आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.117 &118/RPR/2024

निर्धारण वर्ष /Assessment Year: 2014-15 & 2016-17

Ashok Kumar Wadhwani,
Ujwal Udyog, Sinodha, Neora,
Tilda, Raipur,
Chhattisgarh.
PAN: AAHPW1400B

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer,
Ward 1(2), Ayakar Bhawan,
Civil Lines, Raipur,
Chhattisgarh.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Mahawar, CA

Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 04.07.2025
घोषणा की तारीख / Date of Pronouncement : 14.07.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

The captioned appeals preferred by the assessee emanates from the separate orders of the Ld.CIT(A)/NFAC, Delhi dated 31.01.2023 for assessment year 2014-15 and dated 14.06.2022 for the assessment year 2016-17 as per the grounds of appeals on record.

2. At the outset, this is a re-called matter remanded to the Tribunal by the Hon'ble Jurisdictional High Court. That so far ITA No. 117/RPR/2024 in the 1st round is concerned, the Tribunal had not condoned the delay of 366 days and had dismissed the appeal of the assessee., therefore, the assessee had preferred an appeal before the Hon'ble Jurisdictional High Court and *vide* order dated 10.03.2025 in Tax Case No. 210 of 2024, the Hon'ble High Court had condoned the said delay and remanded the matter back to the file of this Bench of the Tribunal. The relevant paras are extracted as follows:

> "6. Admittedly, there is a delay of 366 days in filing the appeal before the ITAT and for which the appellant/assessee has assigned the reason that the communication of the order was made on an e-mail of which the appellant was not an active user and even the authorized representative of the assessee did not amend the e-mail id on which the order was to be communicated and, therefore, the order could not be communicated and as soon as the appellant came to know about the order, the appeal was preferred.
> 7. The Supreme Court *vide* its Order dated 31.01.2025 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.

> 8. In view of the 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 366 days occurred in filing the appeal remained uncontroverted, the delay of 366 days occurred in filing the appeal 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.
> 9. The matter is remitted back to the ITAT for deciding the appeal on merits, in accordance with law, at the earliest.
> 10. The appeal stands allowed to the extent indicated herein above, leaving the parties to bear their own costs. However, it is made clear that failure to deposit amount of cost by the appellant within the stipulated time shall lead to automatic dissolution of this order."

3. Similarly, in ITA No.118/RPR/2024, the Tribunal had not condoned the delay of 597 days and dismissed the appeal, against which the assessee had preferred an appeal which was admitted and adjudicated by the Hon'ble Jurisdictional High Court and the delay of 597 days has been condoned and the matter remanded back to this Bench based on similar observation *vide* order dated 10.03.2025 in Tax Case No. 209/2024. The same is only referred to and not extracted for the sake of brevity.

4. Regarding merits, the parties herein submitted that the facts, circumstances and the issues involved in both these matters are substantially similar and identical.

5. Having heard the submissions of the parties, both these matters are heard together and disposed of *vide* this consolidated order.

6. That for the illustration of facts and adjudication, we would take up ITA No. 117/RPR/2024 for the assessment year 2014-15 as the lead case, which decision shall apply *mutatis mutandis* to ITA No.118/RPR/2024 for assessment year 2016-17.

7. The relevant facts as emanating from the assessment order are culled out as follows: -

"2. During the year under consideration the assessee has derived Income from business of rice milling and trading of paddy, rice, broken rice etc. During the course of assessment proceedings it was submitted that the assessee has maintained all books of accounts for his business and the same were got audited u/s 44AB of the Income tax Act, 1961. All books of accounts were produced for examination. The same have been examined by test-check The comparative chart of total sales, gross profit, net profit and its ratio are as under:-

	A.Y. 2012-13	A.Y. 2013-14	A.Y. 2014-15
Total sales	90714705/	94276497/-	17,84/44,010/-
Gross profit	5875876/-	5448322/-	94,55026/-
GP. rate	6.48%	5.78%	5.30%
Net profit	1108054/-	1308258/-	21,72,021/-
NP. rate	1.22%	1.39%	1.22%

From the above chart showing comparative ratio of G.P. and NP. It was noticed that during the year under consideration, there is a short fall in the G.P. and NP. ratio both in comparison to the previous year. Therefore the counsel for the assesses has been asked to explain the reason for this

shortfall. In the written explanation filed by the assesses, it has been stated that turnover has been increased during the year FY 2013-14 as compared to last year. As such there is increase in turnover of nearly 89%, So we have to reduces the margin at profit to get more turnover that's why our GP has reduced. Since the NP is directly proportionate to GP so simultaneously NP also reduced. The submission of the assessee is considered but not accepted in the facts and circumstances of the case. Other observations are discussed in ensuing paras.

