

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.586/RPR/2025
निर्धारण वर्ष / Assessment Year : 2017-18

Sunil Madhyani
Ward No.24, Behind Hotel Malwa
Durg (C.G.)- 491 001
PAN: AIPM9839G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rakesh Dhody, CA
Revenue by : Dr. Priyanka Patel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 20.11.2025

घोषणा की तारीख / Date of Pronouncement : 20.11.2025

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 11.07.2025 for the assessment year 2017-18 as per the following grounds of appeal:

“1. That the learned CIT(A) has erred in law and on facts in confirming the addition of Rs.1,12,09,000/- as deemed dividend u/s.2(22)(e) of the Act, ignoring that:

a) the advance was non-gratuitous, having been made in recognition of personal guarantees and collateral security provided by the appellant to enable the company to obtain loans exceeding Rs.25 crores;

b) the transaction conferred substantial benefit to the company and therefore falls outside the ambit of section 2(22)(e).

c) the advance was in the nature of loan advance pursuant to an agreement and duly recorded in the books of the company;

2. That the learned CIT(A) has erred in upholding the validity of reopening u/s.147 of the Income-tax Act, 1961. The reopening is bad in law as it was based on borrowed satisfaction, without independent application of mind, and in the absence of any failure on part of the appellant to disclose fully and truly all material facts necessary for assessment.

3. The appellant reserves the right to addition, after or omit all or any of the grounds of appeal in the interest of justice.”

2. Brief facts in this case are that the assessee, Shri Sunil Madhyani filed his return of income for Assessment Year (A.Y.)-2017-18 on 23.02.2018 declaring a gross total income of Rs.42,43,160/-. The assessee was one of the directors of M/s. Mahadeva Cars (P) Ltd., Raipur and held

more than 10% shareholding in the company. A survey under section 133A of the Income Tax Act, 1961 (for short 'the Act') was conducted in the case of M/s. Mahadeva Cars (P) Ltd. on 13.12.2016. During the course of the survey, it was found that the company had advanced a sum of Rs.1,12,09,000/- to the assessee during the Financial Year 2016-17. The assessee, in his statement recorded under oath on the same date, admitted to having received the said advance from the company. As per the Tax Audit Report of the company, it had accumulated profits of Rs.1,98,90,304/- as on the date of advance.

3. On the basis of this information, the A.O. formed a belief that income chargeable to tax had escaped assessment within the meaning of Section 147 of the Act. After obtaining prior approval from the Addl./Joint Commissioner of Income Tax, Range-1, Bhilai, notice under Section 148 of the Act was issued to the assessee on 28.03.2021. However, the assessee failed to file a return of income in response to the said notice. Subsequently, statutory notices under section 142(1) of the Act were issued and served upon the assessee along with questionnaires. In response, the assessee filed written submissions. However, as per the A.O., the assessee failed to provide substantive or satisfactory explanation or documentary evidence regarding the advance of Rs.1,12,09,000/- received from the company or to demonstrate why the provisions of Section 2(22)(e) of the Act were not attracted. Accordingly, the A.O. held that the amount of

Rs.1,12,09,000/- was liable to be taxed as deemed dividend under Section 2(22)(e) of the Act, being an advance received by a shareholder holding substantial interest in a closely held company with sufficient accumulated profits. The same was added to the total income of the assessee and the assessment was completed u/s.147 read with Section 144B of the Act on a total income of Rs.1,54,52,160/-, comprising the originally declared income of Rs.42,43,160/- and the deemed dividend addition of Rs.1,12,09,000/-.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld.CIT(Appeals)/NFAC and the said authority after considering the assessment order and the submission of the assessee upheld the findings of the A.O.

