

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकर अपील सं/ I.T.A. No.343/Mum/2023
(निर्धारण वर्ष / Assessment Years: 2020-21)

M/s. Guruji Infrastructure Pvt. Ltd 33, Plot 1088 Suraj Plaza, 'A' Wing, Chandulal Park, Station Rd Bhayandar (W), Thane-401101.	बनाम/ Vs.	ADIT, CPC Banglore.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECG3499G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Ms. Dinkle Hariya	
Revenue by:	Ms. Mahita Nair (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 13/04/2023
घोषणा की तारीख /Date of Pronouncement: 26/04/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee company against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 19.01.2023 for assessment year 2020-21.

2. The main grievance of the assessee is against the action of the Ld. CIT(A)/NFAC confirming the action of the CPC passed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") disallowing Rs.1,47,39,619/- claimed towards Employees contribution towards provident fund/ESIC.

3. Fact in brief are that the assessee company had filed its return of income on 24.02.2021 declaring total income of Rs.2,93,38,870/-. And thereafter, it received intimation dated 23.012.2021 from CPC, Bangalore u/s 143(1) of the Act wherein an amount of Rs.1,47,39,619/- was disallowed on account of late deposit of Employees contribution towards PF/ESIC in the relevant funds within



ITA No.343/Mum/2023

A.Y. 2020-21

Guruji Infrastructure Pvt. Ltd.

the due-date as prescribed under the PF/ESIC Act. Aggrieved by the aforesaid action of the CPC, the assessee preferred an appeal before the Ld. CIT(A)/NFAC which was dismissed by the Ld. CIT(A) vide impugned order. Aggrieved, the assessee is before us.

4. At the outset, the Ld. AR, submitted that the Ld. CIT(A) ignored/over-looked the relevant facts and material brought to his notice that the assessee in fact has remitted the payments of PF/ESI within the due date as prescribed under the respective PF/ESIC Acts. And it was pointed out by the Ld. AR, that sometimes the due date fell on Sunday or on public holidays, therefore, the assessee had remitted the Employees contribution on the next day as prescribed by the General Clauses Act. Therefore, she prayed that the matter may be remanded back to the AO for verification and if the remittance made is found to be in accordance to law, the assessee should be given relief accordingly.

5. Per contra, the Ld. DR supported the action of the Ld. CIT(A) and according to him, in the light of the order of the Hon'ble Supreme Court in the case of Checkmate Services Pvt. Ltd. Vs. CIT (Civil Appeal No. 2833 of 2016 dated 12.10.2022) the issue is no longer res-integra and therefore, does not want us to interfere with the order of the Ld. CIT(A).

6. We have heard both the parties and perused the records. The only issue is in respect of the disallowance made by the CPC u/s 143(1) of the Act regarding Employees contribution made to provident fund and ESIC to the tune of Rs.1,43,39,619/-. According to the Ld. AR, at times the due date as per PF/ESI Act fell on Sunday/Public



ITA No.343/Mum/2023
A.Y. 2020-21
Guruji Infrastructure Pvt. Ltd.

Holiday, so the assessee had remitted the same on the next day/working day of the due date as allowed by General Clauses Act. In order to buttress this argument, she drew our attention to column no. 20(b) item no. 81 (*details of contribution received for contribution of various funds as recorded to in Section 36(1)(va) of the Act*) wherein she drew our attention to item no. 81 wherein contributions were purportedly made on 15.12.2019 of an amount of Rs.1,47,600/- and Rs.4,07,210/- and also of other dates like 15.03.2020, item no. 87 & 88 etc, and pointed out that the due date as per PF/ESI Act was on Sunday and therefore, the assessee had remitted the same on the next working day which is allowable by the General Clauses Act. Taking into consideration, the aforesaid facts as brought to our notice, for the interest of justice and fair play, we set aside the impugned order of the Ld. CIT(A) and restore the issue back to the file of the AO, with a direction to look into the grievance of the assessee as to whether the assessee had deposited the Employees contribution of PF/ESIC within the due date as stipulated under PF/ESIC Act; and in any case, if the due date of remittance of Employees contribution of PF/ESIC fell on public holiday/Sunday, it need to be verified whether assessee deposited the employees contribution on the next working day, which fact may be looked into/verified by the AO; and if the assessee had remitted the same on the next working date [due-date being holiday] then AO to give relief accordingly as per General Clauses Act/Doctrine of impossibility to perform. Needless to say that an opportunity be given to the assessee before passing the order; and



ITA No.343/Mum/2023
A.Y. 2020-21
Guruji Infrastructure Pvt. Ltd.

assessee is at liberty to file written submission/documents to substantiate its claim; and AO to pass order in accordance to law.

7. In the result, the appeal of the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on this 26/04/2023.

Sd/-

(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

Mumbai; Dated 26/04/2023.
Vijay Pal Singh, (Sr. PS)

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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