

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

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 3889/MUM/2023 : A.Y : 2012-13

M/s. Nine Globe Industries Pvt. Ltd. Vs. Asst. Commissioner of Income
402A, Prathamesh Tower, Tax, Circle-7(2)(2), Mumbai.
11-12, S.B. Marg, (Respondent)
Lower Parel, Mumbai.
PAN : AACCN8403F (Appellant)

**Appellant by : Ms. Aishwarya Vanikar
Respondent by : Shri S. Srinivasu**

**Date of Hearing : 15/04/2024
Date of Pronouncement : 16/04/2024**

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

This appeal by the assessee for assessment year 2012-13 can be disposed of on a short count.

2. The assessee filed its Return of Income (RoI) on 29.09.2012 for assessment year 2012-13 declaring a total income of Rs.51,80,800/-. The case was taken up for scrutiny and there were no additions made. Subsequently, the case was reopened on the basis of information received from DDIT (Inv.)-2, Surat. However, assessee did not file return within 30 days of the notice issued and hence, by order dated 12.11.2019 the assessee was required to show cause why an addition of Rs.14,31,25,612/- be not made under Section 144 of the Income

Tax Act, 1961 ('Act' for short) on account of sale and purchase made through accommodation entries. In response to the said notice, assessee filed RoI under Section 148 of the Act on 19.11.2019 declaring a total income of Rs.51,80,796/-. The appellant was required to furnish requisite details and upon consideration of the same, the AO by an order dated 23.12.2019 made addition of Rs.14,31,25,612/- on account of unexplained expenditure under Section 69C of the Act.

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 Form-35, 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.

7. In the result, the appeal is partly allowed. The impugned order dated 14.09.2023 is hereby set-aside. The appeal filed by the assessee is restored to the file of CIT(A) for disposal according to law. Needless to mention that we have not examined the merits of the impugned addition and the rival contentions in that regard are left open.

Order pronounced in the open court on 16/04/2024.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai; Dated : 16/04/2024

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai