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/2026
निर्धारण वर्ष /Assessment Year : 2017-18

Balaji Automobiles
Magarpara Road, Near LIC Building,
Bilaspur (C.G.)-495 001
PAN: AAGFB4093C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-1(1), Bilaspur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhilesh Begani, Advocate
Revenue by : Shri Piyush Tripathi, Sr. DR

सुनवाई की तारीख / Date of Hearing : 16.10.2026
घोषणा की तारीख / Date of Pronouncement : 16.10.2026

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM

The present appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeals)/NFAC, Delhi dated 17.10.2025 for the assessment year 2017-18 as per the grounds of appeal on record.

2. At the very outset, it is noted that the present appeal is time barred by 273 days. Explaining the reasons for such delay and praying for condonation, the assessee had filed an "affidavit", dated 03.10.2026 as well as condonation application. The relevant contents of the said affidavit are extracted as follows:

5. That, we opted in for service of notices through e-mail by selecting *"Yes"* against the question ***"whether notices/communication may be sent on e-mail?"*** asked in the Appeal Memo and provided e-mail address : balajitvsbsp@gmail.com as the designated E-mail Address for receiving the notices and other communication during the appellate proceedings before Ld. CIT(A). Further, we also provided our address for sending the Physical Address as "Shreya Complex, Ambedkar Marg, Magar Para Road, Bilaspur, Chhattisgarh, PIN – 495001" against the question ***"Address to which notices may be sent to the appellant".***

6. Thereafter, the Ld. CIT(A) dismissed the appeal vide an Appellate Order dated 17.10.2025. However, the said Appellate Order was neither served on the designated e-mail address nor does the said order was physically sent through speed post or courier as prescribed under section 282 of the Act on the afore said address as provided in the appeal memo. Hence, we were unaware of the fact that such an adverse Appellate Order has been passed in our case.

7. That, subsequently, when our counsel accessed the e-filing portal, during the month of September, 2026 to verify our Form No.26AS/TIS/AIS for verifying TDS credits and other details, he came to know that an adverse Appellate Order has been already passed in our case and them he informed us regarding passing of such adverse Appellate Order. However, since the said Appellate Order was never served upon us on our designated e-mail address as mentioned in Form No.35, we were unaware regarding passing of such adverse order.

8. Further, we also observed from the e-filing portal that Ld.CIT(A) had sent appeal hearing notices dated 23.01.2021, 05.06.2025 & 09.09.2025 to a different e-mail address, namely : Ashish.kumar.gupta@icai.org. The said e-mail address appears to be pertaining to our erstwhile counsel. However, the said e-mail address was never provided by us in Form No.35 for sending any notices or communication.

9. That immediately upon becoming aware of the said order dismissing my Appeal, we forthwith instructed my present counsel to take all necessary steps including the payment of appeal fees challan and procuring digital signature etc. to file an appeal before Hon'ble Tribunal, and the present appeal has been filed on 30th September, 2026, within the shortest possible time thereafter, and no avoidable delay has occurred on my part since gaining such knowledge.

10. That, as per Section 253(3) of the Act, the appeal before the Hon'ble Tribunal against any order passed under section 250 has to be filed within two months from the end of the month in which the order sought to be appealed against is communicated to the assessee. In the present case, considering the date of passing of Order under Section 250 as the date of communication, the limitation period would expire on 31st December, 2025, whereas the present appeal has been filed on 30th September, 2026 resulting in a delay of 273 days in filing present appeal.

NOTARY

11. That in view of facts and circumstances, it is humbly submitted that the delay occurred, if any, was for reasons beyond my control and it is filing the present appeal with prayer for condonation of delay considering the peculiar facts and circumstances of the case.

12. That I respectfully rely on the Judgment of the **Hon'ble Supreme Court** in the case of **Shri Vidya Shankar Jaiswal vs. ITO, Ward-2, Ambikapur (Civil Appeal No.__/2025) [Special Leave Petition (Civil) Nos. 26310-26311/2024]** and the **Hon'ble High Court of Chhattisgarh** in the case of **Pradeep Kumar Khandelwal, Raipur vs. Income-tax Officer-1(1), Raipur (TAX Case No.166/2024),** wherein it has been held that a justice-oriented and liberal approach ought to be adopted while considering the condonation of delay.

