

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI**

**BEFORE JUSTICE (RETD.) C V BHADANG, HON'BLE PRESIDENT &  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

**ITA NO.4042/MUM/2023  
Assessment Year 2012-13**

**ITA NO.4043/MUM/2023  
Assessment Year 2013-14**

Nawany Corp (I) Pvt. Limited,  
384/1, Bandana, 15<sup>th</sup> Road,  
Bandra (West), Mumbai – 400 050.  
PAN:AAACN-1471-D

- Appellant

Vs.  
DCIT-13(1)(1), Mumbai  
315, Piramal Chambers  
Mumbai 400 012.

- Respondent

Appellant by : Shri Ashish Thakurdesai  
Respondent by : Shri Ashok Kumar Ambastha

Date of Hearing : 25/04/2024  
Date of Pronouncement : 02/05/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

Both the appeals filed by the assessee are directed against orders passed by Ld CIT(A)-21, Mumbai and they relate to the assessment years 2012-13 and 2013-14. Both the appeals are barred by limitation by 2291 days.

2. The assessee has moved petitions in both the years requesting the bench to condone the delay. We have heard the parties on this preliminary issue. The ld A.R submitted that the assessee is engaged in transportation business and the matters relating to Income Tax were earlier handled by a Chartered Accountant named Mr. Harshad B.Desai. In the assessment

proceedings, the Assessing Officer made certain additions in both the assessment years under consideration and as per the advice given by the aforesaid Chartered Accountant, appeals were filed before the Ld.CIT(A) for both the years, who dismissed appeals of both the years. After the orders so passed by Ld.CIT(A), the above said Chartered Accountant opined that the chances of getting favourable orders from ITAT is very bleak. Hence, the assessee did not file appeals before ITAT within the statutory time limit based on the above said opinion given by the CA. Further, the assessee had declared loss and the additions made by Assessing Officer has only resulted in reduction of loss. Hence, there was no necessity to pay any tax. Subsequently, the assessee approached another Chartered Accountant with regard to other pending matters and the said Chartered Accountant advised the assessee to file appeals against the orders passed by Ld.CIT(A) for both the assessment years under consideration.

3. The Ld.A.R further submitted that the assessee had also filed an appeal before ITAT for assessment year 2014-15 with a delay of 944 days and the same was numbered as ITA No.539/Mum/2022. Identical reasoning was given before the Tribunal for the delay in filing appeal for AY 2014-15. The Tribunal, after considering the fact that the assessee did not file appeal in time, on the basis of advice given by a Chartered Accountant, has condoned the delay in its order passed on 06/04/2023. The Ld A.R further submitted that the assessee had filed certain additional evidences with regard to the additions made in AY 2014-15. The Tribunal admitted the additional evidences and restored all the issues to the file of Assessing Officer for examining them afresh.

4. The Ld.A.R submitted that the assessee has filed additional evidences in respect of additions made in these two assessment years also. He further submitted that the facts prevailing in these two years are identical with the facts that prevailed in AY 2014-15. Accordingly, he prayed that the delay in filing of the appeal for these two assessment years may be condoned and the

additional evidences filed by the assessee may be admitted. The Ld.A.R also prayed that the matter relating to all additions may be restored to the file of Assessing Officer for examining them afresh, as done by the Co-ordinate bench in assessment year 2014-15.

5. On the contrary, Ld. Departmental Representative submitted that the present appeals have been filed with a delay of 2291 days and the reasoning given by the assessee for the delay was not convincing. Accordingly, he submitted that both the appeals of the assessee should be dismissed on this preliminary ground.

6. We have heard the rival conditions and perused the record. We notice that an identical issue of delay in filing of appeal has been considered by the Co-ordinate Bench in assessee's own case in assessment year 2014-15. The Bench noticed that the assessee has furnished copy of letter obtained from the Chartered Accountant, who had given his opinion about the prospects of appeal. In that letter, the CA he has admitted that he had advised the assessee not to file the appeal before ITAT for the reason that the chances of getting favourable order is rare. Accordingly, the Tribunal has appreciated the fact that the assessee acted bona-fide on the legal advice tendered by a professional and accordingly expressed the view that no negligence or any deliberate or intentional act on the part of the assessee can be imputed. Accordingly, the Tribunal had condoned the delay. In that year also the assessee had filed additional evidences and they were admitted by the Tribunal and all the issues were restored to the file of the Assessing Officer.

7. The facts in the two years under consideration are identical with the facts that prevailed in AY 2014-15. The Chartered Accountant, M/s Shah Desai & Associates, Mumbai has given similar certificates for both the years under consideration, wherein they have affirmed the opinion given by them that the chances of getting favourable order from ITAT was rare. Since the assessee has acted bona-fide on the legal advice given by a professional, as held by the co-ordinate bench, no negligence or any deliberate or intentional

act can be imputed upon the assessee. Hence, we are of the view that there was reasonable cause for the assessee in these two assessment years in not filing the appeals within the statutory time limit before the Tribunal. Accordingly, we condone the delay in filing appeals for both the assessment years and admit them for hearing.

8. As mentioned earlier, the assessee has filed additional evidences in both the assessment years along with petitions seeking their admission. It was also submitted that the assessee has not been effectively represented before the Assessing Officer and these additional evidences would help the Assessing Officer to take appropriate decision in accordance with law. We noticed earlier that, in assessment year 2014-15, the Tribunal had admitted additional evidences. Accordingly, we admit the additional evidences filed by the assessee for both the assessment years. Since these evidences require examination at the end of the Assessing Officer, we set aside the orders passed by Id.CIT(A) in both the years under consideration and restore all the issues to the file of Assessing Officer for examining them afresh by duly considering the additional evidences and also any other information and explanations that may be furnished by the assessee. After affording adequate opportunity of being heard to the assessee, the Assessing Officer may take appropriate decision in accordance with law. We also direct the assessee to fully co-operate with the Assessing Officer for expeditious completion of the assessment proceedings.

9. In the result, both the appeals of the assessee are treated as allowed.

Order pronounced in the open court on 2<sup>nd</sup> May , 2024.

Sd/-

[Justice (Retd) C V Bhadang]  
President

Mumbai, Date : 2<sup>nd</sup> May, 2024

VM.

Sd/-

(B.R. Baskaran)  
Accountant Member

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai