

आयकर अपीलीय अधिकरण  
मुंबई पीठ "बी", मुंबई पीठ  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री गगन गोयल, लेखाकार सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
आअसं.539/मुं/ 2022 (नि.व.2014-15)  
ITA NO. 539/MUM/2022(A.Y. 2014-15)

Nawany Corporation (I) Pvt. Ltd.

384/1, Bandana 15<sup>th</sup> Road,  
Bandra (West) Mumbai 400 050

PAN: AAACN-1471-D

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT 13(1)(1),

Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Deepak P. Tikekar

प्रतिवादी द्वारा/Respondent by : Shri Tejinder Pal Singh Anand

सुनवाई की तिथि/ Date of hearing : 13/01/2023

घोषणा की तिथि/ Date of pronouncement : 06/04/2023

**आदेश/ ORDER**

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-21, Mumbai [in short 'the CIT(A)'] dated 24/06/2019, for the Assessment Year 2014-15.

2. This appeal is time barred by 944 days. The Director of the assessee company has filed an affidavit explaining reasons causing delay in filing of the appeal. Delay in filing of the appeal has been attributed to the wrong

opinion given by the then Chartered Accountants / Tax Consultants of the assessee. Along with the affidavit, the assessee has enclosed a copy of opinion dated 22/07/2019 given by Shah Desai & Associates, Chartered Accountants. A perusal of same shows that the CAs had opined that there are bleak chances of success in appeal before the Tribunal. The Id.Counsel for the assessee submits that the Hon'ble Bombay High Court in the case of Vijay Vishin Meghani & Another vs. DCIT, 398 ITR 250 condoned delay of 2984 days in filing of appeal before the Tribunal, wherein the delay was caused due to wrong advice of the Chartered Accountants. The Id.Counsel for the assessee further placed reliance on the decision in the case of Perfect Sclae Co. P. Ltd. vs. DCIT, 60 SOT 255 (Mum) , wherein the Tribunal condoned 513 days delay in filing of the appeal, delay resulting from wrong advice of the Counsel/Chartered Accountant. The Id.Counsel for the assessee further placed reliance on the following decisions to condone delay.

(i) Concord of India Insurance Co. Ltd. vs. Nirmala Devi & Others, 118 ITR 507(SC); &.

(ii) ITO vs. Vishu Impex Pvt.Ltd. 45 CCH 590(Del-Trib)

3. Per contra Shri Tejinder Pal Singh Anand representing the Department vehemently opposed condonation of delay in filing of appeal. The Id. Departmental Representative submits that there is inordinate delay of 944 days in filing of appeal. The reason given by assessee for delay in filing of the appeal is an after thought. The assessee be put to strict proof and furnish documentary evidence of the reasons resulting in delay.

4. We have heard both sides qua delay in filing of appeal. There is inordinate delay of 944 days in filing of the appeal. A perusal of the affidavit filed by the Director of the appellant company shows that the delay in filing the appeal has been attributed to the wrong advice of the Chartered Accountants. Along with affidavit, the opinion of the Chartered Accountants is also placed on record. Purportedly, the assessee on the initial opinion of Chartered Accounts decided not to file appeal before the Tribunal against the order of CIT(A). The Hon'ble Bombay High Court in the case of Vijay Vishin Meghani & another vs. DCIT (supra) condoned 2984 days delay in filing of the appeal before the Tribunal on the ground that where assessee acted bonafide on legal advice tendered by a professional, no negligence or any deliberate or intentional act on his part can be imputed. Wrong advice by a legal professional is a sufficient cause to seek condonation of delay.

5. The Hon'ble Supreme Court of India in the case of Ram Nath Sao Alias Ram Nath Sahu & Ors. Vs. Gobardhan Sao & Ors. (2002) 3 SCC 195) has held that acceptance of explanation furnished explaining delay should be the rule and refusal, an exception. The Hon'ble Court held:

*".....But one thing is clear that the courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over-jubilation of disposal drive. Acceptance of explanation furnished should be the rule and refusal, an exception, more so when no negligence or inaction or want of bona fides can be imputed to the defaulting party. On the other hand, while considering the matter the courts should not lose sight of the fact that by not taking steps within the time prescribed a valuable right has accrued to the other party which should not be lightly defeated by condoning delay in a routine-like manner. However, by taking a pedantic and hypertechnical view of the matter the explanation furnished should not be rejected when stakes are*

*high and/or arguable points of facts and law are involved in the case, causing enormous loss and irreparable injury to the party against whom the lis terminates, either by default or inaction and defeating valuable right of such a party to have the decision on merit. While considering the matter, courts have to strike a balance between resultant effect of the order it is going to pass upon the parties either way.”*

5.2 The Hon’ble Apex Court in the case of Collector Land Acquisition, vs Mst. Katiji & Ors., 167 ITR 471(SC) held that the explanation furnished by the assessee for seeking condonation should be accepted. The expression “sufficient cause” should be interpreted liberally.

5.3 After taking into consideration the facts of case and the law expounded by the Hon’ble Apex Court and the Hon’ble Jurisdictional High Court, we deem it appropriate to condone delay in filing of the appeal. Thus, the delay in filing of appeal is condoned and the appeal is admitted to be heard on merits.

6. The assessee in appeal has assailed:

(i) Disallowance of Rs.32,92,960/-u/s. 40(a)(ia) of the Income Tax Act, 1961 ( in short ‘the Act’) being interest paid to Non-Banking Financial Institution without deduction of tax at source; and

(ii) Disallowance u/s.36(1)(iii) of the Act, Rs.21,22,858/- being interest paid on loan.

7. The assessee has filed an application requesting for admission of additional evidence to substantiate its submissions. The additional evidences field by the assessee include ledger accounts of the assessee, certificate of payment of interest, audited accounts as on 31/03/2010, 31/03/2011 and 31/03/2012. The Id.Counsel for the assessee submits that these additional evidences are crucial for deciding the issue raised in the appeal by the

assessee. For admission of additional evidences the assessee placed reliance on the following decisions:

- (i) CIT vs. Virgin Securities and Credits Pvt. Ltd. 332 ITR 396 (Del)
- (ii) PCIT vs. Daljit Singh SRA, 247 Taxman 240 (P&H)

8. On the other hand, Id. Departmental Representative vehemently opposed admission of additional evidences at this belated stage. The Id. Departmental Representative submits that no reason whatsoever has been given by the assessee for non-furnishing of the documents during assessment proceedings or even before the CIT(A), now being filed as additional evidence. The Id. Departmental Representative prayed for dismissing the appeal of assessee.

9. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee has filed an application dated 05/10/2022 with a prayer to admit additional evidences. The relevant extract of the said application reads as under:

*"2. In course of assessment proceedings party wise details of interest paid were submitted by the Chartered Accountant of the Company. Detailed submissions regarding allowability of the same do not appear to have been made. It appears that submissions made before the A.O. only have been reiterated before learned Commissioner of Income Tax Appeals and no detailed submissions regarding investment in subsidiary company and utilization by the subsidiary company have been made. Further no distinction has been made between investment in associate concern and investment in subsidiary particularly when it was a wholly owned subsidiary company.*

*3. Before Hon'ble Income Tax Appellate Tribunal, the company has submitted following additional evidence on 03.08.2022:*

- i. Ledger Accounts of Interest paid to Non Banking Finance Companies (NBFC)*

- ii. *Certificates from Chartered Accountants of two NBFC's viz. M/s Tata Motors Finance Limited & M/s Shriram Transport Finance Corporation which were obtained in July 2022 certifying payment of interest by the Company*
- iii. *Note regarding purpose of investment in wholly owned subsidiary.*

4. *In the note, certain facts regarding utilization of funds by subsidiary company were clarified. Please find enclosed herewith :*

- i. *Audited Accounts of Nawany Marine Shipping FZE Sharjah (UAE) for the year ended 31.03.2010, 31.03.2011 & 31.03.2012 These Balance Sheets were duly reported to Authorised Dealer, Bank of Baroda in the form of Annual Performance Report. Copies of the same are annexed herewith.*
- ii. *Copies of Order of Calcutta High Court dated 21.07,2011 & Terms of Settlement taken on record by Calcutta High Court on 24.09.2014 are annexed herewith.*

*These documents clearly show that the amount advanced by Nawany Corporation (I) Private Limited to its wholly owned subsidiary company have gone to fund the losses incurred by the wholly owned subsidiary company and not for any personal use of the Directors.*

5. *Request for Admission of Additional Evidence :*

*The Company deeply regrets non submission of additional evidence before Assessing Officer and learned Commissioner of Income Tax Appeals as per Paragraphs 3 & 4 above. The company was fully guided by its Chartered Accountant and completely relied upon his expertise in the matter.*

*It is submitted that these documents are genuine and crucial to decide the case on merits. The Company has already suffered substantial losses and if this evidence is not admitted it will cause substantial injustice in terms of financial hardship to the Company. On the contrary if this evidence is admitted and the issue is decided on merits of the case it will not prejudice department materially.*

*Hon'ble Income Tax Appellate Tribunal is requested to admit this additional evidence under Rule 29 of ITAT Rules and oblige. This will reduce substantial financial hardship faced by the company which is already having major financial difficulties due to Corporate Guarantee and Personal Guarantees given."*

A perusal of the application reveals that the assessee was not effectively represented before the Assessing Officer or the CIT(A). The assessee has bonafide relied on the advice given by the professional. Taking into consideration entire facts we deem it appropriate to admit additional

evidences and restore this appeal to the file of Assessing Officer for denovo assessment , in accordance with law. The assessee shall cooperate with Assessing Officer and shall furnish all relevant documentary evidences without delay upon receipt of notice from the Assessing Officer.

10. In the result, impugned order is set aside and appeal by the assessee is allowed for statistical purpose.

Order pronounced in the open court on Thursday the 06<sup>th</sup> day of April, 2023.

Sd/-

(GAGAN GOYAL)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 06/04/2023  
Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
- 4.. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai