gain exempt u/s.10(38) of the Act and Rs.26,41,000/- besides other exempt income.

5. Facts further reveals that based on the information received from the investigation wing, it is found that the assessee was a beneficiary to the tune of Rs.26,41,000/- being the profit shown on account of transactions made in penny stock in Ejecta Marketing Ltd and Appu Marketing and Manufacturing Ltd., thereby, re-opened the assessment by following due procedure and accordingly, issued notice u/s 148 dated 31-03-2021. Opportunities by way of issue of statutory notices were given and after examining the modus operandi, it is seen that the assessee has dealt with penny stock and claimed it under long term capital gain. It is also observed from the assessment order and the response uploaded by the assessee that though the A.O has given sufficient and reasonable opportunities, but the assessee failed to comply with the same and accordingly, assessment was framed by the A.O. u/s. 147 r.w.s. 144 r.w.s 144B of the Act on 30-03-2022 by making additions viz. (i) addition on

account of bogus LTCG u/s.69A of the Act : Rs.26,41,000/-; and (ii) addition u/s.69C of the Act for commission paid for accommodation entry: Rs.1,32,500/- and determining total income of the assessee at Rs.30,98,480/-.

6. Thereafter, the assessee preferred an appeal before the Ld.CIT(Appeals)/NFAC who vide an ex-parte order had dismissed the appeal due to non-compliance by the assessee observing as follows:

> "In response to the appeal filed, as discussed above opportunities have been given to substantiate the ground raised whereas, the appellant has failed to upload his submission explaining the ground. Accordingly, it is understood from the materials available in the system that the appellant has dealt in penny stocks of Ejecta Marketing Ltd. and Appu Marketing and Manufacturing Ltd. against which the claim of long term capital gain has been made which was uncovered during the course of action conducted by the Inv. Wing of Raipur. Further, as brought out in the assessment order at Para — 01 of Page — 16 and Para — 02 and 03 of Page — 18. In the light of these facts, I am of the considered opinion that the A.O has rightly brought to tax the bogus claim of long term capital gain u/s 69A."

7. In this regard, the Ld. Sr. DR has fairly conceded that the matter may be adjudicated denovo on merits before the first appellate authority providing one final opportunity to the assessee. The Ld. Sr. DR further submitted that though the tax effect involved in the present case is Rs.15,713/- which is below the monetary limit of Rs.60 lakhs as per CBDT Circular No.09/2024, dated 17.09.2024, however, the case falls

under the exception clause 3.1(h) of the CBDT Circular No.05/2024, dated 15.03.2024.

8. I have carefully considered the contents in the documents/material available on record and submissions of the parties herein. 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.

9. 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 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."

10. Respectfully following the aforesaid, 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. At the same time, it is directed that this being the final opportunity, the assessee shall duly comply with the hearing notices from the Ld. CIT(Appeals)/NFAC. The assessee at the time of denovo proceedings shall be at liberty to file documentary evidence, if any before the first appellate authority to substantiate its claim. The Ld. CIT(Appeal)/NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act.

11. It is also observed that the primary source from which the present matter emanates is the investigation report of the department. It has been unearthed that the *modus-oparandi* adopted by the assessee is being

beneficiary to the tune of Rs.26,41,000/- being the profit shown on account of transactions made in penny stock in Ejecta Marketing Ltd. and Appu Marketing and Manufacturing Ltd. The assessee had dealt with penny stock and claimed bogus long term capital gain. In other words, as per report of investigation, these practices are colourable device in order to defraud the revenue. I am of the considered view that this matter is not simply an ex-parte matter but since formation/basis of this matter is investigation report, it is now the onus on the part of the Ld. CIT(Appeals)/NFAC to verify and examine in detailed manner whether any fraud has been committed by the assessee towards department. That though on the ground of natural justice, one final opportunity has been given to the assessee but the genesis of the entire facts and circumstances needs proper verification in light of the investigation report of the department so to find out whether any lawful taxes remain unpaid to the department due to sham transactions adopted which will be within purview of tax evasion amounting to fraud to the revenue and in such case, fraud vitiates everything including natural justice.

12. The application of principle of fraud was even considered by the **Hon'ble Supreme Court** in the case of **Badami (deceased) by her LRs v. Bhali in Civil Appeal No.1723/2008, dated 22/05/2012** wherein the Hon'ble Supreme Court has held as follows:-

> "20. In S. P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others AIR 1994 SC 853 this court commenced the verdict with the following words:-
>
> "Fraud-avoids all judicial acts, ecclesiastical or temporal"

It had been held that the courts of law are meant for imparting justice between the parties and one who comes to the court, must come with clean hands. A person whose case is based on falsehood has no right to approach the Court.

13. In another decision of the Hon'ble Supreme Court in the case of **Smt. Shrist Dhawan v. M/s. Shaw Brothers AIR 1992 SC 1555**, it has been held that fraud and collusion vitiates even the most solemn proceedings in any civilized system of jurisprudence including natural justice. Further, the **Hon'ble Supreme Court** in the case of **Mc Dowell & Company Ltd. Vs. CTO [1985] 154 ITR 148 (SC)** has held that "Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning....".

14. Therefore, in my considered view, in the present matter, it is the responsibility of the revenue authorities to investigate the matter in detailed manner as per law whether there is tax planning or tax evasion as per the transactions entered into by the assessee. If tax evasion is determined by the revenue in such circumstances additions are to be sustained in the hands of the assessee.

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

16. In the result, the appeal of the revenue is allowed for statistical purposes.

Order pronounced in open court on 18th day of June, 2025.

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

रायपुर / Raipur; दिनांक / Dated : 18th 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