3. During the proceeding of scrutiny the assessee has submitted that he has purchased paddy/broken from outside state and from local parties. The details of paddy/ broken purchase during the year from local parties are as under:-

S.No.	Name of the party	Total purchase
1	M/s Agrawal Agro, Raipur	63,35,000/-
2	M/s Maa Sharda Process, Raipur	14,50,000/-
3	M/s Shri Annapurna Foods, Raipur	38,00,000/-
4	M/s Bajrang Foods, Raipur	18,00,000/-
5	M/s Shrikhand Agrotech, Raipur	44,25,000/-
6	M/s Shri Krishna Process, Raipur	9,91,400/-
7	Ms Shri Sakshi Gopal Corporation, Raipur	9,00,000/
8	M/s Shri Shyamji Rice Agrotech, Raipur	90,50,000/-
	Total	2,87,51,400/-

4. A survey operation u/s 133A was conducted in the business premises of Shri Sanjay Sharma, Hanuman Market, Raipur and Shri Kamlesh Kesharwoni, Canvasting Agent, Romsagarpara, Raipur on 15/03/2016. The point of Inquiry was of bogus bills that were required through the brokers and entry providers to the rice millers and rice traders. These brokers and entry providers were Individuals related to the rice milling and rice trading business, Fakes or bogus bills were provided to the rice millers

by the broker himself or through entry providers. This meant that bogus bills were given to the rice millers and traders as per their demand but no actual purchase and selling of goods had taken place. During the survey operation, the premises covered unraveled a whole lot of material like, bill books of various paper firms run by these entry providers. They used these paper firms to open bank accounts through which they operated this business of providing bills. These bogus firms that were created only on paper by a set of broker's and entry providers, were also used to open bank accounts which were operated by these brokers and entry providers themselves. Survey action was also carried out in the case of Nagrik Sahakari Bank, Raipur where some of these bank accounts were maintained. The officials statements were recorded where they have admitted that they were aware that these accounts were run by a few other individuals (entry providers). It would be pertinent to mention here that all these bogus firms' operators (brokers and entry providers) have admitted on oath at the time of their statements recorded u/s 131 of the IT. Act that they never owned or operated any godowns or mills or never owned any stock in order to carry out any sale and purchase of goods. Their only work was to provide bogus bills to rice traders and millers.

In their statements, it was categorically admitted that they acted as an intermediary in arranging the bogus sate and purchase bills between the parties without actual delivery of goods. It was revealed from their statements that the modus operandi of these firms is to provide bogus purchase bills, Brokers Shri Sanjay Sharma, Shri Aditya Sharma, Shri Kamlesh Kesharwani, Shri Ghanshyam Rijwani, Shri Narad Sahu and others have stated on oath that they provided bogus entries or bogus bills to various rice millers in lieu of which they received commission income only. It was stated that after receiving the payment from the rice millers in their respective bank accounts, the same were withdrawn in cash on the same day. Later on, the cash withdrawn was given back to these millers after deducting their commission. These bogus bills had no transport or bilti/transport challans or weigh bridge slips in support of its genuinity. In normal course of business events, the bills of purchases are accompanied by the bills of transport and weigh bridge slips. This is more important in present scenario where volume of goods purchased and transported is in huge quantity. But factually, since no such physical movement of goods ever occurred, the bills do not accompanied the aforesaid vital documents. The survey action at multiple points supported the fort that these bogus bills were provided to the rice millers and traders on their demand. These demands were usually received by brokers directly when provide the bill himself or through any entry provider. The rice millers then made on RTGS payment on these bogus hills into the bank account of these bogus firms Cash was withdrawn by these operators from the banks and given back to the rice milers.

