

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA**

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER  
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.374/Kol/2022  
Assessment Year: 2018-19**

Signotron (India) Pvt. Ltd. Plot-J1-6, Block-EP, Salt Lake City, Sector-V, Kolkata- 700091. (PAN: AA ECS3941F)	Vs.	I.T.O. Circle-2(1), Kolkata.
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Appellant by : Shri Pratyush Jhunhunwala, Advocate  
Respondent by : Shri Kallol Mistry, JCIT, Sr. DR

Date of Hearing : 06.09.2023  
Date of Pronouncement : 08.09.2023

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1042907094(1) dated 29.04.2022 against the Intimation u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 16.10.2019 for AY 2018-19.

2. Grounds taken by the assessee are reproduced as under:

*1. The Ld. Commissioner(Appeals) has not been justified in upholding the disallowance of Rs.37,52,220 u/s. 86(1)(va) of the Act.*

*2. The Ld. Commissioner (Appeals) has erred in law in confirming the disallowance of Rs.25,00,000 u/s. 36(1)(va) of the Act on account of Gratuity fund contribution paid to Life Insurance Corporation of India.*

*3. The Ld. Commissioner (Appeals) has acted arbitrarily in not rendering any reason for upholding the disallowance of Rs. 25,00,000 on account of Gratuity Fund contribution although the same is allowable u/s. 43B of the Act.*

4. *The Ld. Commissioner (Appeals) has not been justified in upholding the disallowance of Rs.111,43,785 and Rs.1,08,435 on account of Employees contribution to Provident Fund and Employees state insurance Fund respectively.”*

3. We note that ground nos. 1 and 4 deal in the issue of disallowance on account of Employees’ contribution to Provident fund and Employees’ State Insurance Fund, owing to delay in deposit. Ground nos. 2 and 3 are in respect of disallowance towards gratuity fund contribution paid to Life Insurance Corporation of India.

4. Brief facts of the case are that assessee filed its return of income on 20.11.2018 which was processed u/s. 143(1) of the Act on 16.10.2019 by issuing intimation. While processing the return under section 143(1), disallowance of expenditure towards contribution to gratuity fund and towards employees’ contribution to PF and ESI were made which is tabulated as under:

(iv) Disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return-143(1)(a)(iv)				
Sl.No	Particulars	Amount in Income Tax Return	Amount mentioned in Form Annexure 3CD	Variance
1	Inconsistency in amount disallowed under section 43B in any preceding previous year but allowable during the previous year	2500000	0	2500000
2	Any sum received from employees as contribution to any provident fund or superannuation fund or any fund set up under ESI Act or any other fund for the welfare of employees to the extent not credited to the employees account on or before the due date [36(1)(va)]	0	1252220	1252220

5. In respect of disallowance of PF & ESI contribution of employees, Ld. Counsel referred to tax audit report in Form 3CD which was furnished along with the return, to point out

in clause 20(b) that in respect of two contribution of Employees State Insurance at Sl. No. 16 and Sl. No. 24, the deposits were made on the very next working day, after the due date. For Sl. No. 16, due date for payment was 15.08.2017 which was paid on 16.08.2017, it being Independence Day. For Sl. No. 24, the due date for payment was on 15.04.2018 which was deposited on 16.04.2018, it being Sunday. In this respect Ld. Counsel submitted that sec. 10 of the General Clauses Act provides that where there is a holiday on the prescribed due date, the next working day is to be considered as the due date for compliance and, therefore, out of the entire disallowance, these two deposits ought to be allowed to the assessee.

5.1. For the remaining disallowance on this account, Ld. Counsel fairly submitted that the issue is covered against the assessee in view of decision of Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. Vs. CIT (2022) 143 taxmann.com 178 (SC)*.

5.2. On the issue relating to disallowance of contribution to gratuity fund, Ld. Counsel submitted that it was also duly reported in Clause 26(i)(B)(a) of Form 3CD which was paid on or before the due date for furnishing the return of income u/s. 139(1). Ld. Counsel referred to the deposit receipt issued by LIC of India in respect of this contribution of Rs. 25 lakh for the group gratuity cash accumulation plan taken by the assessee. The said receipt is dated 28.08.2018 for the contribution made by the assessee. It was also submitted that this gratuity contribution fund is an approved fund maintained by LIC

of India. Ld. Counsel thus, submitted that the amount has been paid on or before the filing of return and is, therefore, ought to be allowed.

6. Per contra, ld. Sr. DR did not object on the submissions relating to disallowance of PF & ESI contribution. In respect of disallowance for gratuity fund contribution, he submitted that this documentary evidence referred by the Ld. Counsel were not placed before the Ld. CIT(A) and were filed for the first time before the Tribunal and, therefore, needs a verification.

7. We have heard the rival contentions and perused the material available on record. On the issue relating to disallowance of PF& ESI, it is squarely covered by the decision of Hon'ble Supreme Court in the case of *Chekmate Services Pvt. Ltd. (supra)* and, therefore, the addition made in this respect are sustained. However, we do find force in the submissions made by the Ld. Counsel for considering the due date as the next working day if it happens to be a holiday as per section 10 of the General Clause Act. Accordingly, we are of the considered view to allow the claim of the assessee for the two items at sl. No. 16 and 24 mentioned in clause 20(b) of Form 3CD. Accordingly, ground nos. 1 and 4 are allowed partly.

8. In respect of disallowance towards contribution of gratuity fund, ld. Counsel has evidently demonstrated that the amount has been paid to LIC of India. Further, on the objection raised by the Ld. Sr. DR, it was pointed out that the said document was furnished before the Ld. CIT(A) by referring to e-proceeding response acknowledgement placed in the paper book at page 188. From the perusal of the same, we are in agreement with the submission made by the Ld. Counsel. Considering the facts on record and the submission so made, we

delete the disallowance made of Rs. 25 lakhs in this respect.  
Accordingly, ground nos. 2 and 3 are allowed.

9. In the result, appeal of the assessee is partly allowed.  
Order is pronounced in the open court on 08.09.2023

Sd/-

(SonjoySarma)  
Judicial Member

Sd/-

(Girish Agrawal)  
Accountant Member

***Dated: 8<sup>th</sup> September, 2023***

JD, Sr. P.S.

Copy to:

1. The Appellant:
  2. The Respondent:
  3. CIT(A), NFAC, Delhi
  4. CIT
  5. DR, ITAT, Kolkata Bench, Kolkata
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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata