

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.331/RPR/2025**

**निर्धारण वर्ष / Assessment Year : 2017-18**

Bhandari Construction  
Nutan Chowk, Seepat Road,  
Sarkanda, Bilaspur (C.G.)-495 001  
PAN: AAJFB9702B

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Income Tax Officer,  
Ward-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 26.06.2025

घोषणा की तारीख / Date of Pronouncement : 27.06.2025

**आदेश / ORDER****PER PARTHA SARATHI CHAUDHURY, JM**

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 23.08.2024 for the assessment year 2017-18 as per the following grounds of appeal:

**Gr.No.1:**

"On the facts and circumstances of the case and in law, approval granted u/s.151 by PCIT dt.21-7-22 is invalid as he was not the specified authority to 'grant sanction u/s.151(ii) for AY17-18 under new regime i.e., more than 3 years; in absence of a valid approval by specified authority i.e., Pr.Chief CIT u/s.151(ii), order u/s.148A(d) dt.25-7- 22 & notice u/s.148 dt.26-7-22 under new regime would be invalid; assessment made u/s.147 dt.8-5-23 would also be invalid and is liable to be quashed; relied on Rajeev Bansal (2024) (SC); Ashish Agarwal (2022)(SC); Surya Fel-nous Alloys P Ltd (2024) (Mum-Trib); Varda Energy & Engineering P Ltd (2024) (Raipur-Trib)."

**Gr.No.2:**

"On the facts and circumstances of the case and in law, order u/s.148A(d) dt.25-7-22 and reopening u/s.148 dt.26-7-22 (under new regime) for AY17-18 are invalid; it is barred by limitation as first proviso of sec149(1)(b) of new regime i.e., beyond the period of 3 years, since the escaped income is below Rs.50 lakhs (i.e., Rs.32,55,000); order u/s.148A(d) dt.25-7-22 & notice u/s.148 dt.26-7-22 (under new regime) are barred by limitation, invalid; thus, assessment made u/s.147 rws.144B dt.8-5-23 would be invalid and is liable to be quashed; relied on Rajeev Bansal (2024) (SC)."

**Gr.No.3:**

"On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.32,55,000 made u/s.69 by the AO on the count of cash deposits & bank credits into bank; while bank credits of Rs.13,00,000 is from partner- Eshan Bhandari cash deposits of Rs.19,55,000 is

from cash withdrawals from bank account; thus, addition of Rs.32,55,000 is unjustified & is liable to be deleted."

**Gr.No.4:**

"On the facts and circumstances of the case and in law, Id CIT has erred in applying sec115BBE for imposing higher rate of tax, is unjustified; is liable to be deleted."

**Gr.No.5:**

"The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing."

2. At the time of hearing, none appeared nor any adjournment application has been filed. The matter is heard after recording the submissions of the Ld. Sr. DR and on a careful perusal of the material available on record.

3. It is noted as evident from Paras 4.1 and 4.2 of the impugned order, the Ld.CIT(Appeals)/NFAC vide an ex-parte order had dismissed the appeal of the assessee in limine due to non-compliance by the assessee. For the sake of clarity, the Paras 4.1 and 4.2 of the Ld.CIT(Appeals)/NFAC's order are culled out as follows:

"4.1 During the appellate proceedings, the appellant was provided many opportunities but no compliance was made. The appellant was provided with 04 opportunities to furnish the details but no compliance was made.

Sr. No.	Date of hearing notice	Date of compliance	Remarks
1.	07/06/2023	22/06/2023	No compliance
2.	21/07/2023	07/08/2023	No compliance
3.	22/12/2023	08/01/2024	No compliance

4.	07/08/2024	14/08/2024	No compliance
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4.2. On the basis of the above facts, it is evident and clear that the appellant is not interested in filing any details during the appellate proceedings and avail the opportunity under the Principles of Natural Justice. No further opportunity is being provided as the appellant has already been granted 04 opportunities which shows that the appellant is a habitual non-compliant and had no regards for the statutory proceedings. It is also matter of record that on 01/06/2023 a channel of communication was enabled under intimation to the appellant in this case. This means that appellant also had additional opportunity to make any submission in support of his grounds of appeal even if there was no notice issued to the appellant. It is further matter of record that the appellant has not availed even this opportunity. Hence this appeal is being decided on the basis of the material available on record.”

4. 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.

5. I have carefully considered the contents in the documents/material available on record. 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.

6. On a perusal of the order of the Ld.CIT(Appeals)/NFAC, it is observed that the Ld.CIT(Appeals)/NFAC dismissed the appeal of the assessee in limine without dealing with the merits of the case. In my considered view, once an appeal is preferred before the

CIT(Appeals)/NFAC, it becomes obligatory on his part to dispose off the same on merit and it is not open for it to summarily dismiss the appeal on account non-prosecution. In fact, a perusal of Sec.251(1)(a) and (b), as well as the "Explanation" to Sec.251(2) of the Act reveals that the CIT(Appeals)/NFAC remains under a statutory obligation to apply his mind to all the issues which arises from the impugned order before him. As per the mandate of law the CIT(Appeals)/NFAC is not vested with any power to summarily dismiss the appeal on account of non-prosecution. The aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Premkumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)**. In the aforementioned case the Hon'ble High Court had observed as under:

"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the AO to make further inquiry and report the result of the same to him as found in Sec. 250 of the Act. Further, Sec. 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Sec. 251(1)(a) and (h) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-s. (2) of [s. 251](#) of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under [s. 246A](#) of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact w.e.f. 1st June, 2001 the power of the CIT(A) to set aside the order of the AO and restore it to

the AO for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) are co-terminus with that of the AO i.e. he can do all that A.O could do. Therefore, just as it is not open to the AO to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the [s. 251\(1\)\(a\)](#) and (b) and Explanation to Sec. 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act.”

7. 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 on merits while complying with the principles of natural justice. 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 Ld.CIT(Appeal)/NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act within three months from receipt of this order.

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

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 27<sup>th</sup> day of June, 2025.

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

रायपुर / Raipur; दिनांक / Dated : 27<sup>th</sup> 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