



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT  
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER**

**AND**

**SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER**

**आयकर अपील सं./ITA No.377/RJT/2025**

**(निर्धारण वर्ष /Assessment Year: (2012-13)**

**(Physical Hearing)**

Nilesh Ashanand Thacker, Near-Laxmi Vekari Mahakali Shopping Mall, Jublee Circle, Bhuj, Kutch-300 001(Gujarat)	<b>बनाम</b> / <b>Vs.</b>	Income-tax Officer, Ward-4, Gandhidham (Bhuj-2)-370 201
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ADHPT 8610R</b>		
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>

Appellant by : Shri Kalpesh Doshi, AR

Respondent by : Shri Abhimanyu Singh Yadav, Sr. DR

**Date of Hearing : 18/12/2025**

**Date of Pronouncement : 13/02/2026**

**आदेश/Order**

**Per, Dr. A. L. Saini, AM:**

Captioned appeal filed by the assessee, pertaining to assessment year (AY) 2012-13, is directed against the order passed under section 250 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 08.01.2024, by the National Faceless Appeal Centre (NFAC), Delhi/ Commissioner of Income Tax (Appeals) [in short 'Ld.CIT(A)'] which in turn arises out of an assessment order passed by the Assessing Officer (in short 'AO') u/s 143(3) r.w.s. 147 of the Act, dated 26.11.2019.

2. Grievances raised by the assessee are as follows:

*"1. That the Ld. CIT(A) has wrongly confirmed the reopening of assessment u/s 143(3) r.w.s 147 of the I.T. Act, 1961.*

*2. That the Ld. CIT(A) has wrongly confirmed the addition amounting to Rs.20,36,554/- on account of unexplained money u/s 69A of the I.T. Act, 1961.*



3. That the Ld. CIT(A) has wrongly confirmed initiation of penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961.

4. That the Ld. CIT(A) has wrongly confirmed levy of interest u/s 234A, 234B and 234C of the I.T. Act, 1961.

5. That the findings of the Ld. AO and Ld. CIT(A) are not justified and are bad-in-law.

That the appellant craves leave to add, amend, alter or delete any of the above grounds of appeal.”

3. The appeal filed by the assessee, for Assessment Year 2012-13, is barred by limitation by 428 days. The assessee has moved a petition requesting the Bench to condone the delay. Learned Counsel for the assessee, explained the reasons of delay stating that notices were served digitally and through email. The assessee had provided his registered email id to the Department. However, the notices have not been served on assessee’s registered email address reflected in “My Profile” section, that is, on [aspak.manjothi@gmail.com](mailto:aspak.manjothi@gmail.com) nor on the e-mail-id mentioned by the assessee, while filing the appeal before Ld.CIT(A). In fact, the notices were served on the e-mail id of previous tax consultant who did not inform to the assessee. Therefore, because of the mistake of the previous tax consultant, the assessee should not be penalized. The assessee came to know about passing of order by Ld. CIT(A), only when he received the demand notice from the Department for recovery of tax. Hence, such delay is not intentional, therefore, in the interest of Justice, the delay should be condoned.

4. On the other hand, Ld. Sr. DR for the revenue submitted that if the notices were served on the e-mail id of previous tax consultant of the



assessee then it is not a mistake of the revenue authorities. Besides, the mistake of the tax consultant is not a sufficient cause to condone the delay. Therefore, delay should not be condoned and appeal of the assessee should be dismissed on account of delay.

5. We have heard both the parties on this preliminary issue. We note that the assessee was not aware about passing of order by Ld.CIT(A), as the notices were served on the e-mail id of assessee's previous tax consultant, who did not inform to the assessee. Therefore, on account of mistake committed by the tax consultant, the assessee should not be penalized. For that we rely on the judgment of ITAT, 'C' Bench Kolkata in the case of M/s. Garg Bros. Pvt. Ltd. & Others vs. DCIT [ITA Nos.2519 to 2521/Kol/2017, vide order dated 18.04.2018], *wherein* under similar set of facts and reasons, the Hon'ble Tribunal was pleased to condone the delay of 211 days by holding as under:

*"3. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the application for condonation of delay, we are of the considered opinion that assessee was under a bona fide belief that the impugned order of Pr. CIT was not appealable before this Tribunal since they were not advised by their Tax Consultants about this legal right. Later on, when a Senior Lawyer advised them to file an appeal, the assessee immediately took steps to file the appeals. Therefore, the delay caused. We note that delay was occurred because of the wrong advice of the Tax Professional for which assessee cannot be penalized. For the ends of justice, we condone the delay and admit the appeal for hearing."*

6. On professional advice, we note that the Courts and Tribunals have consistently held that in the matter of condonation of delay, pragmatic and liberal approach should be taken. We note that unless there is *mala-fide* or negligence, on the part of the assessee, the delay should be condoned and appeals should not be rejected on technical ground of delay and they should be ordinarily decided on merits. For that we rely on the judgement of the Hon'ble jurisdictional Gujarat High Court in case of Gujarat State



Fertilizers & Chemicals Ltd. (283 ITR 149) wherein it was held as follows:

*"The position in law is well settled that an assessee should be granted due relief where it is due without standing on technicalities and the revenue must bear the established legal position in mind while dealing with applications seeking condonation of delay. It is necessary that liberal approach is adopted in such a matter so as to ensure that substantive rights are not defeated on the basis of technicalities or limitation. "*

7. We note that the reasons given in the affidavit for condonation of delay were convincing and these reasons would constitute reasonable and sufficient cause for the delay in filing this appeal. Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay and admit the appeal of the assessee for hearing on merit.

8. Succinctly, the factual panorama of the case is that assessee before us is an Individual and had filed his return of income for assessment year (A.Y.) 2012-13, on 25.03.2013, declaring total income of Rs. 1,78,070/-.

During the year, the assessee has earned business income and had offered presumptive income u/s 44AD of I.T.Act. As per AIR information, the assessee had made cash deposit of Rs. 19,80,000/- and had purchased property of Rs. 40,00,000/-. Therefore, with the prior approval of Pr. CIT-1, Rajkot, notice u/s 148 of the I.T. Act was issued to the assessee on



29.03.2019. In compliance to the notice issued u/s 148 of the Act, the assessee filed his Return of Income for A.Y. 2012-13, declaring total income of Rs. 1,78,070/-. The notice u/s 142(1) of the Act, along with questionnaire was issued on 10.09.2019. Subsequently, notice u/s 143(2) was issued on 31.10.2019 and reason for reopening was also provided to the assessee. In response to the notices issued, the assessee submitted the documents and details before the assessing officer and explained the transactions in the bank statement. However, the assessing officer rejected the contention of the assessee and observed that assessee had maintained a bank account No. 044210003284 maintained with Dena Bank, Netra branch, Nakhtrana during the F.Y. 2011-12. On further perusal of bank statement, it was noticed by the assessing officer that the assessee had made deposit of Rs. 20,36,554/- during the year. Therefore, an amount of Rs. 20,36,554/- was added to the total income of the assessee, as unexplained income.

9. Being aggrieved by the said order of the Assessing Officer, the assessee filed an appeal before the Ld.CIT(A), but remained unsuccessful, therefore, assessee is in further appeal before this Tribunal.

10. Shri Kalpesh Doshi, Learned Counsel for the assessee, at the outset stated that ground No.1 raised by the assessee, goes to the root of matter, which is pertaining to reopening of assessment under section 147/148 of the Act, and approval granted by the higher authorities. He stated that approval granted by the higher authorities during the reassessment proceedings is defective. The ld.Counsel submitted that notice u/s 148 of the Act is issued on 29.03.2019 and the copy of reasons for reopening and copy of approval of competent authority have been



provided to the assessee, by the assessing officer, on dated 28.03.2019. With regards to the approval, it was stated by Id Counsel that the approval so obtained was without application of mind and mechanical in nature. The case has been reopened by jurisdictional Assessing Officer on the basis of AIR information stating that the assessee has deposited cash in the bank account without verifying the actualities of the case and merely on the basis of transaction value without quantifying the amount of income escapement.

11. Shri Doshi, Learned Counsel for the assessee, further stated that the specified authority has merely stated that “**Yes, I am satisfied.** The specified authority did not mention that how and why he was satisfied? Moreover, the specified authority was convinced that the assessee’s case was fit for issue of notice under section 148 of the Act, for reopening without having tangible material on hand and merely by relying on third party information, hence, it is completely non-application of mind on the part of the specified authority . The snap shot of the **approval** is reproduced below:

Date : 28/03/2019 Place : Bhuj	(Shashank Sharma) Income Tax Officer, Ward-2, Bhuj-Kutch.
12. Whether the Pr. commissioner/Add. Commissioner, Board is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of a notice u/s. 148 of the Act.  Date:	Yes, I am satisfied,  R
	अजित कुमार सिन्हा / Ajit kumar Sinha मुख्य आयकर आयुक्त (ओ.एस.डी.) Chief Commissioner of Income Tax (OSD) एवं प्रधान आयकर आयुक्त - १ Pr. Commissioner of Income Tax - 1 राजकोट / Rajkot



