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 No: 389/RPR/2025

(**निर्धारण वर्ष** Assessment Year: 2019-20)

Gaurav Agrawal, Legal Heir of Santosh Kumar Agrawal, Agrawal Abhushan, Pawan Putra Super Bazar, Baniya Para, Tilda Neora, Dist-Raipur, Chhattisgarh, 493114	v s	Assistant Commissioner of Income Tax, Central Circle-1, Raipur, Room No.819, 8th Floor/819, Central Revenue Building, Raipur (C.G.), Chhattisgarh 492001
PAN: ACIPA5812C		
(**अपीलार्थी/Appellant**)	. .	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से / Assessee by	:	Shri Sunil Kumar Agrawal, CA
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	06.08.2025
घोषणा की तारीख / Date of Pronouncement	:	06.08.2025

आदेश / O R D E R

Per Arun Khodpia, AM:

The captioned appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Raipur-3, [in short "Ld. CIT(A)"], passed under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 18.03.2025, for the Assessment Year 2019-20, which in turn arises from the assessment order u/s 143(3) of the Act, dated 28.09.2021, passed by the Assistant Commissioner of Income Tax, Central Circle 1, Raipur (in short "Ld. AO ").

2. The grounds of appeal raised by the assessee are as under:

> ***Gr.No.1***
>
> *On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining higher rate of tax w/s115BBE on the count of excess stock of Rs.2,06,47,091/- found during survey u/s 133A on 19-2-19 treating it as unexplained investment u/s69; excess stock of Rs. 2,06,47,091 on count of gold & silver items i.e. 'business income' which is included in 'net profit' of Rs.2,27,90,142 reflected in computation of income under the head "Income from business'; it is without giving proper opportunity to explain its case for applying deeming sec 69, application of sec 115BBE is not justified and is liable to be deleted.*
>
> ***Gr.No.2***
>
> *"On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining higher rate of tax u/s115BBE on the count of excess cash of Rs.4,58,948 found during survey u/s133A on 19-2-19 treating it as unexplained money w/s69A; excess cash of Rs.4,58,948 found during the course of regular business which has been recorded in the books of account & shown in the P&L account as 'business income which is included in 'net profit of Rs.2,27,90,142 reflected in computation of income under the head "Income from business'; it is without giving proper opportunity to explain its case for applying deeming sec69A, application ofsec115BBE is not justified and is liable to be deleted."*
>
> ***Gr.No.3***
>
> *"The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing."*

3. The concise facts of the case are that the assessment in the case of the assessee u/s 143(3) of the Act was completed on 28.09.2021, wherein, returned income of the assessee has been enhanced with two additions; (i) for Rs.2,06,47,091/- on account of excess stock found during the survey treated as un-explained investment u/s 69 and the tax is applied as per provisions of section 115BBE of the Act and (ii) for Rs.4,58,948/- on account of excess cash found during the survey treated as un-explained money u/s

69A of the Act and the tax is applied as per provisions of section 115BBE of the Act.

4. Aggrieved with the higher rate of tax u/s 115BBE on the aforesaid addition of Rs.2,06,48,091/- for excess stock u/s 69, the assessee preferred an appeal before Ld. CIT(A), challenging the justification of higher tax rate, however, the appeal was dismissed on an *ex-parte* basis.

5. Dissatisfied with the aforesaid order of Ld. CIT(A), the assessee preferred an appeal before us, which is under consideration in the present case.

6. It has been noticed that the appeal filed by the assessee in the present case is delayed by 12 days. In this respect, Ld. AR representing the assessee has furnished an application for condonation of delay along with an affidavit to substantiate the reasons for delay. Reason for delay is confronted to the Departmental Representative, who is, Dr. Priyanka Patel, Ld. Senior DR, to which, she did not objected, therefore, it is considered in the interest of justice following the decision of the Hon'ble Apex Court in the case of ***Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025,*** wherein, it is held that so far as the delay is concerned a much more judicious and liberal approach must have to be

adopted by the concerned authority. Therefore, the delay of 12 days in filing the present appeal is condoned.

7. On perusal of order of Ld. CIT(A), it is transpired that the impugned order was on an *ex-parte* basis as the assessee had not responded towards the hearing notices dated 27.08.2024, 04.09.2024, 03.09.2024, except one request for adjournment. Since the matter was disposed of on an *ex-parte* basis and we have held in earlier cases also that one last and final opportunity should be provided to the assessee, accordingly, we are of the considered view that the matter needs to be restored back to the file of CIT(A) for *de novo* adjudication.

8. Our aforesaid view is fortified by our earlier decision, 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 our 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 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.*

9. In view of aforesaid facts and circumstances, respectfully following the aforesaid decision in the case of **Brajesh Singh Bhadoria (supra)**, without dealing with the grounds of appeal raised by the assessee on merits, we find it appropriate to provide one last and final opportunity to the assessee to represent its case before the First Appellate Authority, to which both the parties herein have fairly agreed. Accordingly, the matter is restored back to

the files of Ld. CIT(A) for fresh adjudication within a period of 3 months from the receipt of this order.

10. 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 no further opportunities shall be provided, and the Ld. CIT (A) would be at liberty to decide the case in accordance with the mandate of law.

11. Resultantly, the appeal of the assessee in ITA No. 389/RPR/2025 is **allowed for statistical purposes**.

Order pronounced in the open court on 06/08/2025.

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

रायपुर / Raipur; दिनांक Dated 06/08/2025
***HKS*

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Gaurav Agrawal
2. प्रत्यर्थी/ The Respondent- ACIT, Circle-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