

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 No.175/RPR/2025
निर्धारण वर्ष / Assessment Year : 2012-13

Vijendra Singh
Bedford Earthmovers Income. 01,
Raipur Road, Rajiv Gandhi Chowk,
Bilaspur-495 001 (C.G.)
PAN: ATTPS8591G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None (Adjournment Application)
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 05.08.2025

घोषणा की तारीख / Date of Pronouncement : 05.08.2025

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

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 21.07.2023 for the assessment year 2012-13 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee. However, an adjournment application has been filed by the assessee which is rejected. The matter is heard after recording the submissions of the Ld. Sr. DR and on perusal of the documents available on record.

3. At the very outset, it is noted that the appeal is time barred by 151 days. That explaining reasons leading to the said delay, the assessee has filed condonation application a/w. affidavit. For the sake of completeness, the relevant contents of the said affidavit is culled out as follows:

5. That aggrieved by the assessment order, I have filed appeal before Id. Commissioner of Income-tax (Appeals).
6. That the Id. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) decided the appeal ex-parte on 21/07/2023 and it appears that the appellate orders were uploaded in my e-filing portal of Income tax.
7. That when my consultant was uploading the Written Submission on 02/07/2024 in response to notice u/s.250 of the Act for A.Y. 2015-16, he came to know that appeal for A.Y.2012-13 had already been decided ex-parte by the Id. CIT(Appeals), NFAC without deciding the grounds of appeal as required u/s.250(6) of the Act.
8. Immediately, thereafter, I have filed a rectification application u/s.154 of the Act on 28/08/2024 on the ground that the Id. CIT(Appeals), NFAC has not adjudicated the grounds of appeal raised as per provisions of section 250(6) of the Act.
9. That the rectification application was rejected by Ld.CIT (Appeals), NFAC vide order dated 04/02/2025 u/s.154 r.w.s. 250 of the Act and on being so advised, I am filing the present appeal within the shortest time possible.
10. That as per my humble understanding there is no delay in filing the appeal as I have opted for the alternative remedy u/s.154 of the Act and subsequently when my rectification application was rejected, I preferred to file the appeal against order u/s.250 of the Act. However, considering date of passing of order u/s.250, there will be a delay of 155 days in filing the appeal, which has occasioned due to bona fide reasons hence I am filing present application for condonation of delay.
11. That in view of facts and circumstances, it is humbly submitted that the delay occurred, if any, was for reasons beyond my control and I am filing the present appeal with

prayer for condonation of delay considering the peculiar facts and circumstances of the case.

12. That I respectfully rely on the recent judgement of the Hon'ble Supreme Court in the case of Shri Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur in Special Leave Petition (Civil) Nos. 26310-26311/2024] dated 31/01/2025 and the Hon'ble High Court of Chhattisgarh in the case of Pradeep Kumar Khandelwal, Raipur vs. Income-tax Officer-1(I), Raipur (TAX Case No.166/2024), wherein it has been held that a justice-oriented and liberal approach ought to be adopted while considering the condonation of delay.
13. That as per my understanding there are fair chances of substantial relief in further appeal.
14. That in view of above facts and circumstances it is humbly prayed that the Hon'ble Tribunal may be pleased to condone the delay and admit the appeal for adjudication in the interest of justice.
15. This affidavit is being sworn with prayer for condonation of delay in filing appeal before Hon'ble Income-tax Appellate Tribunal, Raipur Bench, Raipur.

4. The Ld. Sr. DR did not raise any objection as regards condoning the impugned delay.

5. We have considered the contents therein and it is noted that such delay cannot be attributed to any deliberate or malafide conduct of the assessee, if any. At the same time, the department could not place on record any material /evidence to demonstrate that such delay was caused due to deliberate or malafide act of the assessee. Since reasons are purely circumstantial beyond the control of the assessee, therefore, the said delay of 151 days is condoned taking guidance from the judicial pronouncements viz. (i) **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025 (SC);** (ii) **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025** and (iii) **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025.**

6. It is noted that as evident from Para 4 of the impugned order, the Ld.CIT(Appeals)/NFAC vide an ex-parte order had dismissed the appeal of the assessee due to non-compliance by the assessee. For the sake of clarity, the Para 4 of the Ld.CIT(Appeals)'s order are culled out as follows:

“4. Non-compliance: This appeal was filed on 29.01.2018 and after rolling out the Faceless Appeal Scheme, first notice of hearing in this case was issued on 18.07.2022 seeking compliance by 26.07.2022. However, there was neither any response on the prescribed date nor any submission was filed. In fact, the appellant has not at all complied during the appellate proceedings. Following notice of hearing/ opportunities were given to appellant to represent his case:

S. No.	Date of issue	Date of complinace	Remarks
1.	18.07.2022	26.07.2022	No response or submission received
2.	27.07.2022	04.08.2022	No response or submission received
3.	11.08.2022	22.08.2022	No response or submission received
4.	29.08.2022	06.09.2022	No response or submission received
5.	08.09.2022	15.09.2022	No response or submission received
6.	04.05.2023	11.05.2023	No response or submission received
7.	05.07.2023	12.07.2023	No response or submission received

As can be seen from the above table the appellant was given many opportunities by way of notices issued as narrated above. However, the appellant/AR have refrained from submitting response/submission during the appellate proceedings.”

7. The Ld. Sr. DR has fairly conceded that the matter may be adjudicated denovo on merits before the first appellate authority providing one final opportunity to the assessee.

8. We 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, we deem it fit and proper to provide one final opportunity to the assessee to represent his case on merits before the Ld. CIT(Appeals)/NFAC.

9. At this stage, we herein observe that the ITAT, “Division Bench”, Raipur in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur, IT(SS)A Nos. 1 to 6, 8 & 9/RPR/2025, dated 20.03.2025** had dealt with similar issue on the same parameters of ex-parte order passed by the Ld. CIT(Appeals)/NFAC and remanded the matter back to the file of the Ld. CIT(Appeals)/NFAC observing as follows:

“7. We have considered the submissions of the parties herein and analyzed the facts and circumstances involved in all the captioned appeals. After careful perusal of the documents on record, we find that the assessee had assailed the legal ground as aforestated, however, the fact of the matter is that on perusal of the respective orders of the Ld. CIT(Appeals) for all the years before us, it is also evident from Para 3 that there

has been no compliance by the assessee before the said authority and as such, an ex-parte order was passed for the concerned years in appeal. Admittedly, as per record, sufficient opportunities had been provided to the 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.”

10. Respectfully following the aforesaid order, we 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.

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

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

Order pronounced in the open court on 5th day of August, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 5th 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, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.