IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

INCOME TAX APPEAL NO.1 OF 2024

[DSD Progressive Associate **vs.** Assistant Commissioner of Income Tax]

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

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Mr Anand Jaiswal, Senior Advocate a/b Mr Kapil Hirani, Advocate for Appellant.
Mr Anand Parchure, Advocate for Respondent.

CORAM: ANIL L. PANSARE AND RAJ D. WAKODE, JJ.
DATE : 19-12-2025.

. On previous date, following order was passed :

"*On 5-12-2025, following order was passed.*

"On 1st August, 2025, the following order was passed:

"One of the grounds of challenge is that opportunity of hearing was not given to the appellant.

2. The learned Counsel for the respondent seeks time to take instructions.

3. List on 22nd August, 2025."

02. Unfortunately, till today, the learned Counsel for the respondent did not get instructions. This is not the first case, where the department failed to give instructions in time. In the circumstances, we grant one more opportunity with clear understanding that in the cases where the instructions are required to be given, if the same are not given before the next date, the Court will consider imposing costs for failure of the department to give instructions to the learned Counsel.

03. The copy of the order shall be served upon the Principal Chief Commissioner of Income Tax, Nagpur for information and appropriate action.

04. Stand over to 12th December, 2025."

In response, Mr. Anand Parchure, learned counsel for respondent submits that the opportunity of hearing was given to appellant at every stage.

Learned counsel for appellant has invited our attention to the order passed by the Income Tax Appellate Tribunal (ITAT), Nagpur, which is impugned. It records the presence of Mr. Mukesh Agrawal, Chartered Accountant (CA) on behalf of the assessee. The argument is that Mr. Mukesh Agrawal was not authorized to appear for assessee. Mr. Vijay Agrawal, CA is the one who was appointed to represent assessee. On the day of hearing i.e. on 30-8-2023, Mr. Vijay Agrawal had filed a request for adjournment vide e-mail dated 17-8-2023. It is the case of the appellant that as per usual practice, Mr. Vijay Agrawal requested Mr. Mukesh Agrawal to mention the said fact and to bring it to the knowledge of ITAT that such request for adjournment was filed by the counsel representing the assessee. Despite such status, the ITAT has, without passing any order on the request for adjournment, recorded appearance of Mr. Mukesh Agrawal as counsel for assessee and passed impugned order. Accordingly, the appellant maintained the stand that he was not given opportunity of hearing though it is so mentioned in the impugned order.

We may note here that these details are mentioned by the appellant in the appeal memo and accordingly, we were waiting for the Department to make a statement whether opportunity of hearing was given or not to the appellant. On previous date i.e on 5-12-2025, we have noted that the respondent herein is not giving instructions to the counsel.

Today, we are required to note that incorrect instructions are given to the counsel. This conduct is deprecated. We expect respondent to be ideal litigant and, therefore, carries the responsibility of encouraging ethical norms and thus to make a fair statement. Instead, a misleading statement is made.

We therefore, call upon respondent to show cause as to why costs of Rs. 50,000/- should not be imposed upon him for wasting judicial time of the

> *Court. The costs shall be deducted from his salary, if satisfactory answer is not received. The respondent shall remain personally present before the Court on next date.*
>
> Stand over to 19-12-2025."

2. In response, the respondent has filed an affidavit admitting the fact that an opportunity of hearing was not given. The respondent has tendered an apology with an assurance that such mistake will not be committed. In addition, Mr. Anand Parchure, learned counsel, makes a statement that the appellant was not given an opportunity of hearing. Statement accepted.

3. In view of the above, the appeal under question will have to be remanded back to the Income Tax Appellate Tribunal, Nagpur. Hence, the following order :

O R D E R

i) Income Tax Appeal No.1 of 2024 is partly allowed.

ii) The order dated 13.10.2023 passed by the Income Tax Appellate Tribunal, Nagpur Bench, is hereby quashed and set aside.

iii) Income Tax Appeal No.387/NAG/2019 is remanded back for consideration afresh in accordance with law.

4. The appeal is disposed of in terms of above.

(JUDGE) **(JUDGE)**

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