

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर

IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR

श्री पार्थ सारथी चौधरी, न्यायिक सदस्य एवं श्री अवधेश कुमार मिश्रा, लेखा सदस्य के समक्ष ।

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM &

SHRI AVDHESH KUMAR MISHRA, AM

आयकर अपील सं. / ITA No: 632/RPR/2025

(निर्धारण वर्ष Assessment Year: 2011-12)

Sharda Devi Singh, W/o Shri Shailendra Singh, K-8, Rajdhani Vihar, Saddu, Raipur-492001, C.G.	vs	Income Tax Officer, Aayakar Bhawan, Mahasamund- 493445, C.G.
PAN: CLZPS1287D		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri R. B. Doshi, CA
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	06.01.2026
घोषणा की तारीख/Date of Pronouncement	:	07.01.2026

आदेश / ORDER

Per Avdhesh Kumar Mishra, AM:

The appeal for Assessment Year ('AY') 2011-12 filed by the assessee is directed against the order dated 19.08.2025 passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi ['CIT(A)'].

2. The assessee has raised following grounds of appeal: -

"1. Ld. CIT(A) erred in deciding appeal without service of notice. Resultantly, appellate order is illegal & unsustainable.

2. Ld. CIT(A) erred in not adjudicating the appeal on merits. The appellate order passed by Ld. CIT(A) is illegal inasmuch as the same is contrary to principles of natural justice.

3. *Ld. CIT(A) erred in dismissing appeal without adjudicating ground relating to validity of reassessment proceedings and reassessment order. The reassessment proceedings and consequent reassessment order is illegal and liable to be quashed.*
4. *Ld. CIT(A) erred in confirming addition of Rs.77,51,352/- made by AO on account of credits in the bank account of credits in the bank account of appellant treating it to be unexplained cash credit invoking sec. 69. The addition made by AO and confirmed Ld. CIT(A) is arbitrary, illegal and not justified.*
5. *The appellant reserves the right to add, amend or alter any ground/s of appeal.”*

2.1 In nutshell, the appellant assessee has challenged the impugned order of the Ld. CIT(A), not only on the merit but also on the legal issue i.e., the illegality of impugned order being contrary to the principle of natural justice and non-adjudication of each grounds of appeal raised by the assessee in accordance with the provisions of the Income Tax Act, 1961 ('Act').

3. The relevant facts giving rise to this appeal, as evident from the record, are that the appellant assessee, a 'Non-Filer of Income Tax Return' has deposited cash aggregating Rs.76,99,000/- in her Saving Bank Account in the relevant year. Based on the information of cash deposits aggregating Rs.76,99,000/- made by the assessee in the relevant year, the Ld. Assessing Officer ('AO') reopened the case of the assessee on the reasoning that the cash deposits aggregating Rs.76,99,000/- has escaped assessment as the assessee was a 'Non-filer'. During the reopened assessment proceedings, the Ld. AO provided many opportunities of being heard as detailed on page 1 of the assessment order to explain the source of cash

deposits aggregating Rs.76,99,000/-, but in vain; therefore, the Ld. AO completed the assessment ex-parte under section 144 of the Act by taxing the entire cash deposits aggregating Rs.76,99,000/- under section 69 of the Act. Aggrieved with the assessment order, the appellant assessee filed appeal before the Ld. CIT(A), who dismissed the appeal due to non-prosecution as under:

“4. The assessee made certain submissions in the form of statement of facts, the relevant portion of the statement of facts is reproduced below for ready reference:

The Appellant is a lady, aged about 50 years. She has Savings Bank Account with Punjab National Bank, Nartola branch wherein some business receipts were deposited. Some deposits were also out of withdrawal from the same bank account and some were from past savings. The deposits amounted to Rs.76,99,000/-. The Ld. AO added the entire sum along with interest in above account and assessed the income at Rs.77,51,350/-. The Ld. AO issued Notices u/s 147 and 142(1) at the address at Main Road, Jhalap, District Mahasamund whereas the Appellant shifted to K 8, Rajdhani Vihar, Saddu, Raipur and as such the above Notices were neither served upon the Appellant nor received by the Appellant and the above Notices were returned back by the Post Office. Subsequently, it came to the knowledge of the Counsel of the Appellant that some demand is outstanding, thereafter, the Counsel approached the Ld. AO and obtained the Assessment Order, Demand Notice and various other Notices. The Ld. AO passed Order u/s 144 which cannot be considered as best judgement as the relevant factors were not considered by him.

5. During the course of appeal proceedings, the appeal was for hearing on various dates, the details of which are as follows:

S.No.	Date of Notice	Date of Hearing	Remarks
1	30.12.2020	05.01.2021	No response.
2	05.03.2025	12.03.2025	No response.
3	07.07.2025	21.07.2025	No response.
4	29.07.2025	04.08.2025	No response

6. As seen from the above, it is clearly evident that the appellant was provided with sufficient time and adequate number of opportunities of being heard, but in vain. Accordingly, I am of the considered view that no useful purpose will be served in keep on adjourning the case without there being any response from the assessee. Hence, the case is decided basing on the material available on record.

7. Primarily, as there is no proper response to appeal notices, the appeal is liable to be dismissed in terms of verdicts of the Hon'ble Apex Court and the various High Courts. The Hon'ble Apex Court, in the case of CIT v. B.N. Bhattacharjee and another (10 CTR 354) held that-

“appeal does not mean only filing of memo of appeal but also pursuing it effectively. In cases where the assessee does not want to pursue the appeal, the Court/Tribunal have inherent power to dismiss the appeal ...”

8. An appeal means an effective appeal--"expression "prefer an appeal" would mean effectively prosecuting an appeal" Purposefully interpreted, preferring an appeal means more than formally filing it but effectively pursuing it. If a party retreats before the contest begins, it is as good as not having entered the fray.

8.1 The Hon'ble MP High Court in Estate of Late Tukojirao Holkar v. CIT, 223 ITR 480(MP) has held that if a party, at whose instance the reference is made, fails to appear at the hearing, or fails in taking steps for preparation of paper

books so as to enable hearing of the reference, the court is not bound to answer the reference. Similar view has also been taken in the case of CIT v. Multiplan (India) Pvt. Ltd., 38 ITD 320 (Del). Following the ratio of Multiplan (India) Ltd (supra), the Chennai Tribunal has also dismissed appeal for non-prosecution. It is pertinent to add here that the laws assist those who are vigilant and not those who sleep over their rights. This principle is embodied in the well-known maxim "Vigilantibus, et non dormientibus, jura subveniunt". It means equity comes to the aid of the vigilant and not the slumbering. In all actions, suits and other proceedings at law and in equity, the diligence and careful plaintiff is favoured to the prejudicial of him who is careless.

9. Further, the appellant has failed to produce any substantial evidence to overturn the decision made by the AO in the impugned order. Therefore, it has been construed that the appellant is not interested in prosecuting the appeal. In the instant case, I am refraining from discussion and decision on the Grounds of appeal on merits. The Grounds of appeal are dismissed herewith for non-prosecution."

4. At the outset, Shri R. B. Doshi, the Ld. Authorized Representative ("AR") of the appellant assessee submitted that the Ld. CIT(A) had erred in dismissing the appeal, ex-parte, without adjudicating the appeal on merit. Before us, the Ld. AR of assessee prayed for remanding the matter to the Ld. AO as the assessee failed to ensure proper and complete compliance not only before the Ld. AO but also before the Ld. CIT(A). However, on specific query by us, he accepted our point of view of remanding the matter back to the Ld. CIT(A) for adjudication on merit after setting aside the impugned order as the same had been decided against the appellant assessee for want of prosecution.

5. On the other hand, the Ld. Sr. DR defended orders of the Authorities below. She, drawing our attention to various paras of the assessment order and impugned order, submitted that reasonable opportunities of being heard were provided to the appellant assessee by the Authorities below. However, the appellant assessee tactfully ensured non-compliance to avoid proper investigations. Hence, she prayed for dismissing the appeal and upholding of the impugned order.

6. We take note of the fact that the Ld. CIT(A) has not only provided proper opportunity of being heard but has also not decided each ground of appeal after discussing the issues in detail and his/her reasons for agreeing with the assessment order though he/she, as per provisions of section 250(6) of the Act, is obliged to dispose of the appeal in writing with well-reasoned order on each point of determination arisen for his/her consideration. It is evident from the perusal of section 251(1)(a), 251(1)(b) and Explanation of section 251(2) of the Act that the CIT(A) is required to apply his/her mind to all the issues which arise from the impugned order before him/her, whether or not these issues have been raised by the assessee before him/her. On cumulative consideration of the provisions of section 250(6) of the Act read with sections 250(4), 250(5), 251(1)(a), 251(1)(b) of the Act and Explanation of section 251(2) of the Act, the Ld. CIT(A) is not empowered to dismiss the appeal for non-prosecution of appeal and is obliged to dispose of the appeal on merit. Further, we have also taken note of the fact that the appellant assessee has not ensured any effective compliance before the Authorities below.

7. We heard both parties and perused the material available on the record. We take note of the fact that both Authorities below have decided the case ex-parte and not on the merit. In view of the above, we are of the considered view that the appellant assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances as the appellant assessee has not ensured any compliances before the Authorities below. Therefore, considering all the facts and without offering any comment on merit of the case, we, in the interest of justice, deem it fit to set aside the impugned order and to remit the matter back to the Ld. CIT(A) to decide this case on merit. Ordered accordingly. Needless to say that the appellant assessee should ensure compliances during the remitted appellate proceeding before the Ld. CIT(A). Further, we direct the Ld. CIT(A) to decide the case on merit *afresh/denovo*, in accordance with law, after providing adequate opportunity of being heard to the appellant assessee.

8. In the result, the assessee's appeal is **allowed for statistical purposes**.

Order pronounced in the open court on 07/01/2026.

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

Sd/-
(AVDHESH KUMAR MISHRA)
लेखा सदस्य / ACCOUNTANT MEMBER

रायपुर / Raipur; दिनांक Dated 07/01/2026
Vaibhav Shrivastav, Stenographer

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Sharda Devi Singh
2. प्रत्यर्थी/ The Respondent- ITO, Mahasamund
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**