The benefit of this practice is directly received by the rice millers. The millers by acquiring a bogus bill are able to bring to their books of account their unaccounted stock end cash purchases. In the state of Chhattisgarh, the rice millers can acquire paddy only through the state governed Mandi. The State has prohibited direct selling of paddy to the millers. However, this is openly violated by millers and the formers and such direct selling and purchasing between the farmers and millers is a well known fact. This is especially true if the farmer's production does not meet the mandated norms set by the State Govt, In that case he prefers to sell to the millers. In case of the millers, during his manufacturing activities, lots of by-product is produced like, broken rice, bran, husk, etc. The Food Act of State has although set norms in terms of general percentage of production of rice and its by-products, In actuality, lot more quantity of broken rice and bran is generated that is not reported. To create movement of these extra-products that is not accounted in the books of account of millers, they use this modus operandi to acquire bogus bills in order to create movement of cash purchase (from farmers and others).

Amongst the persons whose statements were recorded during survey proceedings also consisted of rice millers who had mills but actually gave bogus bills. That is, only bills were given without having any stock transfer. It is also stated by them that they received a higher commission on these bogus bills as they also owned rice mills and their bills would qualify as more authentic.

Extracts of Statements of all individuals recorded u/s 131 of the I.T. Act are attached herewith (Formed part of this Order as Annex-A) who confirmed the above explained modus aperandi. In fact the entry providers and brokers were cross examined with rice millers in order to establish positive evidence to this unholy nexus of rice millers, brokers and entry providers. The entries of these nexus were to bring into account the unaccounted stock and unaccounted cash purchase of the rice millers.

It is now established that these bogus dealers don't carry any business activity either by way of purchase or sale of goods. All transactions are carried out by issuing bills to the intending purchasers without any transfer of goods. Such dealers indulging in the business of bogus bills and in some cases individuals, as above, have opened multiple firms by different names. In view of above facts and categorical admittance, an opportunity was provided to the assessee vide letter dated 05/12/2016 asking to explain that:-

"Survey operation u/s 133A of the Income tax Act, 1961 have been carried out on 15/03/2016 in the business premises of three Rice millers at Tilda and two broker, at Raipur by the JT. CTI Range-1 Raipur. During the survey proceedings statement on oath u/s 131(1) of the I.T. Act were recorded by the

authorized officer. In the statement it was revealed that many firms were providing mere entries to rice millers in respect of purchases. The entry providers/broker and others have on oath stated that they provided bogus millers over the years in lieu of which they received commission. After receiving the payment bogus entries or bogue bills to various rice from the rice millers in their respective bank accounts the same were withdrawn in cash on the same day. Later on the cash withdrawn was given back to these millers after deducting their commission. This was the trend in all the bank accounts. These several firms were run by the Entry operators which used to provide bogus bills only. None of the entry providers had an godown or actual stock, there was actually no sale or purchase of goods. It was admitted by each of them in their statement on cath. The rice millers have also accepted these facts during the cross examination.

During the investigation it has been established that above named firms are bogus firm from whom you have shown purchases of Rs. 2,87,51,400/- As per the detailed inquiry it has been established that these firms are only paper firm and provided bogus bills to the rice millers. You are therefore required to submit your explanation as and why the amount of Rs. 2,87,51,400/- should not disallowed u/s 69C of the Income tax Act, 1961"

The assessee stated vide order sheet dated 07/12/2016 that:-

"all the purchase and sale made by the assesses during the F.Y. 2013-14 is genuine, stock of material has been duly received & dispatched. Further, such transactions are recorded properly in the books of accounts and stock register of F.Y. 2013-14. The assessee had purchased material through broker therefore the assesses does not have direct contact with suppliers, assessee relied on the bill given by the supplier for the stock received physically. It is also stated by the assessee that the purchase & sale are genuine and recorded in the books of accounts... Moreover, in order to maintain the peace of mind & avoid penalty, the assessee agrees to offer tax on gross profit 10% on purchase made from above firms i.e. Rs.28,75,140/-/- (10% of Rs.2,87,51,400/-) and agree to pay tax on the said amount."

5. During the course of scrutiny proceedings, the assessee was specifically required to prove that the purchase bills are genuine and that he has actually purchased the items reflected in the bills. This was more particularly so, because in all such cases where bogus purchase bills were procured, the Invoices issued by the suspicious dealers were not found to be supported by delivery challans. The mode of inward transport and Mandi passage Anugya, etc for the goods was not available in the possession of the assessee. Thus, it is apparent that the goods have not been purchased from the aforesaid parties. This fact is also supported by

the statement of bogus supplier parties who have categorically admitted that they did not own any stock or godown.

6.1 Legal position with regard to establishing 'Burden of Proof':

The term 'Burden of Proof means burden to prove an allegation before a decision can be given. The question regarding burden of proof arises on a contested issue where one of the two contending parties has to introduce evidence and in the absence of such evidence, it is assumed that the party has failed.

Sometimes in the statute itself it is provided that, burden of proof will be on the assesses of the Assessing Officer.

However, there is difference between 'Burden of Proof' and 'Onus of proof as Burden of Proof lies on the person who has to prove a fact and it never shifts, but the onus may shift. As per section 103 of the Evidence Act, Burden is on that person who wishes the court to believe in the existence of a particular fact, For instance, when a person who says positively that another had notice of a fact but does not adduce evidence to prove that positive fact, the court cannot hold that the other person had such notice, save that other person admits that he had notice.

A support for above conclusion can be found in the following legal dictum:

In the absence of any direct evidence, the quasi judicial authorities can base their conclusions on the basis of what are known as notorious facts, bearing in mind the principles of section 144 of the Evidence Act. They can assume that, existence of any fact which they think likely to have happened in the course of normal conduct of public and private business. For this purpose, I rely on the ratio of the following judgments, wherein the doctrine of 'notorious fact has been taken note of.

(i) CWT Vs. Tohtah Industries Ltd., 67 ITR 283,
(ii) (ii) Malini R Rele Vs. ITO., 205 ITR 52 (Mumbai) ITAT Third Member.

While analyzing the facts of this case, it is kept in mind that the proceedings under Income Tax Act are not judicial proceedings in the sense in which the phrase "Judicial proceedings is ordinarily used. The Assessing Officer is not fettered or bound by technical rules about evidence contained in the Indian Evidence Act and he is entitled to act on material which may not be accepted as evidence in a court of low. 26 ITR 775 (S.C), 45 ITR 206 (S.C). 63 ITR 449 (S.C). Thus, the assessment can be made on the basis of inference on evidence which in criminal or civil justice may be insufficient. Further, as held by the Supreme Court in the case of Collector of Customs Vs. D. Bhoormal A.R. 1974 SC 859, the department is not required to prove

its case with mathematical precision towards demonstrable degree: for, in all human affairs absolute certainty is a myth, and as proof. Fundamental rules of evidence and interpretation in mind relating to proof in all criminal or quasi-criminal proceedings, where there is no statutory provision to the contrary. But in appreciating its scope and the nature of the onus cast by it, we must pay due regard to other kindred principles, no less fundamental, of universal application.

This principle has been succinctly and felicitously put by Brett "all exactness is a fake". El Dorado of absolute proof being unattainable, the law accepts for it, probability as a working substitute in this work-a-day world. The low does not require the prosecution to prove the impossible. All that it requires is the establishment of such a degree of probability that prudent man may, on its basis believe in the existence of the fact in Issue. Thus legal proof is not necessarily perfect proof; often it is nothing mere than a prudent man's estimate as to the probabilities of the case.

The other cardinal principle having an important bearing on the incidence of burden of proof is that sufficiency and weight of the evidence is to be considered - to use the words of Lord Mansfield in Blatch Vs. Archer according to the proof which, "it was in the power of one side to prove and in the power of the other to have contradicted". Since it is exceedingly difficult, if not absolutely impossible for the Department to prove facts, which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

6.2 Legal position with regard to treat the transaction entered into by assesses are a Sham, Fictitious and Artificial Transaction:

a. In determining whether a number of transactions of which at least one (the genuine transaction) had no purpose other than tax avoidance should be treated for fiscal purposes not as Independent but as forming part of one composite linear transaction for which the tax consequences flowed when the transaction was entered into, It was preordained in order to produce a given result, that the transaction had no other purpose than tax mitigation, that there was at that time no practical likelihood that the pre planed events would not take place in the order ordained, so that the intermediate transaction was not even contemplated practically as having an Independent life, and that the pre ordained events did in fact take place.

b. In the context of determining whether a transaction is a sham or illusory transaction or a device or a rúse, the income-tax authorities are entitled to penetrate the veil covering it and ascertain the truth. The taxing authorities are not required to put on blinkers while looking at the documents produced before them. They are entitled to look into the surrounding circumstances to find out the reality of the recitals made in the documents.

In every case, where ingenuity is expended to avoid taxing and welfare legislation, it is the duty to get behind the smoke screen and discover the true state of affairs.

c. There is behind taxation laws as much moral sanction as is behind any other welfare legislation and it is a pretence to say that avoidance of taxation is not unethical and that it stands on no less a moral plane than honest payment of taxation. The proper way to construe a taxing statue, while considering a device to avoid tax, is not to ask whether the provisions should be constructed literally or liberally nor whether the transaction is not unreal and not prohibited by the statue, but whether the transaction is a device to avoid tax and whether the transaction is such that the judicial process may accord its approval to it. It is neither fair nor desirable to expect the Legislature to intervene and take care of every device and scheme to avoid taxation.

d. The transaction is for the purpose of tax avoidance and is a "Fiscal Nullity" which should be ignored. According to the Black's Law Dictionary "Fiscal" meen forming of or relating to financial matters / of or relating to Public Finance or taxation" "Nullity" means "something that is legally void / forged commercial transfer is a Nullity". Therefore, the correct wording of "Fiscal Nullity" is "something that is legally void relating to Public Finance or Taxation"

7. In a similar case of Vijay Proteins Ltd. [ITD 425 ALD.) similar facts are noted whereby bogus purchase is proved and admitted by Hon Die ITAT Bench, Ahemdabad, [1996/58 ITD 428 ALD, did 18/01/1996] Point 19.3 and 21.1 of the said order of ITAT are reproduced as under:

Point No. 19.3 "It is well known that purchases are made from open market without insisting for the genuine bills, the suppliers may be willing to sell these products at a much higher rate as compared to the rate of which they may charge in case the dealer has to give a genuine sale Invoice in respect of that sale and supply the goods. There may be various factors due to which there is bound to be a substantial difference between the party purchase price of unaccounted material and rate of purchase price of unaccounted material and rate of purchase of unaccounted goods. There may be a saving an account of sales tax and other taxes and duties which may be leviable in respect of manufacture of sale of goods in question. The suppliers or the manufacturers make a substantial savings in the income tax in respect of income from sole of unaccounted goods produced and sold by them. This may also be one of the factors due ta which the seller may be willing to charge lower rate for unaccounted goods as compared to accounted for of ITAT in the case of Sanjay Oil cake Industries VS. IAC ITA No. 2653, 2654 and 2655/Ahd/1988 dtd. 29/04/1994, we hold that 20% of the purchase price accounted far in the books of account through such

fictitious invoices in the name of 33 bogus parties should be disallowed out of the amount of purchases shown to have been made from those 33 bogus suppliers."

Point No. 21.1:-

"We have already considered the facts relating to bogus purchases invoices in respect of ell cakes shown as purchased by the assessee from 33 bogus suppliers. We have confirmed the findings given by the authorities below that these purchases invoices in the name of 33 bogus parties are not genuine documents and they do not represent genuine transactions. We have however held that material in question was received by the assessee from undisclosed sources or from unknown parties which are within the special and exclusive knowledge of the assessee and the assessee is not willing to disclose the true facts to the department. The detection of such serious mistakes by the AO in the vouchers produced by the assessee and that too of such a large amount fully justifies the rejection of books of account made by him.

The correctness of books of account cannot be determined sector wise as contended on behalf of the assessee. It was pointed out by the assessee that no mistakes have been found in the oil mill section. This is also not a correct expression of facts. In fact, one of the items produced by the oil mill is oil cake which is a raw material for the SEP. In SEP Division it has been found that oil cakes in the name 33 bogus suppliers, We are therefore of the considered opinion that books of account maintained by the assessee are neither reliable nor correct. The provisions of section 145(2) are clearly attracted on the facts and circumstances of the present case."

7.(1) As mentioned in point 19.3 of the above referred order, the AQ has rightly made disallowance of 25% of the bogus purchases which clearly applies to the present case Accordingly, the submission of assessee is not accepted and 25% of such purchase expenses of the assessee are not allowed on account of being bogue purchases. The facts also, mentioned above reveals the said amounts of bogus purchase which leads to rejection of books of account for the specific purpose as per the provisions of section 145(3) of the L.T.Act. For the reasons detailed above, the purchases recorded in the books of account of the assessee amounting to Rs.2,87,51,400/- are held to be bogus and 25% of such purchase amount works out of Rs.71,87,850/- is hereby added to the total income of the assessee in respect of transaction shown to have been made with different bogus firms. Penalty proceedings u/s 271(1)(c) of the IT. Act are Initiated separately for furnishing inaccurate particulars of Income.

(Addition of Rs.71,87,850/-)

7.(ii) Further, In making bogus purchase of Rs.2,87,51,400/- the assesses must have Invested his unaccounted Income which is being rolled into its business activities, hence the element of unaccounted investment has to be determined which is taken as the highest peck purchase amount from the bogus firm and stands at Rs. 4,87,500/-(as per purchase ledger dt. 18,12,2013 of M/s Maa Sharda Process) The same is added to the total income of the assesses u/s 68 of the I.T. Act, 1961. Penalty proceedings u/s 271(1)(c) of the IT. Act are Initiated separately for concealment and furnishing inaccurate particulars of Income.

(Addition of Rs.4,87,500/-)

8. In the Profit & loss account Freight expenses of Rs.10,99,144/-, Hamali expenses of Rs.2,35,116/- are claimed. On verification and also during the course of scrutiny assessment, it is admitted that all the expenses have been claimed by the assessee on the basis of self made vouchers. The ledger account only shows the freight payment of certain quintal of paddy at certain rate. The places of transportation, name of the transporter, recipient's signature, expenses related to loading and unloading expenses on hamals are not at-all reflected in such self mode vouchers. These expenses are not supported by pakka bills of transportation. Similarly, on verification it is found that hamali expenses are comprised of hamali and labour expenses for varied nature of Jobs ranging from loading of CMR paddy, mandi hamali payment, engagement of labours and hamals in the segregation and staking of paddy and simultaneously in the process of milling to dhan bafai, drying process, etc. All these expenses are admitted to be claimed by self made vouchers. The assessee has not maintained any register for daily labour its related expenses so to mark the execution of work on the aforesaid heads of expenses. There is paucity of revenues stamps in the payment vouchers. Also, some hamals are given higher payment in comparison to others but the nature of work done by them is not defined in said vouchers. For hamali and labour expenses also the assessee has not maintained any register for daily works done by the hamals. Hence the possibility of excessive claim on the aforesaid heads can not be ruled out. Thus, the veracity of these expenses is not ascertainable and lies beyond the purview of authentic verification. Considering all these facts, circumstances and deficiencies in the maintenance of proper like, registers and other details, on amount of Rs.1,00,000/- is disallowed out of the total Freight expenses and Hamali expenses claim and added to the total income of the assessee.

(Addition of Rs.1,00,000/-)

9. The assessee has claimed an amount of Rs.4,571/-as Entry tax for earlier year and Rs.44,169/- as ESIC expenses for earlier in the P & L account. Total expenses of Rs.48,740/- has been claimed in the head of earlier year expenses. It is settled that the deduction can be permitted in respect of only those expenses which are incurred in the relevant

accounting year for the purpose of computing of profit, the claim of the assessee of expenses pertaining to prior period cannot be allowed for the year. Therefore the amount of Rs.48,740/- is disallowed and added back to the total income of the assessee.

(Addition of Rs.48,740/-)

Subject to the above discussions, the total income of the assessee is assessed as under:

Total Income as shown in the return	Rs.7,96,000/-
Add: 1. Addition as discussed in para-7(1)	Rs.71,87,850/-
2. Addition as discussed in para-7(ii)	Rs. 4,87,500/-
3. Addition as discussed in para-8	Rs.1,00,000/-
4. Disallowance as discussed in para-9	Rs. 48,740/-
Total Income of the assessee	Rs.78,24,090/ Rs.86,20,090/-"

8. At the first appellate stage there was no compliance by the assessee which resulted in an *ex-parte* order being passed in the case of the assessee which is evident from the paras 3 & 7, extracted as follows:-

3. Various notices of hearing under section 250 of the Act were issued to the appellant i.e. on 11.01.2021, 16.09.2022, 26.09.2022 and 23.12.2022 under section 250 of the Act vide which the appellant was requested to furnish written submissions online on or before 11.03.2021, 23.09.2022, 04.10.2022 and 30.12.2022 respectively. However, no reply has been filed and by the appellant in the appeal proceedings.

