

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER**  
**AND**  
**SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

**ITA No.377/Ind/2025**  
**Assessment Year:2011-12**

Rajesh Gourishankar, Sarpatti Patadi Kshipra, Dewas, (Assessee/Appellant)	<b><u>बनाम/</u></b> <b><u>Vs.</u></b>	ITO Ward -1 Dewas (Revenue/Respondent)
<b>PAN: AWAPG0186B</b>		
Assessee by	Ms. Sonam Khandelwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	09.02.2026	
Date of Pronouncement	19.02.2026	

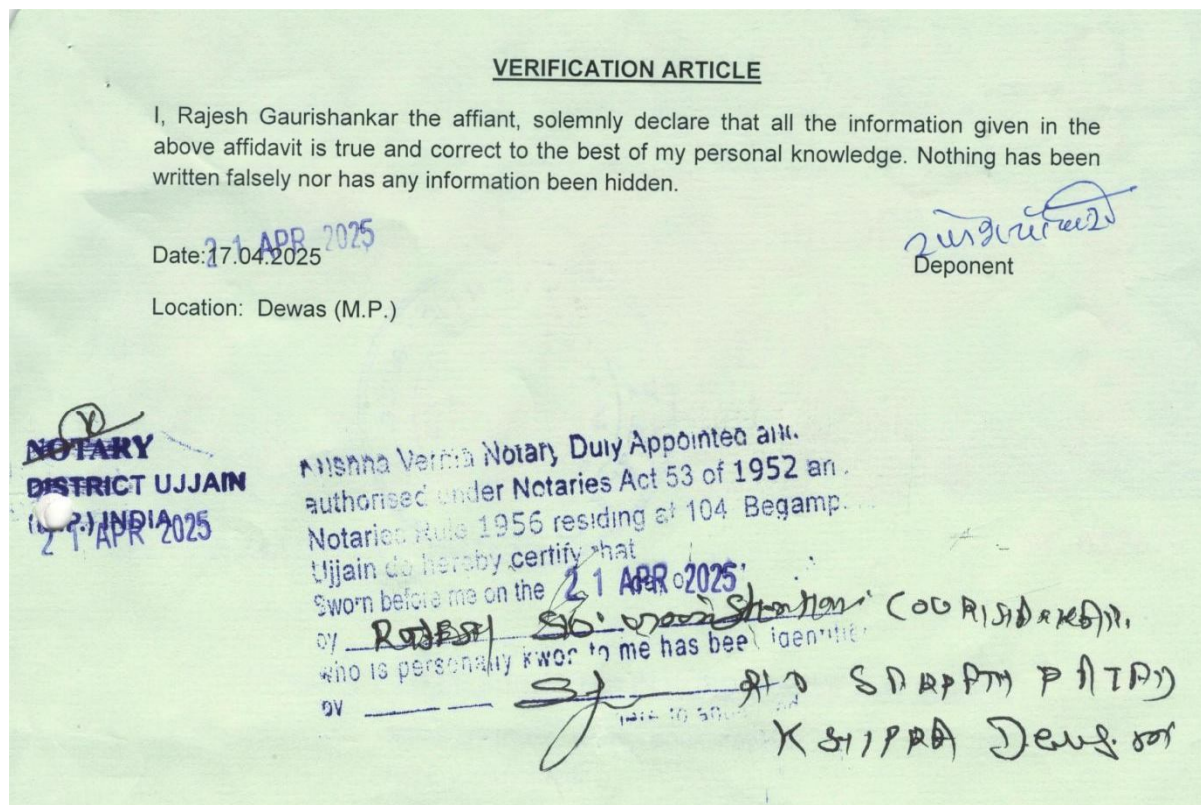
**आदेश / O R D E R**

**Per B.M. Biyani, A.M.:**

Feeling aggrieved by order of first-appeal dated 26.12.2023 passed by learned Commissioner of Income-Tax (Appeals)-NFAC, Delhi ["CIT(A)"] which in turn arises out of assessment-order dated 03.12.2018 passed by learned ITO-1, Dewas ["AO"] u/s 144 of Income-tax Act, 1961 ["the Act"] for Assessment-Year ["AY"] 2011-12, the assessee has filed this appeal on the grounds mentioned in Appeal Memo (Form No. 36).

2. The registry has informed that the present appeal is filed after a delay and therefore time-barred. The assessee has filed an application/affidavit for condonation of delay; the same is scanned and re-produced for an immediate reference:





3. The averments made by assessee in above affidavit, which are self-explanatory and which do not require repetition, were discussed and the Ld. DR for revenue does not have any objection if the bench condones delay and accordingly left it to the wisdom of bench. We have considered the explanation advanced by assessee and in absence of any contrary fact or material on record, the assessee is found to have a "sufficient cause" for delay in filing present appeal. We find that section 253(5) of the Act empowers the ITAT to admit an appeal after expiry of prescribed time, if there is a "sufficient cause" for not presenting appeal within prescribed time. It is also a settled position by Hon'ble Supreme Court in **Collector, Land**

***Acquisition Vs Mst. Katiji and others 1987 AIR 1353, 1987 2 SCC 387***

that whenever substantial justice and technical considerations are opposed to each other, the cause of substantial justice must be preferred by adopting a justice-oriented approach. Thus, taking into account the facts of case, the provision of section 253(5) and the decision of Hon'ble Supreme Court, we take a judicious view, condone delay, admit appeal and proceed with hearing.

4. Ld. AR for assessee submitted that the CIT(A) has decided first-appeal *ex-parte* qua assessee for the reason that the assessee did not make any submission before him despite opportunities given. However, the Ld. CIT(A) has simply confirmed the order passed by AO but the grounds/issues raised by assessee in first appeal requires an apt adjudication by CIT(A) on merit in accordance with provisions of 250(6) of the Act which provides "The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision."

5. Ld. AR went ahead to explain that the AO has also passed ex-parte assessment-order u/s 144 after making an addition of Rs. 72,47,194/- on account of unexplained deposits in bank but, however, the assessee is having only one bank a/c with Bank of India in which a cash deposit of Rs. 9,00,000/- was made on 03.09.2010 which was converted into FDR. However, the AO has made hefty addition of Rs. 72,47,194/- and that too without giving any details of the sum of Rs. 72,47,194/- in assessment-

order. Ld. AR further asserts that the assessee is having interest income from SB A/c and FDR which has not been taxed by AO. Therefore, in the situation, the case of assessee requires a detailed re-visit by AO. Ld. AR acknowledges that the assessee is ready and willing to make an effective representation before AO and hence the present matter ought to be remanded back to the file of AO for a fresh consideration.

6. Ld. DR for revenue agreed to the submission of Ld. AR but made a request to direct the assessee to represent his case before AO and do not seek unnecessary adjournments.

7. In view of above, having regard to the principle of natural justice and also bearing in mind that no prejudice would be caused to revenue if the present matter is restored at the level of CIT(A), we remand this matter back to the file of AO for adjudication afresh. The CIT(A) shall give necessary opportunity of hearing to assessee and pass an appropriate order uninfluenced by his earlier order. The assessee is also directed to remain vigilant and ensure participation in the hearings as may be fixed by AO and do not seek unnecessary adjournments failing which the AO shall be at liberty to pass appropriate order in accordance with law. Ordered accordingly.

8. However, we find that the assessee has not made representation before lower authorities due to which the resources of department are wasted. **Therefore, to offset the revenue's efforts, we impose a cost of**

**Rs. 2,500/- to be paid by assessee to Income-tax Department through appropriate challan.** It is made clear that the payment of cost shall be a pre-condition for availing the opportunity of fresh adjudication before AO and the assessee shall submit a copy of duly paid challan to AO.

**9. Resultantly, this appeal is allowed for statistical purpose, subject to payment of cost by assessee as mentioned above.**

Order pronounced in open court on 19/02/2026

Sd/-

(PARESH M. JOSHI)  
JUDICIAL MEMBER

sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

दिनांक /Dated : 19/02/2026

Patel/Sr. PS

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore