

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.537/RPR/2025

निर्धारण वर्ष / Assessment Year : 2018-19

Wasimuddin Kazi
EWS 410, Vaishali Nagar,
Bhilai-490 023 (C.G.)
PAN: BMDPK4223K

.....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 : 24.09.2025

घोषणा की तारीख / Date of Pronouncement : 24.09.2025

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

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 25.03.2025 for the assessment year 2018-19 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee submitted that the appeal is time barred by 107 days. The Ld. Counsel for the assessee has filed condonation application a/w. affidavit dated 18.09.2025, wherein it was stated that in Form 35, email id for communication that has been given is of the assessee himself. For the sake of completeness, the relevant extract of the Form 35 is culled out as follows:

FORM NO. 35 [See rule 45]

Appeal to the Joint Commissioner (Appeals) or the Commissioner of
Income-tax (Appeals)

Acknowledgement Number -266222090200623



Personal Information :	
Name of Entity	WASSIMUDDIN KAZI
PAN	BMDPK4223K
TAN	-
Address	EWS 410, WARD NO 10DURG, Supela, Supela Bhilai S.O, Chhattisgarh, INDIA, 490023
Mobile No.	9098901346
STD code	
Landline No.	
Email Address	wasimuddinquazi07 @gmail.com
Whether notices/communication may be sent on email?	-

The Ld. Counsel has placed on record various notices of hearing that was sent to the assessee by the department in such other email id. That for illustration, one of such notice is made part of this order as follows:

The screenshot shows the e-filing portal interface. At the top, there is a navigation bar with 'e-Filing Anywhere Anytime' and 'Income Tax Department, Government of India'. The user is logged in as 'WASSIMUDDIN KAZI'. The main content area displays a 'Notice/Letter pdf' with the following details:

- Notice/ Communication Reference ID: 100085461134
- Date: [Redacted]
- From: [Redacted]
- To: cadeepankar@gmail.com
- Subject: [ITBA]Hearing Notice u/s 250of Income Tax Act 1961.

The body of the notice reads:

Dear WASSIMUDDIN KAZI,

Please find attached the Notice u/s 250 for PAN BMDPK4223K and A.Y. 2018-19.

Please quote your PAN in all future correspondences.

Note :

- This communication is computer generated and may not contain signature.
- This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.
- Signed copy may be sent separately if not already digitally signed.
- Please quote your PAN in all communications.
- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

At the bottom of the notice, there is a 'Download' button next to the file name: 7000000078666229_104366329_2024_APL_BMD PK4223K_Hearing Notice us 250_1069080426(1)_25092024.pdf.

At the bottom of the page, there are links for 'Feedback', 'Site Map', 'Accessibility Statement', 'Website Policies', 'Browser Support', and 'DoBrowse Help'. The footer also contains the text: 'This site is best viewed in 1024 * 768 resolution with latest version of Chrome, Firefox, Safari and Edge. Last reviewed and updated on: 23-Sep-2025' and 'Copyright © Income Tax Department, Ministry of Finance, Government of India. All Rights Reserved'.

The Ld. Counsel has referred to Para 4 of the Ld. CIT(Appeals) order which reads as follows:

“4. During the appellate proceedings hearing notices were issued to the appellant on 25.09.2024, 16.01.2025 and 10.02.2025. The appellant did not respond to the notices issued.”

It is evident from the aforesaid para that the hearing notices were served on various dates but there is no compliance. The reason for non-compliance as demonstrated by the Ld. Counsel is that notices of hearing were sent to the email id of the erstwhile counsel. Meaning thereby, the information furnished by the assessee in Form 35 was not updated by the department and notices have been sent continuously in the old email id. The same fate happen with the order of the Ld. CIT(Appeals)/NFAC which was also sent in the wrong email id due to which the assessee was not aware about the proceedings before the Ld. CIT(Appeals)/NFAC.

3. The Ld. Sr. DR fairly conceded to the contentions raised by the Ld. Counsel regarding the condonation of delay.

4. Having heard the parties herein, I am of the considered view that the reasons for delay cannot be attributed to any malafide or deliberate conduct of the assessee, if any for causing such delay of 107 days. Also there is no evidence regarding any deliberate or malafide conduct of the assessee as regards the delay involved in filing of the present appeal before the Tribunal and whatever delay has been caused, was absolutely

circumstantial beyond any direct control of bonafide assessee. At the same time in these issues a liberal and judicious approach must be adopted also. In so far the delay is concerned, 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,** (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,** I condone the delay of 107 days involved in the captioned appeal.

5. Coming to the merits of the matter, it is noted that as per 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. Reasons for non-compliance have already been examined in the foregoing paras where it is noted that hearing notices were being sent by the department on the wrong email id.

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

7. I have carefully considered the contents in the documents/material available on record and submissions of the parties herein. 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.

8. In such scenario, 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.”

9. 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. Counsel for the assessee has made a statement at bar that they shall comply with hearing notices and submit all the relevant documents as regards the merits of the case. The Ld.CIT(Appeal)/NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act.

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

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

Order pronounced in open court on 24th day of September, 2025.

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

रायपुर / Raipur; दिनांक / Dated : 24th September, 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