आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य **एवं** श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 479/RPR/2025

(**निर्धारण वर्ष** Assessment Year: 2016-17)

Bharat Lal Tahalyani, M/s Mohan Lal Nebhan Das, Agresen Marg, Station Area, Janjgir- Naila- 495668, C.G.	v s	Deputy Commissioner of Income Tax, Circle-1(1), Shriram Plaza, Income Tax Department, Vyapar Vihar Road, Bilaspur-495001, C.G.
PAN: ACKPT9214D		
(**अपीलार्थी/Appellant**)	. .	(**प्रत्यर्थी / Respondent**)
निर्धारिती की ओर से / Assessee by	:	None
राजस्व की ओर से / Revenue by	:	Shri Raghunath, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	09.10.2025
घोषणा की तारीख / Date of Pronouncement	:	09.10.2025

आदेश / O R D E R

Per Arun Khodpia, AM:

The appeal is filed by the assessee against the order of Commissioner of Income Tax, Appeal Addl/JCIT (A)-2, Ahmedabad, [in short "Ld. CIT(A)"] under section 250 of the Income Tax Act, 1961 (in short "the Act") dated 30.04.2024 for the AY 2016-17, which in turn arises from the order passed by DC/ACIT-2(1), Bilaspur, (in short "Ld. AO") u/s 143(3) of the Act, dated 20.12.2018.

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

1. *That, on the facts and in law, the addition of Rs.6,19,449.00 as unexplained expenses is not warranted and it is liable to be deleted.*
2. *That, on the facts and in law, the addition of Rs.4,98,250.00 as bogus liability is not warranted and it is liable to be deleted.*
3. *That, on the facts, appellant did not get opportunity to represent his case before Ld. CIT(A) and hence the order is liable to set aside.*
4. *That, the appellant reserves the right to add, alter or delete any other ground.*

3. It is noticed that the appeal of the assessee is barred by limitation being delayed in filing of appeal for more than one year. To clarify the aforesaid situation, the assessee submitted a request for condonation of delay along with affidavit stating that the delay had occurred as the e-mail ID and mobile No. of the counsel was mentioned in Form 35 before the Ld. CIT(A), whereas the service of the said tax consultant Shri Arvind Mittal, were not satisfactory, therefore, the assessee changed the counsel, namely, Shri Abhay Paliwal on 30.07.2025. The new counsel of the assessee had found that the appellate order of the assessee was already passed on 30.04.2024 which had been brought to the notice of assessee on 30.07.2025. Accordingly, the delay was occurred which was neither intentional nor deliberate. It is also a case, wherein the assessee had not been represented before the Ld. CIT(A), as all the notices u/s 250 were not responded by him, so it can be said that the communications from the office of Ld. CIT(A) were not informed to the assessee to take necessary recourse. The aforesaid contention of the assessee

are rebated by the revenue by way a counter affidavit, however regarding the conduct of previous counsel and change of counsel, the revenue was unable to place before us any plausible explanation, rather the Ld. AO had not made any comment stating that it was a personal issue of the assessee. In view of the aforesaid circumstances, we find that the assessee was prevented with a valid reasons to file the appeal within the permissible time, therefore the delay of filing of appeal has been condoned. Our decision is supported by the judgment of Hon'ble Apex Court in the case of **Vidya Shankar Jaiswal Vs. the Income Tax Officer, Ward-2, Ambikapur, SLP (Civil) Nos. 268310-26311/2024, dated 31.01.2025**, that while dealing with the condonation of delay a justice-oriented and liberal approach ought to have adopted.

4. At the outset, it is noticed that the assessee as well as the revenue had filed an adjournment application in the present matter, however, since the impugned order of Ld. CIT(A) was an *ex-parte* order which as per our observation and decision, in many of the cases qualifies to be set aside to the file of Ld. CIT(A) for fresh adjudication after providing reasonable opportunity of being heard to the assessee. Accordingly, we are of the considered opinion that the present matter which was decided on *ex-parte* basis by the Ld. CIT(A) is also needs to be revisited by the First Appellate Authority. Our view is supported by the decision of this tribunal 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 it has been decided to restore the matter back to the file of Ld. CIT(A), for the sake of clarity the relevant observations in the case of **Brajesh Singh Bhadoria (supra)**, are extracted hereunder:

> ***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.*

5. In view of aforesaid facts and circumstances, respectfully following the aforesaid decision in the case of **Brajesh Singh Bhadoria (supra)**, the matter is restored back to the file of Ld. CIT(A) for *denovo* adjudication, within a period of 3 months from the receipt of this order.

6. 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 the Ld. CIT (A) would be at liberty to decide the case in accordance with the mandate of law.

7. In result, appeal of the assessee is **allowed for statistical purposes**, in terms of over aforesaid observations.

Order pronounced in the open court on 09/10/2025.

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

रायपुर / Raipur; दिनांक Dated 09/10/2025
Vaibhav Shrivastav

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Bharart Lal Tahalyani
2. प्रत्यर्थी/ The Respondent- DCIT, Circle-1(1), Bilaspur
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