7. Held: During the course of appeal proceedings, no reply has been filed by the appellant. I have perused the order of the Assessing Officer and considered the facts of the case. The appellant has not pursued the appeal despite being granted several opportunities as elaborated above. No details, documents or submission have been provided by the appellant substantiating its grounds of appeal. The mere facts mentioned in Form No. 35 cannot be

> considered in the absence of any supporting documentary evidence and submissions. The AO has passed a very reasoned and speaking order considering all the facts and the circumstances of the case and no inference with the order of the AO is called for. All the grounds of appeal are therefore dismissed.

9. Similarly, in ITA No.118/RPR/2024 AY 2016 -17 also there was no compliance by the assessee which resulted in passing of an *ex-parte* order by the First Appellate Authority, as evident from para 4.1 of the said order which is only referred to and not extracted for the sake of brevity.

10. After having heard the parties and on a careful consideration to the materials/documents on record, we are of the considered view that this is not just a simple case of an *ex-parte* order wherein the matter is to be remanded to CIT(A)/NFAC but it is a case which has a pan India impact and presence for the fact that there are intermediaries/brokers working in the realm of rice mill and these brokers are providing bogus purchase bills, bogus sale bills to the rice mills owners for a commission. There is co-operative bank which is generally opened and wherein the total amount is first deposited and after deducting the commission amount the remaining is refunded back through back door to the rice mill owners. Further, in this case the official statements have been recorded, where the entry providers have admitted on oath at the time of their statements recorded under Section 131 of the Act that they never owned or operated any mill/godown or never owned any stock in

order to carry out any sale and purchase of goods. Their only work was to provide bogus bills to rice traders and millers. Therefore, it is the onus on the part of the Ld. CIT(A)/NFAC to conduct specific enquiry in the case of the assessee to find out whether any legitimate taxes that was to be paid to the Department remains unpaid or whether any colourable devices had been adopted by the assessee committing fraud on the revenue. In such scenario, fraud vitiates everything even natural justice and the same addition has to be retained in the hands of the assessee. At the same time, we refer to our judgment in the case 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** wherein we 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."

11. Respectfully following the aforestated judgment and as per the directions in the foregoing paragraphs, we set-aside the order of the Ld. CIT(A)/NFAC and remand the matter back to its file for *de novo* adjudication as per law while complying with principles of natural justice. And at the same time, this being the final opportunity provided to the assessee, he shall represent his case merits and comply with all the hearing notices.

12. We also observe that the primary source from which all these matters have emanated is the investigation report of the department. It has been unearthed that the *modus-oparandi* adopted by the assessee is obtaining share application money a/w. premium from shell/bogus companies, which are having no credentials and only act as conduits to layer the transactions related to rotation of funds which are ultimately received by the beneficiary in the form of share application money/share

premium. In other words, as per report of investigation, these practices are colourable device in order to defraud the revenue. We are of the considered view that these matters are not simply ex-parte matters but since formation/basis of these matters is investigation report, it is now the onus on the part of the Ld. CIT(A)/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 company 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.

13. 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.

14. 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....".

15. Therefore, in our considered view, in all these matters, 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.

16. As per the aforesaid terms, the grounds stands allowed for statistical purposes.

17. In the result, appeal in ITA No. 117/RPR/2024 allowed for statistical purposes.

18. Since the facts & circumstances and the issues involved in both the matters are substantially identical and similar, our decision in ITA No. 117/RPR/2024 shall apply *mutatis mutandis* to ITA No. 118/RPR/2024 for AY 2016-17. Therefore, ITA 118/RPR/2024 stands allowed for statistical purposes.

19. To sum up, both the appeals of the assessee stands allowed for statistical purposes.

Order pronounced in open court on 14th day of July, 2025.

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

रायपुर / Raipur; दिनांक / Dated : 14th July, 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