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.361/RPR/2023

निर्धारण वर्ष /Assessment Year : 2018-19

Sidharth Co-operative Credit & Thrift Society Limited.
Nayapara Titrudhi,
Durg-490 020 (C.G.)
PAN: AAGAS2471Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(1), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Yogesh Sethia, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 01.08.2025
घोषणा की तारीख / Date of Pronouncement : 01.08.2025

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

This is a remand matter from the Hon'ble Jurisdictional High Court from appeal preferred by the assessee u/s.260A of the Income Tax Act, 1961 (for short 'the Act').

2. That at the first round of appeal, the Tribunal had not condoned the delay of 530 days in filing of the appeal before it. The Hon'ble Jurisdictional High Court answering the substantial question of law in favour of the assessee, held that since sufficient cause has been shown by the assessee-appellant regarding the delay of 530 days in filing appeal before the Tribunal, therefore, such delay is condoned. The relevant paras are extracted as follows:

> "10. We have heard learned counsel for the parties and went through the records and documents filed.
>
> 11. Indisputably, after the return was filed, the deduction claimed by the appellant was denied on 07.06.2019. Consequently, first appeal was filed under Section 246A, which was dismissed on 19.04.2022. The statute provides for rectification i.e. a review, in case where certain facts have been left out or wrongly considered. The appellant thought it proper to avail such remedy but did not succeed and eventually the rectification prayer was subsequently dismissed, thereby upholding the original order of first appeal on 19.4.2022. Against such rejection of the rectification application process of first appeal and second appeal was availed which were ultimately decided on 27.10.2023 which leads to point out that it only envelops the issue of rectification. Subsequently, the main order dated 19.04.2022 was challenged before the ITAT on 30.11.2023.

> 12. The submission of the appellant and the learned ITAT dismissed the appeal at the threshold on the ground that the delay has not been properly explained to be a bona fide.
>
> 13. After going through the records of the proceeding and the principles, which is laid down by the Supreme Court, we are of the view that the appellant availed the remedy of rectification and in the instant case, if rectification would have been allowed, the subsequent findings of the appeal would have been rendered infructuous.
>
> 14. Under the circumstances, the remedy availed which is available under the statute, cannot be said to have been branded with the delay, it was eventually when the prayer for rectification in the appeal were dismissed, the appellant came back to the original order which was already available to him and filed the appeal. The order of the ITAT which records that there has been a delay of one month and four days, even after dismissal of the second appeal on 27.10.2023. We do not concur as the time which has been explained prima facie shown to be bona fide. The record shows that the time spent diligently pursuing the review/ rectification application ought to have been condoned and the facts has to be seen in a cluster not in fagment.
>
> 15. Consequently, we allow the appeal and condone the delay of 530 days in filing the appeal before the ITAT and remit back the case to the ITAT to adjudicate afresh, in accordance with law and on its own merits. Accordingly, the question of law is answered in favor of the appellant."

3. As is discernible from the fore-going paragraphs of the order of the Hon'ble Jurisdictional High Court, it had condoned the delay of 530 days and remanded the matter back to the Tribunal to adjudicate afresh in accordance with law and on its own merits.

4. Now coming to the merits of the case, it is noted that an ex-parte order has been passed by the Ld. CIT(Appeals)/NFAC due to non-

compliance by the assessee as evident from the Para 4.1 of its order. For the sake of completeness, the relevant Para 4.1 is culled out as follows:

> "4.1 Hearing notices u/s. 250 of the IT Act, 1961 in the instant case were issued on 07.01.2021, 10.07.2021, 12.08.2021, 25.08.2021, 22.11.2021, 02.12.2021, 12.01.2022 and 08.04.2022. All these notices were duly served on the appellant. In response to the notices, the appellant has not submitted any reply."

5. Therefore, it is evident that the rights and liabilities of the parties herein had not been adjudicated substantially by the first appellate authority. Definitely, reasonable opportunity of hearing was provided by the first appellate authority. However, there is no response from the assessee. In this regard, since Income Tax Act is within the purview of welfare legislation and benefit of doubt arises in favour of the assessee tax payer that he would have been prevented by sufficient cause beyond its control to represent the matter before the Ld. CIT(Appeals)/NFAC on the given dates of hearing.

6. Be that as it may, even the revenue has not brought on record any deliberate or malafide conduct on the part of the assessee in not responding to the said hearing notices issued by the office of the Ld. CIT(Appeals)/NFAC. In this regard, I refer to the decision of 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."

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 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 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, appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 1st day of August, 2025.

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

रायपुर / Raipur; दिनांक / Dated : 1st August, 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