13. That, the aforesaid delay has occurred due to *bona fide* and unavoidable circumstances beyond my control. The delay is neither intentional nor deliberate, and no prejudice would be caused to the Revenue if the same is condoned. It is, therefore, most humbly prayed that the delay of 273 days in filing the present appeal may kindly be condoned and the appeal be admitted for hearing in the interest of substantial justice.

14. This affidavit is being sworn with prayer for condonation of delay in filing appeal before Hon'ble Income-tax Appellate Tribunal, Raipur Bench, Raipur.

For, M/s. Balaji Automobiles

Bilaspur (CG)

Dated : / /2026

(Saurabh Agrawal)

3. I have carefully considered the contents of the condonation application a/w. affidavit and it is observed that there is no material/evidence on record filed by the Revenue to suggest malafide or deliberate conduct of the assessee for causing such delay. Further, contents of the condonation application and affidavit also do not spell out any deliberate conduct of the assessee for causing the said delay. Respectfully considering the various judicial pronouncements viz. (i)

Collector, Land Acquisition Vs. Mst. Katiji & Ors, reported in 167 ITR 471 (SC); (ii) **Vidya Shankar Jaiswal Vs. ITO, Ward-2, Ambikapur, Civil Appeal Nos...../2025 [Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31.01.2025;** (iii) **Jagdish Prasad Singhania Vs. Additional Commissioner of Income Tax (TDS), Raipur (C.G.), TAX Case No.17/2025, dated 24.02.2025** and (iv) **Inder Singh Vs. the State of Madhya Pradesh, Civil Appeal No...../2025, Special Leave Petition (Civil) No.6145 of 2024, dated 21st March, 2025,** the delay of 273 days involved in the present appeal is condoned.

4. At the very outset, it is noted that as evident from Para 4.1 of the impugned order, 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 4.1 of the Ld.CIT(Appeals)/NFAC order is extracted as follows:

> "4.1 During the course of appellate proceedings, the following notices u/s. 250 were issued;

Sl. No.	Date of notice	Date for compliance	Remarks
1.	23.01.2021	08.02.2021	No response
2.	19.01.2022	02.02.2022	No response
3.	23.02.2022	07.03.2022	No response
4.	05.06.2025	13.06.2025	No response

5.	09.09.2025	16.09.2025	No response

As can be seen from the above table, as many as Five opportunities have been granted and the appellant has not furnished any written submissions or documentary evidences. On verification of the ITBA portal, it is observed that all the above-mentioned hearing notices got delivered to email: Ashish.kumar.gupta@icai.org successfully. Final opportunity was granted to the appellant vide notice u/s. 250 dated 10.09.2025 for compliance on 16.09.2025. Till date, the appellant has not complied. It is evident that the appellant is not interested in filing any details during the appellate proceedings and avail the opportunity under the principle of natural justice. In response to the notices issued, even adjournment was not sought. In such a situation, the only conclusion which can be drawn is that the appellant is not interested in pursuing the appeal. Therefore, the appeal is adjudicated on the basis of documents available on record."

5. The Ld. Sr. DR submitted that in these parameters of an ex-parte order being passed, the bench had provided one final opportunity to the assessee to explain the matter on merits before the Ld. CIT(Appeals)/NFAC providing benefit of doubt to the assessee for such non-compliance and in the interest of natural justice, therefore, the matter should be remanded back to the file of the Ld. CIT(Appeals)/NFAC for denovo adjudication as per law in terms with settled principles on the present facts of ex-parte order by the Ld.CIT(Appeals)/NFAC as decided by **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.

6. At this stage, I herein observe that the **ITAT, "Division Bench", Raipur** in the cases of **Collector Mining, Kondagaon Vs. Deputy Commissioner of Income Tax (TDS), ITA Nos. 771, 772, 773, 774, 775, 776 & 777/RPR/2025, dated 12.03.2026** 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 following the order passed in cases of Brajesh Singh Bhadoria (supra), observing as follows:

> "6. We have heard the submissions of the parties herein and analyzed the facts and circumstances in this case. We note that in all these appeals, an ex-parte order has been passed by the First Appellate Authority due to non-compliance by the assessee. The proceedings before the Ld. CIT(Appeals)/NFAC dates back from 27.01.2021 to 28.10.2025 i.e. nearly 4 years (approx.). Admittedly, reasonable opportunities were provided to the assessee. However, there was no compliance from the assessee on any date of hearing. Further, the Ld. Counsel for the assessee simply submitted that the assessee is a government entity and the facts and issues are squarely covered by the decision of the Hon'ble Apex Court, therefore, non-compliance by the assessee before the Ld. CIT(Appeals)/NFAC does not matter. The Act is very clear about the fact of adjudication by the First Appellate Authority through which such orders should be passed in terms with Section 250(4) & (6) of the Act. Meaning thereby, there must be adjudication on merits by the First Appellate Authority on the entire subject matter. Suppose, if there is no compliance by the assessee nor any evidence have been filed in such case, the First Appellate Authority does not have any option but to pass an ex-parte order. In such scenario, considering the principles of natural justice and the fact that tax payer assessee should be

provided benefit of doubt the **ITAT, "Division Bench", Raipur** in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur (supra)** had provided one final opportunity to the assessee to represent the matter on merits before the First Appellate Authority. In the said decision (supra), therein also it was submitted by the Ld. Counsel that the legal issue should be decided by the Tribunal. However, it was held therein that the Tribunal is a statutory authority and emanates from the Act itself and it is therefore not a constitutional authority so to allow any usurp of power of another statutory authority i.e. the Ld. CIT(Appeals)/NFAC.

7. In other words, as per the intent of the legislature the First Appellate Authority has to pass order in terms with Section 250(4) & (6) of the Act and thereafter, the matter if appealed before the Tribunal it would look into the correctness of the decision by the sub-ordinate authorities, whether the law has been correctly applied to the facts of the case while determining the substantive rights and liabilities of the parties. There cannot be any short cut route allowed to the assessee for assailing any legal ground or saying that the matter is squarely covered by the judgment of the Hon'ble Apex Court and get relief from Tribunal even without bothering to comply with the hearing notices before the First Appellate authority. If such practice is allowed, the entire intention of the legislature and the process of adjudication before the Ld. CIT(Appeals)/NFAC as per the Act will get defeated and as a statutory body, the Tribunal cannot travel beyond the intent of the fiscal statute. The Act is very clear that there has to be compliance by the assessee before the Ld. CIT(Appeals)/NFAC and he must pass orders in terms with Section 250(4) and (6) of the Act and thereafter, the matter if appealed before the Tribunal, it has to be decided on the issues as per law and facts. Since in the present case as discernable from record there was no compliance by the assessee before the First Appellate Authority, we, therefore, refer to our decision in the cases of **Brajesh Singh Bhadoria Vs. Dy./ACIT, Central Circle-2, Naya Raipur (supra)** wherein the same parameters were examined and held that in case of an ex-parte order being passed by the Ld. CIT(Appeals)/NFAC due to non-compliance by the assessee, the matter has to be restored back to the file of Ld. CIT(Appeals)/NFAC and it was not open for the Tribunal to address any issue in absence of any substantive order as per Section 250(4) & (6) of the Act by the Ld. CIT(Appeals)/NFAC

which in fact is in the best interest of balancing the scales of justice. The relevant paras are 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 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 assesse, 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."

8. Respectfully following the aforesaid order, on the same parity of reasoning and as per rule of consistency, we 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. 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 and represent the matters on

> merits. The Ld.CIT(Appeal)/NFAC shall consider the submissions of the assessee and accordingly pass speaking order in terms with Section 250(4) & (6) of the Act.
>
> 9. As per the aforesaid terms, the grounds of appeal raised by the assessee stands allowed for statistical purposes.
>
> 10. In the result, all the appeals of the assessee are allowed for statistical purposes."

7. Recently, similar view has been taken by this Bench in the case of **Amit Singh Thakur Vs. ACIT, Central Circle, Bilaspur (C.G.), ITA No.420/RPR/2026, dated 03.08.2026**.

8. Respectfully following the aforesaid orders, on the same parity of reasoning and as per rule of consistency, I set-aside the order of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file for denovo adjudication as per law 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 Ld.CIT(Appeals)/NFAC and represent the matter on merits. The Ld.CIT(Appeal)/NFAC shall consider the submissions of the assessee and accordingly pass speaking order in terms with Section 250(4) & (6) of the Act.

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

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

Order pronounced in open court on 16th day of October, 2026.

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

रायपुर / Raipur; दिनांक / Dated : 16th October, 2026.
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