Therefore, Id. Counsel stated that the competent authority/specified authority has merely provided approval by stating “ **I am satisfied**” by blindly placing reliance on the third- party information and also in absence of any kind of corroborative evidences on hand. Therefore, it can be stated that the approval so provided is without application of mind and is mechanical in nature. It was stated by Id.Counsel that provisions of Section 151 of the Act are an important procedural safeguard against arbitrary exercise of power of issuing a notice for reopening of assessment previously framed after complete scrutiny under section 143(3) of the Act.Such requirement cannot be seen as technical. Compliance of such requirement is therefore, necessary before issuance of notice u/s 148 of the Act as held by the jurisdictional Hon’ble High Court of Gujarat, in the case of Adani Ports And Special Economic Zone Ltd. Vs. DCIT 35 taxmann.com 338 (Guj), the Hon’ble Court held that while recording satisfaction, the designated authority must reflect independent application of mind and not merely a borrowed satisfaction. The approval is given by simply relying on reasons without applying mind and recording objective satisfaction stating documents perused, conclusion drawn based on report, return of income filed.

12. Shri Doshi, Learned Counsel for the assessee, also stated that the authority has failed to peruse the information on the basis of which reasons are recorded. There is no objective satisfaction recorded by approving authority which reflects that there is application of mind and not borrowed satisfaction of assessing officer (AO). The Id Counsel also relied on the judgement of Hon’ble Rajkot Tribunal in case of Shri Dhanji Murji Hirani vs. ITO (Int.Tax), wherein it was that:



*“It is established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be “independent” and not “borrowed” or “dictated” satisfaction”.*


Therefore, Id Counsel stated that the approval given PCIT is mechanical in nature and without application of mind, hence reassessment proceedings initiated against the assessee may be quashed.

13. On the other hand, Id. DR for the revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

14. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that in assessee’s case the satisfaction is recorded by the Ld.PCIT on the reasons recorded stating **“Yes I am satisfied”**, the same is reproduced below for ready reference:



45

  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
ITO WARD - 4, G'DHAM (BHUJ-2)

To, NILESH ASHANAND THACKER OPP. BUS STATION, BHUJ BHUJ NETRA TAL NAKHATRAMA, KUTCH 370620, Gujarat India		
--	--	--

PAN: ADHPT8610R	AY: 2012-13	Dated: 29/03/2019	Notice No : ITBA/AST/S/148/2018-19/1015511045(1)
--------------------	----------------	----------------------	---

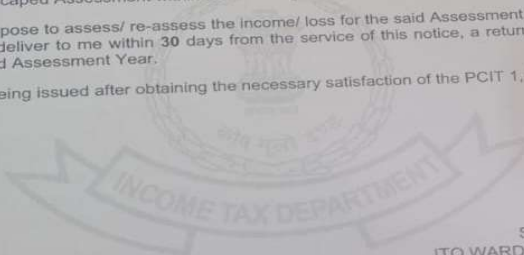
**Notice Under Section 148 Of The Income Tax Act, 1961**

Sir/ Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year 2012-13 has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/ re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within 30 days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the PCIT 1, RAJKOT

  
SHASHANK SHARMA  
ITO WARD - 4, G'DHAM (BHUJ-2)

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

Date of printing: 29/03/2019. The date of digital signature may be taken as date of document. GANDHIDHAM, Gujarat.



104

Form for recording reasons for initiating proceeding under section 147 of the Act and for obtaining the Approval of the Addl. Commissioner of Income Tax/Pr. Commissioner of Income Tax/Central Board of Director Taxes.

01	Name & address of the assessee.	Shri Nilesh Ashanand Thacker At Post Netra, Tal.Nakhatrana-Kachchh.
02	Permanent account No.	ADHPT8610R
03	Status.	Individual
04	District/Circle	Ward-2, Bhuj
05	Assessment year in respect of which It is proposed to issue notice U/s. 148	2012-13
06	The quantum of income, which has escaped assessment	Rs. 25,86,009/-
07	Whether the provisions of sec. 147(a) or (b) are application or both the section are applicable.	147(b)
08	Whether the assessment proposed to be made for the first time, if the reply is in the affirmative, please state;	YES
	(a) whether any voluntary return has already been filed, and	.Yes
	(b) If so, the date of filing the said return.	25/03/2013
09	If the answer to item no. 8 is in the negative please state;	N.A.
	(a) The income originally assessed	N.A.
	(b) Whether it is a case of under assessment, assessment at too low a rate, assessment which has been made the subject of.	N.A.
10	Whether the provision of sec. 150(1) the reply is in the be stated against item No. 11 and it may also be brought out that provisions of sec. 150(2) would not stand in the way of initiating proceedings under sec. 147.	N.A.
11	Reasons for the belief that income has escaped assessment	As per Annexure-A

Date : 28/03/2019  
Place : Bhuj

Shankar J S  
(Shashank Sharma)  
Income Tax Officer,  
Ward-2, Bhuj-Kutch.

12.	Whether the Pr. commissioner/Add. Commissioner. Board is satisfied on the reasons recorded by the ITO that it is a fit case for the issue of a notice u/s. 148 of the Act.  Date:	yes, I am satisfied,  B  अजित कुमार सिन्हा / Ajit kumar Sinha मुख्य आयकर जायुक्त (ओ.एस.डी.) Chief Commissioner of Income Tax (OSD) एय प्रथम आयकर आयुक्त - १ Pr. Commissioner of Income Tax - 1 राजकोट / Rajkot
-----	---	---

15. We have gone through the above satisfaction and noted that satisfaction given by the Id.PCIT, is not as per the provisions of the Act.



16. After giving our thoughtful consideration to the submission of the parties and perusing the judicial decisions relied upon by the Ld. Counsel, we find that the issue involved in the present appeal is no longer res integra. The issue is squarely covered in favour of the assessee by the judgement of the Co-ordinate Bench of ITAT Rajkot in the case of Girish Lahori vs. ITO in ITA No.283/RJT/2025 dated 09.12.2025 wherein the Co-ordinate Bench of this Tribunal held as follows:

*“13. We have heard the rival parties and have gone through the material placed on record. First, we shall take technical ground raised by the assessee, being the approval given by the PCIT stating “yes, I am satisfied”, whether it is correct approval or not. We note that the reasons for reopening have been recorded by the assessing officer, on 23/02/2017. Subsequently, the reopening has been made by obtaining approval of PCIT, Rajkot-1, Rajkot, on 23/03/2017 and notice u/s 148 of the Act, has been issued on 28/03/2017. We find that the approval, so obtained is without application of mind and mechanical in nature. The snap shot of approval given by the learned PCIT is reproduced below:*



**FOR RECORDING THE REASONS FOR INITIATING PROCEEDING U/S 148 AND FOR OBTAINING THE APPROVAL OF THE COMMISSIONER OF INCOME-TAX/ADDL. COMMISSIONER OF INCOME-TAX**

1	Name and address of the assessee	Girish Kishanhand Lahori, Khanasa Market, Gandhidham - 370201.
2	Permanent account no.	AARPL9673R
3	Status	Individual
4	District/Circle/Range/ward	Ward-1, Gandhidham
5	Assessment year in respect of which it is proposed to issue notice u/s 148	2010-11
6	The quantum of income which has escaped assessment	Rs. 3,84,64,754/-
7	Whether the provisions of Section 147(1) or 147(b) are applicable or both the sections are applicable	Explanation 2 of 147 of the Act.
8	Whether assessment is proposed to be made for first time. If the reply is in the affirmative, please state	No
a	Whether any voluntary return had already been filed	No
b	If so, the date of filing in the said return	NA
9	If the answer to item 8 is in the negative please state	NA
a	The income originally assessed	NA
b	Whether it is a case of under assessment at too low rate, assessment, which has been made the subject of excessive relief or allowing of excessive or lesser depreciation	NA
10	Whether the provisions of Sec. 150(1) are applicable. If the reply is in the affirmative, the relevant facts may be stated against item No. 11 and it may also be brought out that the Provisions of Section 150(2) would not stand in the way of initiating proceeding u/s 147	No
11	Reasons for the belief that income has escaped assessment	As per annexure : A

I have, therefore, reason to believe that income to the extent of Rs.3,84,64,754/- has escaped from assessment within the meaning of Section 147 of the Act

Date: 23/02/2017  
Place: Gandhidham.

(Dilip Kumar)  
Income-Tax Officer, Ward-1,  
Gandhidham

Comments of Pr. CIT:

Whether the Pr. Commissioner of Income Tax is satisfied on the reason recorded by the A.O. that it is a fit case for the issue of a notice u/s 148.

Yes, I am satisfied.  
(O.P. Mehra) 23/02/2017  
Pr. Commissioner of Income Tax  
Bijliat 1, Rajkot

14. From the above approval of learned PCIT, it is vivid the date mentioned in the approval provided, is written manually, which seems like an afterthought. Further, ld. PCIT has merely stated **“Yes, I am satisfied”**, on the basis of which it can be said that the approval granted by PCIT, Rajkot-1, is mechanical in nature and the competent authority has not applied mind while granting approval. The approval given by ld. PCIT, by stating **“yes, I am satisfied”** is not correct, as the learned PCIT did not mention, as to how and why he was satisfied with the reasons recorded by the assessing officer. Therefore, we have gone through the above satisfaction / approval given by the ld PCIT, and noted that it is a mechanical approval and on this account the assessment order framed by the Assessing Officer should be quashed.

15. Therefore, we note that ld PCIT (the competent authority) has merely stated that he is satisfied with the reasons recorded and is convinced that the case is fit for the reopening without having tangible material on hand and merely by relying on reasons recorded by assessing officer. We note that the provisions of section 151 of the Act are an important procedural safeguard against arbitrary exercise of power of issuing a notice for reopening of assessment previously framed after scrutiny. The



compliance of such requirement is therefore, necessary before issuance of notice under section 148 of the Act as held by the jurisdictional High Court of Gujarat, in the case of **Adani Ports And Special Economic Zone Ltd. V. DCIT (35 taxmann.com 338) (Gujarat)** where it has been held that in the satisfaction recorded, the designated authority must reflect independent application of mind and not merely a borrowed satisfaction. The approval is given by simply relying on reasons without applying of mind and recording objective satisfaction stating documents perused and conclusion drawn based on report. Therefore, we note that the authority has failed to peruse the information on the basis of which reasons are recorded and there is no objective satisfaction recorded by approving authority which reflects that there is application of mind and not borrowed satisfaction of assessing officer.

16. We are so find that the jurisdictional Rajkot Tribunal in case of Shri Dhanji Murji Hirani vs ITO (Int. Tax), ITA No.131/RJT/2025 has held that:

“It is established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be **"independent"** and not "borrowed" or "dictated" satisfaction.”

17. On the identical facts, the Hon'ble Supreme Court in the case of CIT v. S. Goyanka Lime & Chemicals Ltd. (64 taxmann.com 313) has dismissed the SLP and held that where Joint Commissioner recorded satisfaction in mechanical manner by merely quoting **“yes, I am satisfied”** and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid. Similar view has been taken by Hon'ble SC in the case of Chhugamal Rajpal vs. S.P. Chaliha & Ors. (SC) (79 ITR 603) stating that the court was also of the opinion that the Commissioner had mechanically accorded permission. He did not himself record that he was satisfied that this was a fit case for the issue of a notice under section 148. To question No. 8 in the report which read whether the Commissioner is satisfied that it is a fit case for the issue of notice under section 148", he just noted the word "Yes" and affixed his signature thereunder. The Court was of the opinion that if only he had read the report carefully, he could never have come to the conclusion on the material before him that this was a fit case to issue notice under section 148. The important safeguards provided in section 147 and 151 were highly treated by the ITO as well as by the Commissioner. Both of them appeared to have taken the duty imposed on them under these provisions as of little importance. They substituted the forum for the substance. In the result this appeal was allowed, the order of the High Court was set aside and the impugned notice quashed.”

18. Therefore, we find that it is an established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction. In view of the reasons set out above, as also bearing in mind entirety of the case, we are of the considered view that approval given by ld PCIT, as set out earlier, were not sufficient and correct approval, for reopening the assessment proceedings. We, therefore, quash



*the reassessment proceedings. As the reassessment itself is quashed, all other issues on merits/other technical issues of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.”*

17. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in the case of Girish Lahori (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Co-ordinate Bench, therefore, respectfully following the binding precedent of the Coordinate Bench, in the case of Girish Lahori (supra), we quash the reassessment order dated 26.11.2019, being void *ab-initio*.

18. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

19. In the result, appeal filed by the assessee, is allowed.

Order is pronounced in the open court on 13/02/2026

Sd/-  
(DINESH MOHAN SINHA)  
न्यायिक सदस्य/ Judicial Member

Sd/-  
(DR. A.L. SAINI)  
लेखा सदस्य/Accountant Member

राजकोट /Rajkot

दिनांक/ Date: 13/02/2026

DKP Outsourcing Sr.P.S

True Copy

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण, राजकोट