

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 Nos.514 & 515/RPR/2025
निर्धारण वर्ष /Assessment Year : 2011-12 & 2012-13**

Kamlesh Kumar Dewangan
House No.CH-199, Slice-2,
Behind Bengal Sweets, Veerawarkar Nagar,
Hirapur, Raipur (C.G.)-492 001
PAN: AERPD4010Q

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer-2(2),
Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Kumar Agrawal, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 25.11.2025

घोषणा की तारीख / Date of Pronouncement : 26.11.2025

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

The captioned appeals preferred by the assessee emanates from the respective orders of the Ld.CIT(Appeals)/NFAC, Delhi dated 19.06.2024 for the assessment year 2011-12 & 2012-13 as per the grounds of appeal on record.

2. At the very outset, the Ld. Counsel for the assessee submitted that both the appeals are time barred by 363 days. Elaborating the reasons leading to the said delay, the Ld. Counsel has submitted condonation petition a/w. affidavit dated 04.10.2025 which are similarly worded for both the appeals. For the sake of completeness, the condonation petition a/w. affidavit dated 04.10.2025 are extracted as follows:

“It is very respectfully submitted that, this appeal of the assessee for AY11-12 has filed on 29-8-25 which having delay of 363 days; appellate order u/s.250 i.e., an ex-parte order passed by Id CIT(A)/ NFAC, Delhi on 19-6-24; there were 2 mail IDs mentioned in the e-filing portal of the assessee i.e., kamleshdewangan661@gmail.com' of the assessee & 'batra.incometax@gmail.com' of the accountant of the assessee; that assessee was not proficient in using his 'e-mail ID', so therefore, he was not known about his dismissal of the appellate order dt.19-6-24; he only come to know about this fact when his accountant communicated him the matter and then, immediately, he went to his regular counsel's office Shri Manoj Keswani CA who referred him to my office; and thereafter, the assessee came to our office & we have prepared the appeal in Form No.36 and appeal has been filed on 29-8-25 after depositing appeal fees of Rs.10,000 on 29-8-25; that the assessee has not received any physical copy of the appellate order till date from the Revenue; the impugned delay of 363 days having bonafide

reasons, there is no malafide/deliberate intention of the assessee, it is requested to your Honors to condone the impugned delay of 363 days & obliged.

Affidavit

I, **Kamlesh Kumar Dewangan** s/o Late Shri B.R. Dewangan, age 51 years, R/o CH-199, Slice-2, Behind Bengali Sweets, Veer Savarkar Nagar, Hirapur, Raipur (CG), PAN No. AERPD4016Q, hereby declare the following under oath through this affidavit:

4. That I have not filed my Return of Income for **AY 2011-12**. Assessment u/s147 rws.144 has been made on 10-12-18, wherein addition of Rs.10,97,467 was made and thereby income was assessed at Rs.10,97,467.
5. That, I had filed appeal before the CIT(A), Raipur-1 in Form No.35. Thereafter, ex-parte appellate order passed by the CIT(A)/ NFAC u/s250 dt.19-6-24. Thereafter, I filed appeal before the ITAT, Raipur in Form No. 36 on 29-8-25, which is delayed by **363 days** in total.
6. That, all communications relating to the assessment and appellate proceedings were received on the primary e-mail ID '**kamleshdewangan661@gmail.com**' and '**batra.incometax@gmail.com**', i.e., e-mail id of my accountant Shri Sanjay Batra, registered on the e-filing portal. Since, I was not proficient in using e-mail and lacked digital literacy, due to which, I could not obtain information about the said appellate order, in time. Later on, my accountant informed me about the dismissal of the appellate order dt.19-6-24, thereafter, I approached my regular counsel Shri Manoj Keswani CA who referred me to Shri Sunil Agrawal CA and thereafter, my appeal has been filed before the ITAT, Raipur which is delayed by **363 days**.

ADVOCATE
(C.G.) INDIA
No.-17985
08/10/2030
OF INDIA

Verification

I, **Kamlesh Kumar Dewangan**, hereby verify that the contents of this affidavit are true and correct to the best of my personal knowledge and belief, and nothing stated herein is false.

Place: Raipur
Date: 4-10-25

04 OCT 2025

SOLEMONY AFFIRMED BEFORE
ME WITHIN NAMED DEPONEN™

(Kamlesh Kumar Dewangan)

न कृता मवाह

Ishwar Lal Sabu
Notary/Advocate
RAIPUR (C.G.)

3. The Ld. Sr. DR did not raise any objection if the delay is condoned for the fact that in Form 35, the email address has been given as skc.itr@gmail.com, whereas, notices of hearing and order have been sent by the department to the assessee to the email address viz. (i) 'kamleshdewangan661@gmail.com' and (ii) 'batra.incometax@gmail.com'.

4. Having heard the parties herein and considering the contents of the condonation petition a/w. affidavits, I find merit in the prayer made by the assessee that such delay of filing appeals before the Tribunal was not deliberate or malafide and accordingly, the said delay of 363 days in filing of the appeals is condoned in view of the following 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.**

5. Coming to the merits of the matter, it is noted that as evident from Para 6, 6.1 and 9.1 of the impugned orders, 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 6, 6.1 & 9.1 of the Ld.CIT(Appeals)/NFAC's order in ITA No.514/RPR/2025 for A.Y.2011-12 are culled out as follows:

“6. During appellate proceedings, a notice under section 250 of the Act was issued for the first time on 22/01/2021, fixing the date of hearing on or before 08/02/2021. The appellant did not reply. Further, other notices u/s. 250 of the Act were issued to the appellant on 19/08/2021 & 01/05/2024, fixing the date of hearing on or before 24/08/2021 & 13/05/2024 respectively. These times also, the appellant did not reply or sought any adjournment so far. I am therefore of the view that the appellant has been given sufficient opportunities to represent his case, but he failed to avail them.

6.1 In the appellate proceedings, the initial burden lies on the appellant to prove that the facts and the findings of the Assessing Officer are incorrect with the help of verifiable documents. If the appellant fails to disprove or rebut with cogent evidence such facts and findings, no interference is required. In this case, the appellant did not choose to avail the opportunities in the appellate proceedings which has lead to the only conclusion that he had no evidence or explanation against the order of the Assessing Officer.”

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9.1 During appellate proceedings, appellant has not submitted any document in support of his contention, except making a statement in his statement of facts that "during the year total deposit in saving bank account of the appellant was Rs. 11,50,217/- and out of which cash deposit was Rs.10,97,467/-. Most of the deposit entries in the bank accounts are petty deposits of Rs.5000/- to 20000/- only. There is no deposit entry of big amount in a day. It may also be noted that the peak credit during the year of above bank account of the appellant is Rs. 67,386/- only." In absence of documentary evidence in the form of bank statement and other supporting documents, the contention of the appellant cannot be verified and thus there arise no reason to take a different view from that taken in the assessment order. Considering the above, the appeal is dismissed.”

In so far the appeal filed by the assessee in ITA No.515/RPR/2025 for A.Y.2012-13, it is evident from Paras 6, 6.1 & 9.1 of the Ld. CIT(Appeals)/NFAC order that since there was no compliance from the assessee, therefore, the Ld. CIT(Appeals)/NFAC dismissed the appeal vide an ex-parte order. For the sake of brevity, the same are only referred to and not being extracted.

6. 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.

7. 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.

8. 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.”

9. Respectfully following the aforesaid order, I set-aside the respective orders of the Ld. CIT(Appeals)/NFAC and remand the matters 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.

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

11. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in open court on 26th day of November, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 26th November, 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