

आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ,रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्रीअरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA Nos: 403, 404 & 405/RPR/2025

(निर्धारण वर्ष Assessment Years:2015-16, 2016-17 & 2019-20)

Pratik Agrawal, Behind Durga Petrol Pump, Ring Road No. 2, Gondwara, Raipur-492001, C.G.	v s	Income Tax Officer-3(1), Central Revenue Building, Civil Line, Raipur, C.G.
PAN: ANFPA8182M		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Ms. Dimple Warlyani, C.A.
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	22.07.2025
घोषणा की तारीख / Date of Pronouncement	:	23.07.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The captioned appeals are filed by the assessee against the separate orders of Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"], dated 27.05.2025, 09.04.2025 & 29.05.2025, u/s 250 of the Income Tax Act, 1961 (in short "the Act") for the Assessment Years 2015-16, 2016-17 & 2019-20. Resulted against the assessment order u/s 147 r.w.s. 144 r.w.s. 144B of the Act, dated 22.05.2023, 22.05.2023 & 21.02.2024 respectively, passed by Assessment Unit, Income Tax Department, NFAC, Delhi (in short "Ld. AO").

3. The aforesaid appeal pertains to a single assessee namely Pratik Agrawal for different Assessment Years i.e., AY 2015-16, 2016-17 and 2019-20, however the issues involved therein are identical, interconnected and interwoven, therefore, these matters are heard together and disposed of under this common order.

4. ITA 403/RPR/2025 for the AY 2015-16 has been taken up as the lead case, since the issues involved therein are common, accordingly, our deliberation and decision in ITA No. 403/RPR/2025 will apply *mutatis mutandis* to the remaining ITA's i.e., 404 & 405/RPR/2025 for AYs 2016-17 and 2019-20.

5. The grounds of appeal raised by the assessee in the lead case are as under:

ITA No. 403/RPR/2025 (A. Y. 2015-16)

1. *On the facts and in circumstances of the case, the Learned CIT(A) has erred in passing order without calling for the documents submitted with the AO in the re-assessment proceeding. Therefore, order passed without verifying the documents available with the department is unjustified, unwarranted and uncalled for.*
2. *On the fact and in circumstances of the case, the CIT- Appeal (NFAC) has erred in sustaining the order of the A.O. without adjudicating various legal grounds raised by the assessee. Therefore, the order passed by the CIT-Appeal (NFAC) deserves to be set-aside.*

3. *On the fact and in circumstances of the case, the present re-assessment proceeding initiated by the A.O. is beyond jurisdiction, therefore the present re-assessment order passed in consequence of re-assessment proceeding initiated by the A.O. without valid jurisdiction is void-ab-initio and deserves to be quashed and therefore the re-assessment order passed by the A.O and upheld by the CIT(A) NFAC is bad in law and deserves to be quashed.*
 4. *On the fact and circumstances of the case, the notice issued u/s 148 was never served to the assessee and reflected in e-proceeding tab on 04.07.2021, meaning thereby the proceedings have been completed without valid issue of notice as well as valid service of notice. The re-assessment order have been passed without a valid notice u/s 148 and therefore the re- assessment order passed by the A.O and upheld by the CIT(A) NFAC is bad in law and deserves to be quashed.*
 5. *On the facts and in the circumstances of the case, the notice issued u/ s 148 was without Document Identification Number (DIN), meaning thereby the proceeding have been completed without valid notice and therefore the re-assessment order passed by the A.O and upheld by the CIT(A) NFAC is bad in law and deserves to be quashed.*
 6. *Without prejudice to above: On the facts and in circumstances of the case, the Ld. Assessing Officer has erred in making addition of Rs.78,88,396/- u/s 68 of the I.T. Act, 1961 as unexplained cash credit by treating the sale of Rs.78,88,396/- as bogus. The addition made by the A.O. and sustained by CIT(A) NFAC is unjustified, unwarranted and uncalled for.*
 7. *The appellant reserves the right to add, amend or alter any grounds of appeal at any time of hearing.*
- 6.** At the outset, it is submitted by the Ld. AR that, they have been appointed recently by the assessee as Authorized Representative to represent

the matter, thus, would require time to prepare the case, however, the adjournment is denied after deliberating to the facts of case as under.

7. That on perusal of the order of Ld. CIT(A) for AY 2015-16, which is an *ex-parte* order, has been passed *in limine* without discussing the merits of the issue, only by stating that the assessee was unable / failed to substantiate his written submissions with corroborative evidence / documents regarding delivery of goods such as e-way bill, transport bill to dislodge the allegation *qua* the bogus sales made to M/s Pratyush Steels.

8. Apropos, the failure of the assessee, it was the submission by Ld. AR that the assessee had furnished all the necessary evidence during assessment proceedings, but there is no whisper in the order of Ld. CIT(A) regarding that evidence, impliedly shows that such material was not considered by the First Appellate Authority while deciding the appeal of assessee.

9. Be that as it may, considering the fact that the orders passed by Ld. CIT(A) are *ex-parte* orders, which is a common element in all the appeals under consideration, we observe that the order of Ld. CIT(A) has not followed the provisions of section 250(4) & (6), therefore, following the principle of natural justice, as fairly agreed by both the parties herein, it would be suitable to restore these matters back to the file of Ld. CIT(A) for fresh adjudication in terms of the mandate of law.

10. Our aforesaid decision is supported with the order 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, the relevant findings are as under:

7. We have considered the submissions of the parties herein and analyzed the facts and circumstances involved in all the captioned appeals. After careful perusal of the documents on record, we find that the assessee had assailed the legal ground as aforesaid, however, the fact of the matter is that on perusal of the respective orders of the Ld. CIT(Appeals) for all the years before us, it is also evident from Para 3 that there has been no compliance by the assessee before the said authority and as such, an ex-parte order was passed for the concerned years in appeal. Admittedly, as per record, sufficient opportunities had been provided to the assessee, however, there was no compliance by the assessee. In effect, rights and liabilities of the parties herein are yet to be adjudicated substantially at the level of the first appellate authority. Though in the impugned orders, discussion has been done as per material available on record by the Ld. CIT(Appeals) but they are only Form 35, statement of facts, grounds of appeal and the assessment order. However, due to non-compliance by the assessee, there are no submissions, evidence and documents submitted for adjudication by the assessee before the Ld. CIT(Appeals). That as per Para 3 of the Ld. CIT(Appeals) order, there has been no compliance on the part of the assessee for submitting detailed explanations regarding the grounds of appeal for the years under consideration which clearly shows that the grounds of appeal raised before the first appellate authority has not been substantiated on merits through corroborative evidence /submissions.

8. That in such scenario we are of the considered view that the Income tax Act is within the ambit of welfare legislation which are completely different from that of the penal legislation, therefore, benefit of doubt whenever arises, it has to be interpreted in favour of the assessee tax payer within the parameters of law and facts. There may be circumstances beyond control of the assessee because of which, the assessee may not have been able to represent his case on the given dates of hearing before the Ld. CIT(Appeals). Though it is correct that there was

no compliance from the side of the assessee, however, nothing is there on record which suggests any deliberate non-compliance or malafide conduct of the assessee. That further, if one final opportunity is provided to the assessee to represent his case before the first appellate authority, the position of the revenue will also not be jeopardized.

9. *Recently, the Hon'ble High Court of Bombay in the case of Vijay Shrinivasrao Kulkarni Vs. Income-tax Appellate Tribunal (2025) 171 taxmann.com 696 (Bom.), dated 04.02.2025 observed that in the case the Assessing Officer had passed an ex-parte order and when the matter went on appeal before the Ld. CIT(Appeals)/NFAC, it had also dismissed the matter ex-parte due to non-compliance by the assessee's authorized representative, when the matter came up before the ITAT, it had failed to address the infirmity regarding the fact that the assessee was not afforded proper opportunity of being heard and the matter was dismissed ex-parte by the Ld. CIT(Appeals)/NFAC which amounted to violation of principles of natural justice, and instead ITAT decided the case on merits, in such circumstances, the Hon'ble High Court of Bombay held that passing of an order on merits by the ITAT even when the impugned order was passed ex-parte amounts to violation of principles of natural justice and accordingly, the said matter was remanded to ITAT for passing a fresh order in accordance with law after hearing the parties. The legal principle as enshrined in the present judgment is crystal clear that the principles of natural justice i.e. the right to be heard is to be provided and accordingly, the matter had to be substantially adjudicated by the appellate authority. Therefore, if the impugned order of the Ld. CIT(Appeals)/NFAC is an ex-parte order, the only recourse in conformity with the aforesaid judicial pronouncement is to remand the matter back to the file of the Ld. CIT(Appeals)/NFAC for fresh adjudication in terms with the principles of natural justice providing one final opportunity to the assessee.*

10. *In the aforesaid case, the Hon'ble High Court of Bombay had referred to a judgment of the Hon'ble Supreme Court in the case of Delhi Transport Corporation vs. DTC Mazdoor Union AIR 1999 SC 564, wherein the Supreme Court inter-alia held that Article 14 guarantees a right of hearing to a person who is adversely affected by an administrative order. The principle of audi-alteram partem is a part of Article 14 of the Constitution of India. In light of such decision, the petitioner ought to have been granted an opportunity of being heard which,*

partakes the characteristic of the fundamental right under Article 14 of the Constitution of India.

11. The Hon'ble High Court of Bombay in the aforesaid case had referred to a decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax Madras v. Chenniyappa Mudiliar 1969 1 SCC 591, wherein the Supreme Court in interpreting the section 33(4) of the Income Tax Act, 1922 has held that the appellate tribunal was bound to give a proper decision on question of fact as well as law, which can only be done if the appeal is disposed off on merits and not dismissed owing to the absence of the appellant. Reverting to the facts of the present case the grounds of appeal were simply filed before the Ld.CIT(Appeals) they were not substantiated or corroborated through submissions and filing of documentary evidences since the assessee had not complied before the Ld.CIT(Appeals) on the dates of hearing. Therefore, as per framework of the Act there must be adjudication on merits by the first appellate authority and one final opportunity be provided to the assessee to represent his matter on merits in the interest of natural justice.

12. There may even be a situation where the Ld. Counsel for the assessee may assail a legal ground before the Tribunal following the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Ltd. Vs. CIT (1998) 229 ITR 383 (SC) with a contention that irrespective of the order of the Ld. CIT(Appeals) being ex-parte, the Tribunal may decide the legal issue that has been raised by the Ld. Counsel. In our view, the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Ltd. Vs. CIT (supra) provides that any legal issue which goes to the root of the matter and is established through legal principles, the assessee can take up and raise such legal issue at any appellate forum irrespective of whether the assessee had raised such legal issue at the sub-ordinate level or not, however, it always depends on facts and circumstances of each case whether the Tribunal would decide the legal ground or in a case where the question is of natural justice and ex-parte order by the Ld. CIT(Appeals) the Tribunal would remand it back to Ld. CIT(Appeals) providing final opportunity to a bonafide assessee. The Tribunal as the highest fact finding authority must be certain enough that the impugned order before it has been passed on merits and is a speaking order where the assessee has also complied during the process of litigation. In case, where the order of the Ld. CIT(Appeals) itself is ex-parte and some legal ground is raised and if the Tribunal decides such

legal ground where in fact principles of natural justice is left unanswered due to the fact that the impugned order before the Tribunal is ex-parte and there was no compliance by the assessee in such scenario the Tribunal would also be usurping the power of the Ld. CIT(Appeals) which is also a statutory authority as per the Act. This is due to the reason that as per framework of the Act, Ld. CIT(Appeals) is the first appellate authority where an appeal by assessee it would be substantially decided through a speaking order by the Ld. CIT(Appeals). When this part is over and either party is aggrieved second appeal lies before the ITAT. Now if for every ex-parte order passed by the Ld. CIT(Appeals), of course due to non-compliance by the assessee, if the Tribunal adjudicates a legal ground, for instance validity of assessment or reassessment order and answers it in favour of the assessee then it would create an easy route for assessee getting redressal from Tribunal even without bothering to comply with hearing notices before the Ld. CIT(Appeals). This would dismantle the structure of the Act which is definitely not the intention of the legislature. Here in this situation, where the benefit of doubt is given to the assessee since he had not complied with the hearing notices before the Ld. CIT(Appeals) which resulted in passing of an ex-parte order by the Ld. CIT(Appeals), in such scenario, as per the scheme of the Act and following the principles of natural justice, the only course of action is to remand the matter back to the file of the Ld. CIT(Appeals) for adjudication on merits providing one final opportunity to the assessee.

13. In view thereof, we set aside the respective orders of the Ld. CIT(Appeals) for all the years and remand the same to their file for denovo adjudication on merits. At the same time, we direct the assessee that this being the final opportunity, there must be compliance on merits before the first appellate authority. Needless to say, the Ld. CIT(Appeals) shall provide reasonable opportunity of being heard to the assessee and pass an order in terms of Section 250(4) and (6) of the Act within three months from receipt of this order.

11. In view of aforesaid facts and circumstances, respectfully following the aforesaid decision in the case of **Brajesh Singh Bhadoria (supra)**, the matter is

restored back to the file of Ld. CIT(A) for *denovo* adjudication, within a period of 3 months from the receipt of this order.

12. Needless to say, the assessee shall be afforded with reasonable opportunity of being heard in the set aside appellate proceedings. The assessee is also directed to cooperate and assist proactively in the set aside proceedings, failing which the Ld. CIT (A) would be at liberty to decide the case in accordance with the mandate of law.

13. Resultantly, ITA No. 403/RPR/2025 of the assessee is **allowed for statistical purposes** and on the same parity the remaining two ITA's i.e., ITA No. 404 & 405/RPR/2025, having similar facts, circumstances and grievances are also restored back to the file of Ld. CIT(A) for fresh adjudication in terms of our aforesaid observation.

14. In combined result, all the three appeals i.e. **ITA No 403-405/RPR/2025** are **allowed for statistical purposes**.

Order pronounced in the open court on 23/07/2025.

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

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

रायपुर / Raipur; दिनांक Dated 23/07/2025
Vaibhav Shrivastav

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Pratik Agrawal, Raipur
2. प्रत्यर्थी/ The Respondent- ITO-3(1), Raipur
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**