

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA NO.1604/MUM/2024  
Assessment Year :2017-18

Philomena Paul Fernandesv,  
14B Luis Apts, College Street,  
Shivaji Park, Bhawani Shankar Rd  
S.O,Mumbai – 400 028  
PAN: AALPF-6072-E

- Appellant

Vs.

National Faceless Assessment Centre  
[ITO Ward 22(2)(1),Mumbai]  
Piramal Chamber,  
Mumbai – 400 012.

- Respondent

Appellant by : Shri Mandar Vaidya  
Respondent by : Shri H.M.Bhatt

Date of Hearing : 19/06/2024  
Date of Pronouncement : 24/06/2024

**ORDER**

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

The assessee has filed this appeal challenging the order dated 09/02/2024 passed by learned CIT(A), NFAC, Delhi and it relates to the Assessment Year 2017-18.

2. The ld. Counsel appearing on behalf of the assessee submitted that the learned CIT(A) has dismissed the appeal in-limine for the reason that the assessee has not paid the advance tax and hence, the appeal filed by the assessee before him is not admissible as required u/s. 249(4)(b) of the Act. The ld.Counsel for the assessee submitted that the impugned assessment order has been passed by the Assessing Officer u/s. 147 of the Act after reopening the assessment of

the year under consideration. He submitted that the conditions prescribed in the provisions of section 249(4) of the Act shall apply to original return of income required to be filed u/s. 139 of the Act and the same will not apply to the reassessment proceedings. In support of this proposition, he placed reliance on the decision rendered by Co-ordinate Bench in the case of M/s. Nine Globe Industries Pvt. Ltd. vs. ACIT (ITA No.3889/Mu/2023 dated 16/04/2023). Accordingly, the ld.Counsel for the assessee submitted that the view expressed by Ld CIT(A) is not correct and accordingly contended that the order passed by learned CIT(A) is not sustainable.

3. The ld. Departmental Representative supported the view taken by Ld CIT(A). He submitted that the Ld CIT(A) has not adjudicated the issues on merits and if the bench agrees with the contention of the assessee, then all the issues may be restored to the file of Ld CIT(A) for adjudicating them on merits.

4. We heard rival contentions and perused the record. The undisputed fact is that the assessment under consideration relates to reassessment proceedings. The question as to whether the conditions prescribed in section 249(4) of the Act with regard to the payment of taxes for admitting appeals filed before CIT(A) was examined by the Co-ordinate Bench in the case of M/s. Nine Globe Industries Pvt. Ltd (supra) and it was decided as under:-

*“3. In appeal, the Commissioner of Income Tax (Appeals), NFAC, Delhi (‘CIT(A)’ for short) found that the appellant has not made compliance with the provisions of Section 249(4) of the Act. The CIT(A) in para 4.4 of his order has observed thus:-*

*“4.4 Though the appellant has not offered ‘YES’ comments at sl. No. 9 of Form35, it was asked vide DIN & letter no.*

*ITBA/NFAC/F/17/2023-24/1054461517(1) dated 19.07.2023 to intimate whether it has made payment of tax – which includes element of advance tax also-in compliance to notice of demand u/s 156 of the Act but the appellant made no compliance to this letter.”*

*4. In that view of the matter, the appeal came to be dismissed on the ground that the appellant has not filed RoI as well as not paid an amount equal to the amount of advance tax, which was payable by it. It can thus be seen that the CIT(A) had no occasion to examine the merits of the impugned additions.*

*5. We have heard parties. Perused record. It can be seen that the case was initially selected for scrutiny, which was completed on 29.03.2015, and there was no change in the returned income of Rs.51,80,800/- in the absence of any additions being made. It is a matter of record that originally the return was filed for the relevant year under consideration on 29.09.2012. It was not disputed during the course of hearing that the advance tax has per the assessed income of Rs.51,80,800/- has been paid. Here is the case of reassessment which is done for the benefit of Revenue. Hence, in our view, clause (b) of Section 249(4) of the Act will not apply as there is no question of paying advance tax in reassessment proceedings, even though assessee did not file RoI.*

*6. In the said circumstances, we find that the impugned order dismissing the appeal on the ground of non-compliance of Section 249(4) of the Act cannot be sustained and deserves to be set-aside.”*

5. In the instant case, the learned CIT(A) has refused to admit the appeal of the assessee on the reasoning that the assessee has not paid advance tax as required u/s. 249(4)(b) of the Act. In the above said case, the view so taken by Ld CIT(A) has been held to be not in accordance with the law by the Co-ordinate Bench. Accordingly, following the decision rendered by Co-ordinate Bench, we set aside the order passed by CIT(A) and restore the same to his for adjudicating the issues on merits. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law.

6. In the result, the appeal filed by the assessee is treated as allowed.

Order pronounced in the open court on 24<sup>th</sup> June, 2024.

Sd/-

(SUNIL KUMAR SINGH)  
JUDICIAL MEMBER  
Mumbai, Date : 24<sup>th</sup> June, 2024

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Vm

Copy to :

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

By Order

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