

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'SMC', KOLKATA**

[Before Shri Rajesh Kumar, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 591/Kol/2023**  
**Assessment Year : 2020-21**

Genesis Intellectuals Private Limited	vs	ITO, Ward-11(1), Kolkata
PAN: AAGCG 2638 H		
Appellant		Respondent

Date of Hearing	12.02.2024
Date of Pronouncement	19.02.2024
For the Assessee	Mr. C.A. Roy, ACA
For the Revenue	Mr. P.P. Barman, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2020-21 is directed against the order dated 09.05.2023 passed by the ld. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the ld. CIT(A)']. The assessee has raised the following grounds of appeal:

*"1. That the addition of delayed remittance of employee's contribution to provident fund and employees state Insurance Corporation is unsustainable since such payment was duly effected in time laid down as per statute from the date of disbursal of salary.*

*2. That without prejudice to above such contribution may be allowed as a business expenditure under section 37.*

*3. That even otherwise, the contribution of PF for the month of April 2020 for Rs. 621,331 (Sl No. 21) though reported in tax audit report erroneously does not merit disallowance for AY 2020-21.*

*4. That the disallowance is unwarranted because the due date has been considered without taking into cognizance the extension of due date granted by competent authorities from time to time.*

*5. That the appellant reserves the right to raise additional grounds.”*

2. Brief facts of the case are that in the case of assessee an intimation was issued u/s 143(1) of the Act disallowing sum of Rs. 20,99,730/- u/s 36(1)(va) being the employees contribution towards PF & ESIC on the ground that same were deposited after due dates as prescribed under the provisions of the Act.

3. Aggrieved by the order of AO assessee went into appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Dissatisfied with the above order assessee is in appeal before the Tribunal raising multiple grounds of appeal. However, at the time of hearing, ld. AR submitted before the bench that assessee is fully abide by the judgement rendered by the Hon'ble Apex Court in the case of Checkmate Services Pvt. Ltd. vs CIT (C.A. No. 2383 of 2016-SC). However, the assessee draws attention of this bench by stating that Sl. No. 21 of Clause 20(b) of the tax audit report of the assessee sum of Rs. 74,975/- payments towards ESIC has been made on 16.08.2019 as on the due date 15.08.2019 was a holiday due to which assessee could not deposit the dues in time. Therefore, such disallowance may be deleted by giving relief to the assessee. Further payments towards PF of Rs. 621331/- was made on 03.07.2020 on the part of assessee and assessee could deposit the same within due date as prescribed under the law. It was happened due to the fact that the prescribed due date was filing during the period of Covid Pandemic. Hence assessee prayed before the bench stating that

disallowance may be restricted to Rs. 14,03,434/- (instead of Rs. 20,99,730/-) by deleting sum of Rs. 6,96,306/- from the alleged addition made by the AO.

5. On the other hand, ld. DR supported the order passed by the authorities below.

6. We, after hearing the rival submissions of the parties and perused the material available on record, find that the instant delay is covered under exceptional circumstances as one is for falling on gazetted holiday and another is within period of pandemic. Therefore, we direct the AO to restrict the disallowance as in the case of assessee to the extent of Rs. 14,03,424/- instead of Rs. 20,99,730/- as made in the case of assessee. Accordingly, we direct the ld. AO to delete a sum of Rs. 6,96,306/- from such addition made as in the case of assessee. In terms of the above the appeal of the assessee is partly allowed.

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

Order pronounced in the open court on 19.02.2024

Sd/-

Sd/-

(Rajesh Kumar)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 19.02.2024  
Biswajit, Sr. PS

*ITA No. 591/Kol/2023*  
*AY: 2020-21*  
*Genesis Intellectuals Private Limited*

Copy of the order forwarded to:

1. Appellant – Genesis Intellectuals Private Limited, 1<sup>st</sup> & Ground Floor, BF-52, EKTP 117, Shantipally, Kolkata-700107.
2. Respondent – ITO, Ward-11(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

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By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata