

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.113/RPR/2026
निर्धारण वर्ष / Assessment Year: 2019-20**

Kishor Kumar Arya,
Jai Mahamaya Petroleum,
Village Sulenga, Narayanpur,
494661, Chhattisgarh.
PAN: AHIPA5046R

.....अपीलार्थी / Appellant

बनाम / V/s.

Income Tax Officer, Ward
Jagdalpur, Income Tax
Office, Beside Jhankar
Talkies, Kumharpara,
Jagdalpur, Chhattisgarh,
494001.

.....प्रत्यर्थी / Respondent

Assessee by : Mr. Yash Jain, CA
Revenue by : None (Petition filed)

सुनवाई की तारीख / Date of Hearing : 27.02.2026
घोषणा की तारीख / Date of Pronouncement : 27.02.2026

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

The captioned appeal preferred by the assessee emanates from the order of the Ld.CIT(A)/NFAC, Delhi dated 12.09.2025 for the assessment year 2019-20 as per the grounds of appeal on record.

2. That at the time the matter was called for hearing, the Ld. Sr. DR was absent and there was none present for the department. However, a CL application has been filed by the Ld. Sr.DR. Consequent thereof, the Registry ITAT, Raipur had written to Commissioner to arrange an alternative for representing the matters on behalf of the Department before the Bench. However, no such arrangements have been made by the Commissioner. The Bench is therefore constrained to proceed with the matter after hearing the submissions of Ld. AR and careful consideration of documents placed on record.

3. Further, it is noticed that this appeal is time barred by 80 days for which, the assessee has filed a condonation petition as well as an affidavit. The said affidavit is extracted as follows:

**AFFIDAVIT CUM APPLICATION FOR CONDONATION OF
DELAY IN FILING APPEALS**

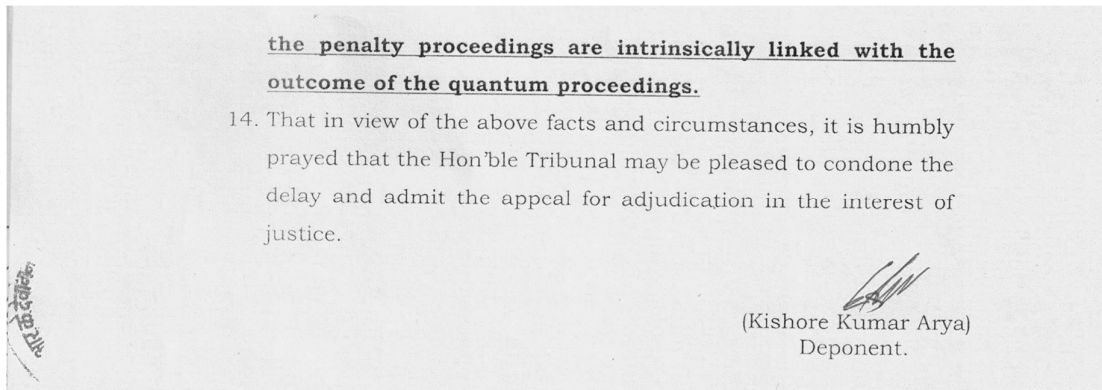
I, Kishore Kumar Arya, S/o Shri J. L. Arya, aged about 51 Years, resident of Vill. Sulenga, Narayanpur, do hereby solemnly state as under:-

1. That I am the Appellant in above appeal. I am well acquainted with the facts and circumstances of the case and I am competent to swear this affidavit.
2. That I am engaged in the business of running a petrol pump in the name and style of *Jai Mahamaya Petroleum* at Village Sulenga, Narayanpur, Chhattisgarh. The said village is located in a very remote and severely Naxalite-affected area where professional and tax consultancy facilities are practically unavailable.



3. That the Ld. Assessing Officer initiated reassessment proceedings for the Assessment Year 2019-20 and issued notice u/s. 148 of the Income Tax Act, 1961. During the course of assessment proceedings, notices u/s. 142(1) were also issued. However, the applicant could not effectively receive or comply with the statutory notices in time due to his location in an interior and disturbed area and the absence of proper professional assistance.
4. That whenever any notices were received, the same were handed over to Shri Prateek Sharma, ITP stationed at Jagdalpur, District Bastar (Chhattisgarh). The applicant submitted documents under a bona fide belief that the said practitioner was making necessary compliances on his behalf. However, it later transpired that no effective compliances were made, which fact was beyond the knowledge and control of the applicant.
5. That in the absence of proper compliances, the Ld. Assessing Officer proceeded to complete the assessment ex-parte and passed an assessment order dated 04.03.2024 u/s. 147 read with section 144 and section 144B of the Act, making arbitrary estimation of income.
6. That aggrieved by the assessment/penalty order, I filed an appeal before the Hon'ble Commissioner of Income Tax (Appeals). However, it appears that the notices fixing the appeal hearings were uploaded on the e-filing portal without any SMS alert or other effective communication. Due to lack of knowledge regarding the fixation of hearings, the appeals came to be decided ex-parte and the orders were uploaded on the e-filing portal.
7. That I have file five appeals against quantum and penalty orders for assessment years 2017-18 and 2019-20 and while checking the status of the appeals on 15.01.2026, I came to know for the first time that appeal for penalty u/s.270A for AY 2019-20 had





4. That on a careful perusal of the said condonation petition along with affidavit and on hearing the submissions of the Ld. Counsel for the assessee, it is crystal clear that the said ordinate delay of 80 days regarding filing of the appeal before the Tribunal is due to the circumstances and lack of timely professional assistance to the assessee. Nothing has been brought on record to suggest any malafide and deliberate conduct for causing such delay on the part of the assessee. Considering the following judicial pronouncements: **(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** passed by the Hon'ble Supreme Court. **(ii) Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), Tax Case No.17/2025, dated 24.02.2025,** passed by Hon'ble High Court of Chhattisgarh. **(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** passed by the Hon'ble

Supreme Court, I hereby, condone the delay of 80 days and proceed to hear the matter on merits.

5. That so far the merits are concerned, it is observed at the outset in the order of Ld. CIT(A)/NFAC at para 6 that inspite of reasonable opportunities of hearing given to the assessee, there was no submissions filed by the assessee and hence an *ex-parte* order was passed by the Ld. CIT(A)/NFAC.

6. That since, the Income-tax Act is within the ambit of welfare legislation, which is totally different from penal legislation and since, there is no evidence on record to suggest any malafide or deliberate conduct on the part of the assessee for not complying with the hearing notices, in such scenario, benefit of doubt travels in favour of the taxpayer assessee. That the said assessee may have been prevented from sufficient cause for not uploading her submissions/evidences. That in absence of any negative finding on the conduct of the assessee by the Department, the non-compliance before the Ld. CIT(A)/NFAC cannot be attributed to any malafide conduct on the part of the assessee. The principles of substantive justice demands that final opportunity should be given to the assessee to contest the case on merits before the CIT(A)/NFAC and in this regard, I would 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, IT(SS)A Nos. 1 to 6, 8 & 9/RPR/2025, dated 20.03.2025, in which, on the same parameters of an *ex-parte* order passed by the Ld. CIT(A)/NFAC the said being remanded back to its file providing final opportunity to the assessee. The relevant paras are extracted 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.”

7. Respectfully following the aforesaid decision on the same parity of reasoning and as per similar terms, I set-aside the order of the Ld. CIT(A)/NFAC and remand the matter back to its file for *denovo* adjudication while complying with the principles of natural justice. At the same time, it is directed that this being the final opportunity, the assessee shall duly comply with the hearing notices from the office of Ld.CIT(A)/NFAC and represent his matter on merits. The Ld.CIT(A) /NFAC shall accordingly pass order in terms with Section 250(4) & (6) of the Act.

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

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

Order pronounced in open court on 27th day of February, 2026.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर / Raipur; दिनांक / Dated : 27th February, 2026.
HKS, PS

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-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//

Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur