

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.745/RPR/2025

निर्धारण वर्ष / Assessment Year : 2018-19

Anket Pagariya
118-119, C/o. Pagaria Jewellers,
Halwai Lane, Sadar Bazar,
Raipur (C.G.)-492 001
PAN: AOVPP8778F

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Central Circle-1, Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 12.12.2025

घोषणा की तारीख / Date of Pronouncement : 12.12.2025

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

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, dated 01.09.2025 for the assessment year 2018-19 as per the grounds of appeal on record.

2. At the time of hearing, none appeared for the assessee and no adjournment petition has been filed. The matter was heard after recording the submissions of the Ld. Sr. DR and on a careful perusal of the materials/documents available on record.

3. At the very outset, it is noted that the order passed by the Ld.CIT(Appeals)/NFAC is an *ex-parte* order as evident from Para 4 of its order which is extracted as follows:

“4.....During the appeal proceedings, the appeal was fixed for hearing as under:

S. No.	Notice u/s.	Notice issued date	Hearing fixed	Assessee reply
1.	u/s.250	11.11.2022	21.11.2022	No submission
2.	u/s.250	22.09.2023	12.10.2023	No submission
3.	u/s.250	14.05.2024	21.05.2024	No submission
4.	u/s.250	09.08.2024	16.08.2024	No submission
5.	u/s.250	15.10.2024	25.10.2024	No submission
6.	u/s.250	08.05.2025	22.05.2025	No submission

7.	u/s. 250	15.07.2025	31.07.2025	No submission
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From the assessee's side none attended nor any request for adjournment were received. It is quite evident from the chronology of event that despite several opportunities being granted from time to time, there has been absolutely no compliance on part of the appellant to give detailed explanation regarding ground of appeal taken for A.Y. 2018-19, the appellant has shown that he is not interested in pursuing the appeal. The laws aid those who are vigilant, not those who sleep upon their rights. Under these circumstances, in my opinion the appellant is not interest in the appeal. In view of these facts, the appeal of the appellant deserves to be dismissed as it cannot be kept pending adjudication for indefinite period. It is the duty of the appellant to make necessary arrangements for effective representation on the appointed date. Mere filing of an appeal is not enough, rather it requires effective hearing also. Therefore, the appeal is found liable for dismissal. This view is supported by the following judicial pronouncements....”

4. 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.

5. I have carefully considered the contents in the documents/material available on record. 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.

6. At this stage, I herein observe that the ITAT, “SMC Bench”, Raipur in the cases of **Prayag Thermoplasts Pvt. Ltd. Vs. ACIT, Circle-1, Naya Raipur, ITA Nos. 575, 576, 577, 578, 579 & 580/RPR/2025 for**

A.Ys.2009-10 to 2014-15, dated 26.11.2025 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:

“3. The Revenue has not brought on record any negative evidence against the assessee regarding any purposeful and deliberate conduct for not appearing before the Ld. CIT(Appeals)/NFAC. That in absence of such evidence against the assessee and in such scenario, ITAT, “Division Bench”, Raipur had followed the view taken 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**, wherein it has been held that in case of welfare legislation, in which, Income-tax Act is a part and parcel of the same and that they are absolutely different from that of penal legislation, in such circumstances, the benefit of doubt is given to the tax payer assessee that he was prevented from sufficient cause beyond its control to respond to the hearing notices before the First Appellate Authority. Resultantly, the First Appellate Authority was compelled to pass an ex-parte order and the mandate of the provision of Section 250(4) & (6) of the Income Tax Act, 1961 (for short ‘the Act’) could not have been complied with.

4. In the aforesaid decision (supra), another aspect also has been dealt with that if the Ld.CIT(Appeals)/NFAC which is a statutory authority within the Act has not dealt with the facts of the case substantially due to non-compliance by the assessee, then the assessee is also debarred from assailing any legal ground before the second appellate forum, wherein the assessee is prevented to take short route and get relief on the legal ground even without bothering to comply with the hearing notices before the Ld. CIT(Appeals)/NFAC. That though on one hand the assessee gets a final opportunity to represent its matter before the Ld. CIT(Appeals)/NFAC in case of non-compliance in view of principles of natural justice, at the same time, there cannot be any direct adjudication by another statutory authority i.e. ITAT without having on record any substantive adjudication and findings contemplated u/s.250(4) & (6) of the Act by Ld. CIT(A)/NFAC. Meaning thereby, one statutory authority cannot overrule the dictate of the legislature enshrined

within the statute itself. In this backdrop, it would be relevant to refer to the decision of the ITAT, "Division Bench", Raipur in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur, (supra)**, wherein similar issue was dealt with on the same parameters of ex-parte order passed by the Ld. CIT(Appeals)/NFAC and the matter remanded 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.”

5. Respectfully following the aforesaid order, all these matters are remanded back to the file of the Ld. CIT(Appeals)/NFAC for denovo adjudication as per law. At the same time, it is directed that this being the final opportunity, the assessee shall accord specific and careful representation regarding all hearing notices issued from the office of the Ld.CIT(Appeals)/NFAC. The Ld.CIT(Appeal)/NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act.

6. Before parting, it is also pertinent to mention that the Ld. Counsel for the assessee referring to the decision of the Hon'ble Jurisdictional High Court in the case of M/s. Adim Jati Seva Sahkari Samiti Maryadit Korba Vs. ITO-2, Korba (C.G.), TAXC No.70 of 2024, dated 21.04.2025, has submitted that the authority has to be deal with the facts of case and not to remand back before the Ld.CIT(Appeals)/NFAC without considering the facts on record. The fact of the matter is that when the assessee who has already been given the benefit of principles of natural justice and when it had not brought any evidence/submission to justify its non-compliance before the first appellate authority, therefore, it is a benefit already given to the tax payer assessee as a form of final opportunity to represent its case on merits before the first appellate authority. When the first appellate authority has not given any findings since the assessee remained non-compliance throughout, the Tribunal as highest fact finding authority, therefore, does not have any material/documents on record to deal with the facts of such case. That further in the foregoing paras, as per decision in **Brajesh Singh Bhadoria (supra)**, it has been already discussed that compliance before the Ld. CIT(Appeals)/NFAC is mandatory and that assessee cannot be allowed to overstep one statutory authority without any compliance before the same and that mandate of the statute and intent of legislature demands fiscal statute to be given strictest interpretation. Furthermore, on enquiry from the Bench, whether any appeal has been preferred in the cases of **Brajesh Singh Bhadoria (supra)** before the Hon'ble Jurisdictional High Court, the Ld. Counsel who was the same Counsel representing the matters of **Brajesh Singh Bhadoria (supra)**, submitted that no appeal has been preferred before the Hon'ble High Court. Meaning thereby, contents of the said decision have already been accepted as on date and therefore, the decision (supra) relied by the Ld. Counsel as per the examination of the facts and law, stands substantially different from the facts of the present case, hence, reliance is misplaced.

7. As per the aforesaid terms, all the appeals of the assessee stands allowed for statistical purposes.”

7. 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.

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

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

Order pronounced in open court on 12th day of December, 2025.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 12th December, 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