5. At the very outset, at the time of the hearing, the Ld. Counsel for the assessee submitted that the appeal had been dismissed since the assessee was not able to furnish relevant evidences before the Ld. CIT(Appeals)/NFAC which is evident from Para 7.4 of its order and the same is extracted as follows:

“7.4 In the present case, the assessee's claim that the advance was in return for the personal guarantee and mortgage of property lacks documentary substantiation in the form of a formal agreement, board resolutions of the company, terms of such guarantee, or quantifiable business consideration. There is no evidence on record showing a direct nexus between the advance and the alleged benefit to the company, such as a board resolution authorizing the

advance as consideration for collateral or guarantee, or a contemporaneous agreement for reimbursement or compensation. Even the claim of land advance is not supported by any registered agreement for sale or relevant documentation evidencing the transaction. Mere mention in the statement recorded during the survey or in a loose paper ledger entry is insufficient to establish the legal character of the transaction as land advance or business reimbursement. Furthermore, the argument that another director was granted similar relief cannot ipso facto justify the assessee's case in absence of parity in facts and in absence of binding factual findings in that case applicable here.”

6. In this regard, it was submitted by the Ld. Counsel for the assessee that they are now ready with the additional evidences and sought permission to file an application under Rule 29 of the ITAT Rules, 1963 for admission of such additional evidences.

7. The Ld. Sr. DR did not raise any objection as regards the admission of such additional evidences filed by the assessee before this bench in interest of justice and fairness.

8. The assessee has filed the said application under Rule 29 of the ITAT Rules, 1963 and for the sake of completeness, contents therein are extracted as follows:

IN THE INCOME TAX APPELLATE TRIBUNAL, RAIPUR BENCH
In the matter of:

Mr Sunil Madhyani v/s Deputy Commissioner of Income Tax Circle Bhilai 1(1)

ITA No.: 586/RPR/2025
Assessment Year: 2017-18

APPLICATION UNDER RULE 29 OF THE INCOME TAX (APPELLATE TRIBUNAL) RULES, 1963 FOR ADMISSION OF ADDITIONAL EVIDENCE

To,
The Hon'ble Members,
Income Tax Appellate Tribunal, Raipur Bench. Raipur

Respected Sir(s),

The appellant most respectfully submits this application under **Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963** seeking leave of this Hon'ble Tribunal to produce the following **additional evidences**, which are material for just and proper adjudication of the appeal:

1 □ List of Additional Documents sought to be filed:

1. **Copy of Bank Sanction Letters from ICICI Bank & HDFC Bank Ltd. (3 Nos.)** – evidencing the term loan and working capital facilities sanctioned to the appellant company, wherein the appellant (individual shareholder) had provided his personal property as collateral/security dated 27-12-2013, 20-06-2017, 04-04-2018.
2. **Copy of Title Deed Registered Property Documents** – relating to the property mortgaged by the appellant/shareholder in favour of HDFC Bank to secure the company's loan dated 31-03-2012
3. **Copy of the Form No-8** – Particulars for Creation or Modification of Charge duly registered with ROC pursuant to Section 125,127,130, 132 and 138 and pursuant to section 600 read with the afore mentioned sections of the Companies Act 1956 authorizing availing of the said loan from HDFC Bank and recording the mortgage of property and personal guarantee of Director Sunil Madhyani, PratapMadhyani and SmtDeepaMadhyani belonging to the shareholders (the appellant). Dated 01-01-2014

4. **Sale Agreement-** Called in Hindi as VikrayIkrar Nama between Seller Sunil Madhyani, PratapMadhyani and Buyer Mahadev Car Private Limited dated 05-11-2013
5. **Affidavit:** Affidavit of Sunil Madhyani in respect of the above documents

2□ **Background and Reasons for Non-submission Earlier:**

1. During the course of assessment and first appellate proceedings, the above documents could not be furnished **due to inadvertence and the fact that the issue of “deemed dividend” under Section 2(22)(e)** was primarily contested on legal grounds based on facts already on record.
2. Subsequently, upon detailed examination, it has been realized that these documents are **vital to establish the factual nexus** between the company and the appellant, namely that:
 - The appellant had provided his personal property as **collateral security** for the company’s bank loan; and
 - The amount received from the company represented **reimbursement / consideration for benefit conferred to the company**, and hence not a gratuitous loan/advance attracting Section 2(22)(e).
 - That there was also an Agreement of Sales of property VikrayIkrar Nama between Seller Sunil Madhyani, PratapMadhyani and Buyer Mahadev Car Private Limited dated 05-11-2013
3. The omission to file these documents earlier was **neither deliberate nor willful**, but purely due to a bona fide belief that the existing records were sufficient to explain the nature of transaction.

