

आयकरअपीलीयअधिकरण, रायपुर न्यायपीठ, रायपुर**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR**

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

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

आयकर अपील सं. / ITA No: 345/RPR/2025**(निर्धारण वर्ष Assessment Year: 2013-14)**

Dinesh Kumar Mishra, C/o- Maa Banjari Transport, Raipur Road, Kalika Nagar, Kawardha, Kabirdham- 491995, C.G.	v s	ITO-1(3), Bhilai, (Erstwhile ITO Ward Kawardha), Income Tax Officer, 32/32 Bunglows, Bhilai, C.G., 490009
PAN: AIXPM5815E		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से / Assessee by	:	Shri Tanjmay Jain, CA
राजस्व की ओर से / Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	20.06.2025
घोषणा की तारीख / Date of Pronouncement	:	26.06.2025

आदेश / ORDER**Per Arun Khodpia, AM:**

The captioned appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short “Ld. CIT(A)”], passed under section 250 of the Income Tax Act, 1961 (in short “the Act”), dated 26.03.2025, for the Assessment Year 2013-14, which in turn arises from the assessment order u/s 143(3)/147 of the Income Tax Act, dated 29.12.2016, passed by Income Tax Officer, Kawardha (in short “Ld. AR”).

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

1. *In the facts and circumstances of the case, the Ld. CIT(A) erred in dismissing the appeal for want of prosecution, without appreciating the reasons and circumstances that prevented the appellant from effectively pursuing the appeal before the CIT(A), thereby denying the appellant a reasonable opportunity of being heard.*
2. *Without prejudice to the above, the Ld. CIT(A) erred in confirming the ad hoc/lumpsum disallowance of **Rs. 1,43,86,586/-** out of Freight Outwards Bauxite expenses, which is arbitrary, unreasonable, and not justified.*
3. *Without prejudice to the above, the Ld. CIT(A) erred in confirming the ad hoc/lumpsum disallowance of **Rs. 2,00,000/-** under Vehicle running and maintenance expenses, which is arbitrary, unreasonable, and not justified.*
4. *The Ld. CIT(A) also erred in confirming the ad hoc/lumpsum disallowance of **Rs.1,50,000/-** under Bhatta Driver Helper and Salary driver helper expenses, which is arbitrary, unreasonable, and not justified.*
5. *Without prejudice to the above, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the ad hoc/lumpsum disallowance of **Rs.1,50,000/-** under Loading Handling of Bauxite expenses, which is arbitrary, unreasonable, and bad in law.*
6. *Without prejudice to the above, on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of **Rs.15,00,000/-** on account of Interest on Service Tax and Penalty, without appreciating that these expenses were allowable under the provisions of the Act.*
7. *The appellant reserves the right to add, amend or modify any of the ground/s of appeal.*

3. Brief facts of the case are that the assessee is a partnership firm engaged in the transport business, had not filed its regular Return of Income. Further as per information available in ITR data, it was noticed by the revenue that TDS u/s 194C was deducted at Rs.21,92,390/- and u/s 194A for Rs. 9,26,829/-. It is also noticed by the Ld. AO that during the year under consideration, the assessee had deposited cash amounting to Rs.

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66,00,000/- in his SB account and Rs. 29,00,000/- in time deposits. Hence, proceedings u/s 147 of the Act were initiated and a notice u/s 148 was issued on 12.02.2016. Initially, no return of income was filed by the assessee in response to notice u/s 148, however, after deliberated attempt by the department counsel of the assessee attended the office of department and filed a return on 18.12.2016, along with power of attorney and unaudited financial statement. During the reopening assessment proceedings various notices were issued to which replies were furnished by the assessee, however, the same were not up to the satisfaction of the Ld. AO, therefore, certain additions were made as under:

- (i) Lumpsum disallowance of 10% amounting to Rs. 1,43,86,586/-, from the head Freight Outward Bauxite.
- (ii) Lumpsum disallowance of Rs. 2,00,000/- from Vehicle Running and Maintenance Expenses.
- (iii) Lumpsum disallowance of Rs.1,50,000/- from Salary and Bhatta, Driver Helper Expenses.
- (iv) Lumpsum disallowance of Rs. 1,50,000/- from Loading, Handling of Bauxite Expenses.

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The aforesaid additions were made as the assessee was unable to substantiate these expenses, for the reason that there are handwritten / self-made Vouchers, which are not fully verifiable and also are not legible.

4. In terms of aforesaid observations, the above additions are made, and the total taxable income of the assessee has been assessed at Rs.1,72,49,396/-.

5. Aggrieved with the aforesaid additions, assessee preferred an appeal before the Ld. CIT(A), however, before, First Appellate Authority, assessee remain non-compliant, therefore, the additions made by the Ld. AO are sustained with the following observations:

7. DISCUSSION, REASON & DECISION:

The following notices of hearing are issued and served on the email address of appellant as under:

<i>Sr. No.</i>	<i>Date of issue</i>	<i>Compliance date</i>	<i>Remarks</i>
<i>1.</i>	<i>14.09.2020</i>	<i>18.09.2020</i>	<i>The appellant filed request for adjournment on 18.09.2020.</i>
<i>2.</i>	<i>22.12.2020</i>	<i>08.01.2021</i>	<i>The appellant did not respond.</i>
<i>3.</i>	<i>06.09.2023</i>	<i>21.09.2023</i>	<i>The appellant did not respond.</i>
<i>4.</i>	<i>20.09.2024</i>	<i>07.10.2024</i>	<i>The appellant did not respond.</i>

There was no compliance on the part of the appellant after filing of first appeal and no communication was received from the appellant during course of this appellate proceedings till date.

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In view of the facts and circumstances mentioned hereinabove it is legitimate to infer that the appellant is not interested in the prosecution of the appeal.

I have carefully gone through the grounds of appeal, statement of facts, assessment order and other material on record. In response to notice of hearing issued, the appellant has not made any submissions to corroborate the Grounds of Appeal. The appellant has not submitted any documentary evidences during the Appellate proceedings. The appellant has not uploaded even a single document in response to the above notices, in spite of multiple hearing opportunities (as above). The appellant failed to substantiate the claims made in grounds of Appeal and there is nothing available on record to rebut the Assessing Officer's findings on merits. The appellant has not produced any material to controvert the finding of AO. Further, from the abovementioned conduct prosecuting its appeal. As no details are uploaded by the appellant, there is nothing available on record to rebut the Assessing Officer's findings findings on merits. No purpose would be served by keeping this appeal pending. As per the details available on record, there is nothing to controvert the findings of the AO and therefore, all the grounds raised in appeal are hereby dismissed. In the event, I have no reason to interfere with the findings of the AO. Hence, the order of the Assessing Officer is confirmed and the appeal is dismissed.

6. The aforesaid observation by the Ld. CIT(A) are confronted to the Ld. AR representing the assessee before us, in response it is submitted that the email ID of the assessee in Form 35 before the First Appellate Authority was capankajssm@gmail.com, whereas the communication are sent by the Ld. CIT(A) on a different email ID i.e., chitratinfc2542@gmail.com, to substantiate this contention Ld. AR placed before us, copy of Form 35 and the copy of screenshot from ITBA portal showing notices sent to the assessee, wherein we observed that the email ID mentioned by the Ld. CIT(A) was different from

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the email ID preferred by the assessee in Form 35. Considering such fact, it is apparent that the assessee was not validly put to notice during the proceedings before the First Appellate Authority and, therefore, was unable to respond to the notices issued. Further, as the order of Ld. CIT(A) was an *ex-parte* order which was without hearing the assessee and, there is sufficient cause for the assessee in not attending the hearings as per opportunities granted by the First Appellate Authority, therefore, in the interest of natural justice, we find it appropriate to permit the assessee one more and last opportunity to represent its case before the Ld. CIT(A).

7. Our aforesaid view is supported by the decision of ITAT, Raipur 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 under similar facts and circumstance, the matter is restore back to the file of Ld. CIT(A). The relevant findings from the decision relied upon in the case of **Brajesh Singh Bhadoria (supra)**, are extracted as under:

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 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*

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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*

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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

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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.

8. In view of the facts and circumstances in the present case, respectfully following the aforesaid decision in the case of **Brajesh Singh Bhadoria (supra)**, as fairly agreed by both the parties, we find it appropriate to restore this matter back to the files of Ld. CIT(A) for fresh adjudication. Ld. CIT(A) is directed to pass an appropriate order following the mandate of law, within a period of 3 months from the receipt of this order.

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9. 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.

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

Order pronounced in the open court on 26/06/2025.

Sd/-
(PARTHA SARATHI CHAUDHURY)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 26/06/2025

Vaibhav Shrivastav

Sd/-
(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकी प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant- Dinesh Kumar Mishra, Kawardha
2. प्रत्यर्थी/ The Respondent- ITO-1(3), Bhilai, (Erstwhile ITO Ward Kawardha), Bhilai
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