

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.488/RPR/2025

निर्धारण वर्ष / Assessment Year : 2010-11

Narendra Kumar Bhojwani
C/o. Bhojwani Medical Stores,
Hatri Bazar, Sadar Ward,
Bhatapara-493 118 (C.G.)
PAN: ADEPB7523J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Bhatapara (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Veekaas S Sharma, CA
Revenue by : Shri Birendra Kumar, Sr. DR

सुनवाई की तारीख / Date of Hearing : 26.08.2025

घोषणा की तारीख / Date of Pronouncement : 26.08.2025

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

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi, dated 15.04.2024 for the assessment year 2010-11 as per the grounds of appeal on record.

2. At the very outset, it has been pointed out by the Ld. Counsel for the assessee that the appeal is time barred by 431 days. However, explaining the reasons for the said delay, the Ld. Counsel has filed condonation application as well as affidavit, dated 14.08.2025 wherein it is stated as follows:

7. यह कि मेने दिनांक 27.12.2019 के निर्धारण आदेश, जो धारा 143(3) सहपठित धारा 263 के अंतर्गत पारित हुआ, के विरुद्ध फॉर्म संख्या 35 में अपील दायर की थी। उक्त फॉर्म में मेने CIT (Appeals) को ईमेल अथवा इलेक्ट्रॉनिक माध्यम से सूचना भेजने की अनुमति नहीं दी थी, बल्कि यह विशेष रूप से अनुरोध किया गया था कि सभी सूचनाएं मेरे द्वारा दिए गए पते पर ही भेजी जाएं। तथापि, न तो कोई नोटिस और न ही धारा 250 के अंतर्गत दिनांक 15.04.2024 को पारित आदेश की कोई हार्ड कॉपी मुझे प्राप्त हुई, जिसके कारण मैं उक्त नोटिस व आदेश से पूर्णतः अनभिज्ञ रहा।
8. यह कि फॉर्म-35 में "क्या नोटिस/संवाद ईमेल पर भेजे जा सकते हैं?" के विकल्प में मेने स्पष्ट रूप से "नहीं" का उत्तर अंकित किया था। इसके बावजूद, मुझे ईमेल के अलावा किसी अन्य माध्यम से कोई नोटिस नहीं भेजा गया, जिसके कारण मैं धारा 250 के अंतर्गत जारी किए गए नोटिसों का अनुपालन नहीं कर सका।
9. यह कि चूंकि मुझे NFAC द्वारा पारित आदेश दिनांक 15.04.2024 की कोई हार्ड कॉपी प्राप्त नहीं हुई, अतः मैं उस आदेश से पूर्णतः अनजान रहा, जिसके कारण माननीय आयकर अपीलीय न्यायाधिकरण (ITAT) के समक्ष अपील दायर करने में विलंब हुआ।
10. यह कि यदि अपील की सीमा (limitation) की गणना उस तिथि से की जाए, जिस दिन मुझे उक्त आदेश की जानकारी प्राप्त हुई, तो मेरी अपील नियत समयवधि (60 दिन) के भीतर दायर की गई है। तथापि, यदि सीमा की गणना उस तिथि से की जाए जिस दिन आदेश पोर्टल पर अपलोड किया गया (15.04.2024), तो अपील दाखिल करने में कुल 431 दिनों का प्रकट विलंब हुआ है, जो उपर्युक्त कारणों से हुआ है।

14 AUG 2025

सत्यापन

Signature of Deponent

अभिसाक्षी
N Bhojwani

Further, the Ld. Counsel contended that in Form 35, there is specific column on the personal information mentioning “whether notices /communication may be sent on email?” and the assessee has given reply as “No” which means there is an option given to the assessee for receiving of the notice/communication through email or not. In this case, the order of the Ld. CIT(Appeals)/NFAC was sent by the department through registered email id but since the assessee has opted as “No”, therefore, there was no checking of such mail and therefore consequent non receipt of the said order resulting in the impugned delay. It was submitted by the Ld. Counsel that the assessee cannot be held at fault as Form 35 itself provides such an option to the assessee to choose the mode of receiving notices/communications.

3. The Ld. Sr. DR in this regard submitted that the department is in the process of amending this provision in Form 35.

4. Having heard the submissions of the parties herein on the ground of limitation, I am of the considered view that such delay has been caused due to technical issue arising from Form-35 itself and it cannot be attributed for any deliberate or malafide conduct on the part of the assessee since there was no receipt of the order of the Ld. CIT(Appeals)/NFAC by the assessee physically while the assessee has already opted as “No” as observed herein before and for that reason, the

said delay has occurred. In so far the delay is concerned, it would be relevant to point out that the Hon'ble Supreme 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**, had observed that a justice oriented and liberal approach ought to be adopted while considering the aspect of condoning the delay involved in filing of the appeal. Also, the **Hon'ble High Court of Chhattisgarh** in the case of **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025**, after relying on the judgment of the Hon'ble Supreme Court in the case of Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur (supra) had held that a justice oriented and liberal approach be adopted while considering the application filed by the assessee for condonation of delay.

5. That in the recent judgment of the **Hon'ble Supreme Court** in the case of **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025**, the Hon'ble Apex Court while interpreting Section 5 of the Limitation Act, 1963 regarding the condonation of delay in respect of case of land acquisition has observed and held on the aspect of delay that although the delay cannot be condoned without sufficient

cause, the merits of the case could not be discarded solely on the ground of delay. A liberal approach, therefore, should be taken in condoning the delay when limitation ground undermines the merits of the case and obstructs the substantial justice. In other words, the objective of the court should be to deliver substantial justice coupled with liberal and judicious approach while deciding the issue of limitation and whenever it is found that the case has merits which needs to be addressed substantially, in such case, the delay should be condoned. Accordingly, the said delay of 431 days involved in the present appeal is condoned.

6. At the time of hearing Ld. Counsel for the assessee submitted that as evident from Paras 4 & 4.1 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 & 4.1 of the Ld.CIT(Appeals)/NFAC's order are culled out as follows:

“4. In response to the various notices issued u/s. 250 of the Act, the appellant has expressed his reluctance in submitting written arguments which indicates that the appellant is not interested in pursuing the appeal before the appellate authority. The Details of such notices issued are given as below:

Sr. No.	Notice issued on	Due date of Reply	Reply Submitted by the Appellant
1.	01.02.2021	15.02.2021	No Response
2.	04.11.2022	Communication window	No Response

3.	07.07.2023	24.07.2023	No Response
4.	02.08.2023	17.08.2023	No Response
5.	20.02.2024	01.03.2024	No Response
6.	13.03.2024	22.03.2024	No Response

As on date of finalizing the appeal, the appellant has neither filed any reply nor filed any request for further adjournment.

The non-compliance by the appellant to statutory notices clearly shows that reasonable, speaking and fullest natural justice has been followed by the NFAC, but it is the appellant who has not availed any charges for the reasons best known to him. Therefore, the bar of 'natural justice' has been breached by the appellant for the reasons known to him.

4.1 Thus, it may be seen from the table given above that the appellant had been given ample opportunities by way of issuing notices as detailed above but the appellant had neither responded to the notices nor filed any written submission in compliance to such notices issued till date.”

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. I have carefully considered the contents in the documents/material available on record, submissions of both the parties. As per the aforesaid examination of the entire spectrum of the matter in the interest of natural justice, I 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, I 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 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.”

10. Respectfully following the aforesaid orders, 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.

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 open court on 26th day of August, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 26th 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