

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H (SMC)" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.3534/MUM/2025
(Assessment Year:2013-2014)**

**Madison Teamworks Film Promotions and
Entertainment Private Limited**

1st Floor, 349 Business Point,
Western Express Highway, Andheri (East)
Mumbai - 400069, Maharashtra.
[PAN:AAECM1006B]

..... **Appellant**

Vs

**Deputy Commissioner of Income Tax,
Circle 10(2)(2), Mumbai**

Aayakar Bhawan, M.K.Road,
Mumbai - 400020. Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Siddhesh Chaugule
For the Respondent/Department : Shri Pravin Salunkhe

Date

Conclusion of hearing : 16.07.2025
Pronouncement of order : 23.07.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 28/03/2025, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 30/10/2015, passed under Section 143(3) of the Act for the Assessment Year 2013-2014.
2. The Assessee has raised following grounds of appeal :
 - "1. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax - (Appeals) erred in*

holding that the appeal filed by the Appellant is not maintainable, as it has exhausted its right to file an appeal.

2. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax – (Appeals) erred in not condoning the delay in filing the appeal under Section 246A of the Income of the Income-tax Act, 1961.*
3. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income Tax – (Appeals) has erred in not adjudicating the Appellant’s appeal on merits.”*

3. The relevant facts in brief are that for the Assessment Year 2013-2024 assessment was framed on the Assessee vide Assessment Order, dated 30/10/2015 passed under Section 143(3) of the Act. The Assessing Officer assessed the income of the Assessee at INR.43,15,350/- after making addition following additions (a) deemed dividend under section 2(22)(e) of INR.55,00,000/-, (b) Account of mismatch of 26AS details of INR.20,28,653/-, and (c) disallowance under Section 40A(3) of INR.48,784/-. Being aggrieved, the Assessee preferred appeal before the CIT(A) challenging the aforesaid addition of INR.20,28,653/- only. The appeal preferred by the Assessee was disposed off by the Learned CIT(A) vide order, dated 08/09/2017. Meanwhile, reassessment proceedings were initiated in the hands of the shareholder of the Assessee-Company and addition was made in the hands of such shareholder as deemed dividend income vide Assessment Order, dated 13/11/2018, passed under Section 147 of the Act in the case of Mr. Sam Balsara. Therefore, the Assessee filed application under Section 264 of the Act for rectification of the Assessment Order, dated 30/10/2015, passed under Section 143(3) of the Act in the case of the Assessee for the Assessment Year 2013-2014 contending, inter-alia, that the same income has been assessed as deemed dividend income in the hands of the shareholders as well as the Assessee-Company and therefore, the addition made in the hands of the Assessee-Company be deleted. The aforesaid

application filed by the Assessee-Company, was dismissed vide Order, dated 14/12/2018, passed by the Learned Principal Commissioner of Income Tax - 10 [for short '**PCIT**']. While disposing the said application the Learned PCIT made the following observations:

- "6. *I have carefully considered the revision application made by the assessee company u/s 264 of the IT Act for AY 2013-14 and also examined the submission made by assessee company. It is stated that the revision u/s 264 of the IT Act is not an alternative to appeal and it is only when the channel of appeal is not available that the revisionary powers can be invoked. Further, the assessee has filed the petition by way of revision before the undersigned not for correcting an error in the order but for adjudicating on the findings given by the Assessing Officer Since the appeal lies against the order, which has not been made but can still be filed by putting up an application for condonation of delay in filing appeal before the CIT(A), therefore, in my view the revision petition for the assessment year under consideration is not maintainable on account of alternative effective remedy of appeal. I do not consider it a fit case for invoking the powers under section 264 of the IT Act, 1961. Moreover, the assessee has also not waived the right of appeal before the Commissioner of income-tax (appeals) as per provisions of section 264(4) of the IT Act.*