3□ **Relevance and Materiality of the Additional Evidence:**

The above evidences are **directly relevant** to the matter in appeal, as they substantiate that:

- The advance received by the appellant from the company was **in consideration of providing benefit** (i.e. mortgage of property enabling company to obtain bank finance);
- Hence, the advance cannot be characterized as “deemed dividend” under Section 2(22)(e); and

- These documents go to the **root of the matter** and will assist this Hon'ble Tribunal in arriving at a fair and just decision.

4□ **Legal Provisions Relied Upon:**

Under **Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963**, the Tribunal has wide discretion to admit additional evidence **if it is necessary for a just decision of the case** or if the party was prevented by sufficient cause from producing it before lower authorities.

The present case fully satisfies the conditions of Rule 29 as:

- The evidence is essential for proper adjudication; and
- Non-production earlier was due to bona fide and sufficient cause.

5□ **Prayer**

In view of the foregoing, the appellant most humbly prays that this Hon'ble Tribunal may be pleased to:

1. **Allow the filing and admission** of the additional evidences listed above under Rule 29 of the ITAT Rules;
2. Take the said evidences on record for the purpose of proper adjudication of the appeal; and
3. Pass such further orders as may be deemed just and proper in the facts and circumstances of the case.

6□ **List of Enclosures**

1. Copy of ICICI Bank Sanction Letter dated 27-12-2013 (Page No 1 to 3)
 2. Copy of HDFC Bank Sanction Letter dated 20-06-2017 (Page No 4 to 7)
 3. Copy of HDFC Bank Sanction Letter dated 04-07-2018 (Page No 8 to 14)
 4. Copy of Form No 8 for registration of Charge (Page No 15 to 20)
 5. Copy of Registered Property Documents (Page No 21 to 45)
 6. Sale Agreement Vikrayalkrarnama in Hindi (Page No 46 to 48)
 7. Affidavit explaining reason for non-production earlier (Page No 49 to 50)
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Place: Bhilai
Date: 13-11-2025
For Sunil Madhyani
Name: Rakesh Dhody
Designation:
Chartered Accountant
Authorized Representative

9. The assessee has also annexed an affidavit in support of his application under Rule 29 of the ITAT Rules, 1963 which is extracted as follows:

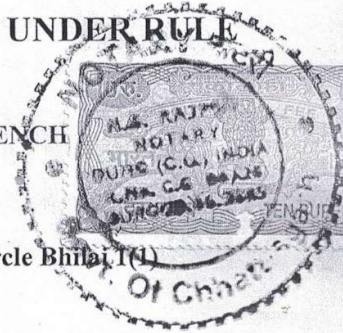
**AFFIDAVIT IN SUPPORT OF APPLICATION UNDER RULE
29 OF ITAT RULES, 1963**

IN THE INCOME TAX APPELLATE TRIBUNAL, RAIPUR BENCH

In the matter of:

Mr Sunil Madhyani v/s Deputy Commissioner of Income Tax Circle Bhilai 1(1)

ITA No.: 586/RPR/2025
Assessment Year: 2017-18



AFFIDAVIT

I, **Sunil Madhyani S/O PratapMadhyani** aged 39 years, residing at House No-31 MalviyaNagar Durg (C.G.) 491002 do hereby solemnly affirm and state as under:

1. That I am the **appellant** in the above-mentioned appeal and am conversant with the facts and circumstances of the case.
2. That during the course of the assessment and first appellate proceedings, the following documents were not filed before the lower authorities:
 - o (i) **Copy of Bank Sanction Letters from HDFC Bank Ltd. (3 Nos.)** – evidencing the term loan and working capital facilities sanctioned to the appellant company, wherein the appellant (individual shareholder) had provided his personal property as collateral/security dated 27-12-2013, 20-06-2017, 04-04-2018
 - o **Copy of Title Deed Registered Property Documents** – relating to the property mortgaged by the appellant/shareholder in favour of HDFC Bank to secure the company's loan dated 31-03-2012
 - o **Copy of the Form No-8** – Particulars for Creation or Modification of Charge duly registered with ROC pursuant to Section 125,127,130, 132 and 138 and pursuant to section 600 read with the afore mentioned sections of the Companies Act 1956 authorizing availing of the said loan from HDFC Bank and recording the mortgage of property and personal guarantee of Director Sunil Madhyani, PratapMadhyani and SmtDeepaMadhyani belonging to the shareholders (the appellant). Dated 01-01-2014


- o **Sale Agreement-** Called in Hindi as VikrayIkrar Nama between Seller Sunil Madhyani, PratapMadhyani and Buyer Mahadev Car Private Limited dated 05-11-2013
3. That the non-submission of the aforesaid documents before the lower authorities was **neither intentional nor deliberate**, but occurred **due to inadvertence and bona fide belief** that the facts of providing security for the company's bank loan were sufficiently evident from the financial records.
 4. That upon further examination and advice, it is now realised that the said documents are **vital and directly relevant** to establish that the advance/loan received by the appellant from the company was in connection with providing collateral security to the bank, and therefore, **does not attract the provisions of Section 2(22)(e)** of the Income Tax Act, 1961.
 5. That the said documents are being now produced before this Hon'ble Tribunal by way of an **application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963**, as they are necessary for a **just and proper adjudication** of the matter in appeal.
 6. That I respectfully submit that the omission to file these documents earlier was **for reasons beyond my control** and not with any intention to withhold information from the authorities.
 7. That I, therefore, pray that the Hon'ble Tribunal may kindly be pleased to **admit the said documents as additional evidence** in the interest of justice.

VERIFICATION

I, the deponent above named, do hereby verify that the contents of the above affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified at 13th day of November of 2025.

Signature of Deponent

()

Name: Sunil Madhyani

Designation: Director in Mahadev Cars Pvt Ltd

Address: Office: Ring Road No-1, Beside ShubhHanda, Raipur 492099



Solemnly affirmed before me
on this 13 day of November 2025 ___
at Bhilai

Signature & Seal of Oath Commissioner / Notary Public

14 NOV 2025

ATTESTED

N.S. RAJPUT
NOTARY, DURG (C G)



14 NOV 2025

14 NOV 2025

[Handwritten signature]

[Handwritten signature]

10. That on careful consideration of the application filed by the assessee under Rule 29 of the ITAT Rules, 1963 a/w. affidavit, it is crystal clear that earlier the assessee had contested the issue of deemed dividend as per Section 2(22)(e) of the Act on legal ground. Since the appeal of the assessee was dismissed for want of substantive evidence on merits, hence, once the assessee is now ready with these evidences, we are of the considered view that in the interest of justice and fairness, all these additional evidences should have to be considered in terms with Section 250(4) & (6) of the Act by the Ld. CIT(Appeals)/NFAC. We further direct that ground verification by calling for a remand report from the A.O shall be relevant for adjudication on merits as per law in terms with Rule 46A(3) of the I.T Rules, 1962. We herein admit the additional evidences a/w. application under Rule 29 of the ITAT Rules, 1963 and order accordingly.

11. That even without going into the merits of the matter, on this issue itself in the interest of justice and fairness, we set-aside the findings of the Ld. CIT(Appeals)/NFAC and remand the matter back to its file as per our aforesaid direction. The rule of natural justice shall also have to be complied with by the Ld. CIT(Appeals)/NFAC while passing order.

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

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

Order pronounced in the open court on 20th November, 2025.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
PARTHA SARATHI CHAUDHURY
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 20th November, 2025.
SB, Sr. 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, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.