7. *It may also be mentioned here that the assessee has also filed an application u/s 154 of the IT Act before the Assessing Officer DCIT 10(2)(2), Mumbai on 14.11.2019 for AY 2013-14, which is pending for disposal. Further, it may also be mentioned here that the assessee may avail the normal channel of appeal by filing an appeal against the assessment order of the Assessing Officer before the Commissioner of income-tax (Appeals) along with an application for condonation of delay in filing the appeal. Further, it is also stated here that assessee's application u/s 154 of the IT Act on similar issue is pending for disposal before the Assessing Officer for AY 2013-14 The application filed by the assessee u/s. 2014 of the IT Act is beyond the lime limit prescribed us. 204(3) of the IT Act, 1961. The assessee has submitted that condonation of delay in filing application u/s 264 of the IT Act, was due to dichotomy in the law on the taxability of deemed dividend. The said submission of the assessee is not found satisfactory as under the provisions of IT Act, the addition us 2(22)(e) of the IT Act has to be made in the hands of registered beneficial shareholder. which fact was well aware by the assessee. Therefore, the submission of the assessee for delay in filing the application u/s 264 of the IT Act is not found a sufficient cause for delay in fling the Application, in view of the above, the assessee has failed to discharge the*

onus to seek benefit u/s 264 of the IT Act.

8-10. xx xx

11. *Thus, in view of the facts of the case, the reasons mentioned above and the legal position emerging on this issue in the cases of Tessy Kuruvilla V. Agricultural Income-tax Officer and Dwarka Nath Vs. Income Tax Officer (Supra), on application under section 264 of the IT Act filed by the assessee, I declined to interfere with the assessment order passed by the Assessing Officer under Section.143(3) of the Act for Assessment Year 2013-14.*

12. *Hence, in view of the above facts, assessee's revision is not maintainable and the assessment order passed u/s.143(3) of the IT Act dated 30.10.2015 for AY 2013-14, does not call for any interference. Accordingly, this petition has been treated as disposed."*

4. Keeping in view of the above observations on the Ld PCIT, the Assessee preferred second appeal against the Assessment Order, dated 30/10/2015 passed under Section 143(3) of the Act, before the CIT(A) raising the following grounds:

"Addition of INR.55,00,000/- on account of alleged deemed dividend u/s.2(22)(e) of the Act:

1. *On the facts and the circumstances of the case and in law, the Learned AO has erred in making an addition of INR.55,00,000 as deemed dividend in the hands of the Appellant Company (i.e. recipient company) instead of the shareholder.*

The Appellant Company prays that the said addition made by the Learned AO is clearly incorrect and ought to be deleted."

5. The CIT(A) dismissed the above appeal preferred by the Assessee vide Order, dated 28/03/2025, which has been impugned by way of present appeal before the Tribunal on the grounds reproduced at Paragraph 2 above.
6. The Learned Authorized Representative for the Assessee appearing before the Tribunal submitted that in the facts of the present case it was clear that the same income was getting taxed twice (a) firstly, in the hands of the Assessee-Company as deemed dividend income in

regular assessment proceedings and (b) secondly, in the hands of the shareholders, as deemed dividend income of the shareholder of the Assessee-Company in the reassessment proceedings. Placing reliance upon the observation of the Learned PCIT in order, dated 25/11/2019, passed while disposing off the application filed under Section 264 of the Act, the Learned Authorised Representative for the Assessee submitted that the Learned CIT(A) should have entertained the second appeal after condoning delay in filing the appeal. The Learned Authorized Representative for the Assessee also placed reliance upon the decision of the Co-ordinate Bench of the Tribunal in the case of The Income Tax Officer Ward 1(2)/The Deputy Commissioner of Income Tax (OSD) Range – 1, Ahmedabad Vs. M/s. Ankush Finstock Limited [ITA No.1989/Ahd/2003 and ITA No.2688/Ahd/2005 for Assessment Year 1996-1997] wherein second appeal preferred by the assessee was entertained.

7. Per contra the Learned Departmental Representative submitting that the scheme of the Act does not provide for filing two separate appeals for the same Assessment Order and therefore, no infirmity could be found in the order passed by the CIT(A) dismissing the second appeal preferred by the Assessee. It was further submitted that the PCIT had rejected the very same reason now being given by the Assessee for seeking condonation of delay in filing the present appeal. The Assessee had, admittedly, not challenged the order passed by the Learned PCIT under Section 264 of the Act. In view of the aforesaid it was submitted that the Learned CIT(A) was also correct in not condoning the delay in filing appeal before the CIT(A).
8. We have given thoughtful consideration to the rival submissions and have perused the material on record.
9. The undisputed facts as emerging from the record are that the Assessee-Company had filed return of income for the Assessment

Year 2013-14 declaring a loss of INR.32,62,092/-. The case of the Assessee was selected for scrutiny and Assessment Order under Section 143(3) of the Act was passed on 30/10/2015 assessing total income at INR.43,15,350/- after making the following additions:

Sr.No.	Name of additions	Amount (INR.)
1.	Deemed dividend under Section 2(22)(e) of the Act	55,00,000
2.	Mismatch of income vis-à-vis Form 26AS.	20,28,653
3.	Disallowance under Section 40A(3) of the Act	48,784

10. The Assessee had originally accepted the addition of INR.55,00,000/- as deemed dividend u/s 2(22)(e) of the Act and had preferred appeal before the CIT(A) only in respect of addition of INR.20,28,653/- on account of mismatch of income vis-à-vis Form 26AS. The aforesaid appeal was disposed off vide Order, dated 08/09/2017. Subsequently, when the assessment proceedings in case of Mr. Sam Balsara, a common shareholder in both the Assessee-Company and Madison Communications Private Limited, was reopened under Section 147 of the Act, and amount of INR.55,00,000/- was taxed again in the hands of Mr. Sam Balsara as deemed dividend. The Assessee Company filed a revision application under Section 264 of the Act before the Ld. PCIT seeking revisions of the Assessment Order, dated 30/10/2015, passed in the case of the Assessee-Company seeking deleting of the addition of INR.55,00,000/- made by the Assessing Officer under Section 2(22)(e) of the Act on the ground that the same amount had been assessed to tax in the hands of the shareholder of the Assessee-Company (i.e., Mr. Sam Balsara) as deemed dividend. However, the Ld. PCIT disposed the said revision application holding that (a) the Assessee had an alternative remedy available in the form of an appeal before the Commissioner of Income Tax (Appeals), and (b) application was barred by limitation. The Assessee did not challenge the aforesaid order passed by the PCIT. Instead, the Assessee-Company instituted second appeal before the CIT(A) on 24/12/2019 challenging the addition of deemed dividend income of

INR.55,00,000/- in the hands of the Assessee by way of Assessment Order, dated 30/10/2015. The aforesaid appeal was dismissed by the CIT(A) by way of order, dated 28/03/2025, impugned by way of present appeal.

11. On perusal of the impugned order, we find that the Ld. CIT(A) has concluded as under:

"Decision and observations:

4. *I have perused the grounds of appeal, statement of facts, submissions and the facts appearing from the order u/s 143(3) of the L.T. Act for the Asstt. Year: 2013-14. The Appellant has preferred this appeal second time u/s 246A as his revision petition u/s 264 was rejected.*

- *The ground that has been raised in this appeal on deemed dividend has not been contested by the appellant in his previous appeal (1st occassion) filled u/s 246A on 02.12.2015.*

xx xx

- *None of the above noted judgments support the claim, that CIT (A) can admit an appeal for the second time against an assessment order that had already been appealed before, and decided on merit by CIT (App), and for which a revision petition u/s 264 was subsequently filed on new ground on deemed dividend was disposed of by PCIT by rejecting the same.*
- *The case laws cited by the appellant only reaffirm the well settled principle that if a revision application u/s 264 is dismissed on procedural grounds, the appellant retains the right to file an appeal before CIT (A). However, this does not apply to the present case, as the appellant had already filed an appeal u/s 246A beforehand which was adjudicated on merit. Due to new developments as recorded by the appellant herein before the revision application u/s 264 was filled for considering the issue of deemed dividend. Without considering the issue on merit, Ld PCIT rejected the petition for inordinate delay purely on technical ground. The appellant being aggrieved with the said order u/s 264 preferred this appeal for the second time before the CIT(A) on new set of grounds for addressing his grievances. Further, the jurisdictional PCIT declined to exercise revisionary powers u/s 264 by considering it as not being a fit case for revision as the issue was not raised as a ground in*

the appeal filled first time u/s 246A earlier and also for inordinate delay in filling revision petition. Ld. PCIT suggested the appellant, while rejecting petition u/s 264, that the assessee may still prefer an appeal before CIT(A) by submitting an application for condonation of delay. However, such view of PCIT is not binding upon the CIT(A).

- *In this regard, it is pertinent to note that the impugned assessment order was prejudicial to the interests of the assessee due to developments brought on record by the assessee and fell within the jurisdiction, scope and meaning of revision u/s 264 of the I.T.Act. However, the Ld. PCIT dismissed the revision application of MATES (appellant), stating that the reason provided for delay is not acceptable and did not agree to condone the inordinate delay on the part of the appellant. In spite of this, the PCIT advised the appellant to file an appeal before CIT (A) along with an application to condone the delay.*
- *The appellant has not preferred to exercise writ jurisdiction under article 226 against the order, of the PCIT, passed u/s 264. If the appellant was not satisfied with the order u/s. 264 the next course of action available for an assessee was to file a writ petition before the jurisdictional High Court challenging the revision order u/s 264 of the PCIT. Instead of filling writ petition the appellant filled an appeal u/s 246A, for the second time which is not maintainable as per law.*
- *PCIT found the delay inadmissible yet suggested a course of action that contradicts his own reasoning for rejection of petition u/s 264. The same analogy for not condoning the delay equally applies in the present appeal.*
- *Further, the PCIT's suggestion to file an appeal with an application for condonation of delay was advisory in nature and is not binding upon a CIT(App).*
- *As per the provision of law an assessee being aggrieved with an order can prefer an appeal within 30 days from service of assesement order. Which it did, by filling an appeal and where the ground raised in the present appeal (2nd time) was not contested. The addition made by the AO on account of deemed dividend was accepted by the appellant and for that no ground was raised on the appeal preferred u/s 246A by the assessee for the first time.*
- **No assessee can file appeal repeatedly u/s 246A, after it has exhausted its right to file an appeal.**

Once an appeal has been disposed of by CIT(App), an assessee is not eligible to file an appeal, for the second time with new set of ground, before CIT(App). Filing of appeal multiple times with new grounds is not permissible as per law.

- *Considering that the appellant had already filed an appeal u/s 246A before CIT(A)-17, Mumbai, and obtained substantial relief, followed by a revision application u/s 264 before the Ld. PCIT-10, Mumbai, it has exhausted its right to file appeal before CIT(A). **No appeal can be admitted for the second time against the same assessment order where the grounds raised in the appeal filed first time has been decided on merit.** It is also interesting to note here that the ground on deemed dividend was not contested in the appeal filed for the first time and no additional ground on this issue was raised during the course of appellate proceeding before CIT(A), for the first time. The ground which was not raised first time before CIT(A) cannot be agitated by filling an appeal for the second time before CIT(A). Therefore, the present appeal is not maintainable. The appropriate course of action for the appellant would be to file a writ petition before the high court against the order of u/s 264 as the matter was not decided on merit.*
- *Having regard to the facts and circumstances of the case, the present appeal preferred for the second time before the CIT(A) is dismissed as the same is not maintainable." (Emphasis Supplied)*

12. We concur with the above view taken by the CIT(A). The scheme of the Act does not providing filing separate appeals against the same assessment order. In case the first appeal preferred by the Assessee against the Assessment Order, dated 30/10/2015, would have been pending, the Assessee would have been within its right to raise additional ground. Even in case, where the first appeal preferred by the Assessee was dismissed on account of technical reasons, as was the case in the judicial precedent cited by the learned Authorised Representative noted in paragraph 6 above, the Assessee would have a case for challenging the action of the CIT(A) in subsequent appeal. However, in the present case it is admitted position that the first appeal preferred by the Assessee against the Assessment Order, dated 30/10/2024, was disposed off on merits (and not on

account of technical reasons such as non-payment of taxes). Therefore, the judicial precedent cited on behalf of the Assessee is of no aid to the Assessee. Further, the Assessee has filed the second appeal on 24/12/2019 after expiry of more than 4 years from the date of passing of the Assessment Order, dated 30/10/2015. In identical facts and circumstances, the PCIT had declined to condone the delay in filing the application filed under Section 264 of the Act and admittedly the Assessee has chosen not to challenge the same. Therefore, in the facts and circumstances of the present case we do not find any infirmity in the order passed by the CIT(A) dismissing the second appeal preferred by the Assessee holding that under the scheme of the Act the Assessee was barred from availing appellate remedy by filing second appeal before CIT(A). Accordingly, Ground No. 1 to 3 raised by the Assessee in present appeal are dismissed.

13. In result the appeal preferred by the Assessee is dismissed.

Order pronounced on 23.07.2025.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 23.07.2025
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai