*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+   **W.P.(C) No.9268 /2014**

Date of decision: 06th January, 2015

T.R.M.PUBLIC SCHOOL ..... Petitioner

Through: Mr. S.K.Gupta, Adv.

Versus

ASSTT. PROVIDENT FUND COMMISSIONER EMPLOYEES PROVIDENT FUND ORGANIZATION ..... Respondent

Through: Mr.Arvind Kumar Verma, Adv.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

VED PRAKASH VAISH, J. (ORAL)

1. By way of this petition under Articles 226/227 of the Constitution of India, the petitioner seeks to challenge order dated 13.10.2014 passed by the learned Presiding Officer, Employees Provident Fund Appellate Tribunal, New Delhi in ATA No.1014(14) 2014.

2. Vide the impugned order, the Appellate Tribunal, while staying the operation of the said order, directed to deposit 7Q amount along with an additional amount of Rs.10 lakhs with the respondent.

3. Notice.

4. Mr. Arvind Kumar Verma, Advocate accepts notice on behalf of respondent and states that he does not wish to file any reply.

5. With the consent of learned counsel for both the parties, the matter is taken up for final hearing.

6. The factual matrix of the present case is that the petitioner is covered under the provisions of Employees Provident Fund and

Miscellaneous Provisions Act, 1952 (for short 'the Act') and the Employees Provident Fund Scheme, 1952. The petitioner was assessed under Sections 14B and 7Q of the Act vide order dated 10.09.2014 passed by the Assistant Provident Fund Commissioner.

7. Aggrieved by the said order, the petitioner filed an appeal bearing ATA No.1014(14)2014 before the Employees Provident Fund Appellate Tribunal.

8. Vide impugned order dated 13.10.2014, while admitting the appeal and stay of operation of impugned order, the petitioner was directed to deposit 7Q amount along with an additional amount of Rs.10 lakhs with the respondent.

9. Learned counsel for the petitioner urges that in case of assessment under Section 14B of the Act, pre-deposit is not required. He has placed reliance on the judgment of this Court in '**M/s. Old Village Industries Ltd. vs. The Assistant Provident Fund Commissioner, Employees' Provident Fund Organization & Anr.**', 2005 LLR 552 and order dated 24.02.2010 in W.P.(C) 1148/2010 titled as '**Lakhani India Ltd. vs. Employees Provident Fund Appellate Tribunal'**

10. I have carefully considered the submissions made by learned counsel for the petitioner.

11. In **M/s. Old Village Industries Ltd.** (supra), this Court held as under:

> "The power to waive or reduce the amount to be deposited is relatively to the amount determined by the Officer under Section 7A of the Act. In other words the pre-requisite of deposit of 75% of the demanded amount applicable to an order passed under Section 7A and not to other provisions. The Legislature in its own wisdom has restricted the application of the provisions of Section 7(1) to the order

passed under Section 7A. Such provisions are to be construed strictly and cannot be given a wider meaning so as to create a liability which is intended to be correct to the entertainment of an appeal. The liability to deposit arises in the situation strictly contemplated under the provisions of this section. There is nothing in the section so as to extend its application to an order passed under Section 14B of the Act. An employer has a right to prefer an appeal against an order under Section 14B, under Section 7(1) of the Act but the pre-condition of deposit for entertainment of such an appeal is not covered under Section 7-O of the Act. Thus, I have no hesitation in rejecting the contention of the respondents that it would be mandatory for the employer to deposit 75% of such amount before appeal can be entertained or even that there cannot be stay of recovery of the said amount by the Appellate Authority. The argument raised on behalf of the respondents would be untenable even for another reason that damage is the consequence of the demand raised under Section 7A of the Act. The provisions of Section 14B of the Act attracted only if there is default on the part of the employer. It being a consequential liability essentially must fall in a category of not the principal liability to attract stringent provisions of pre-deposit to the hearing of the appeal. Such provisions being related to revenue would be construed strictly whether to the advantage or disadvantage of the person upon whom the liability is sought to be fastened. Once the provisions of Section 7-O does not include an appeal against an order under Section 14B then it would be in no way permissible to include such an order by implication or otherwise."

12. On a bare perusal of Section 7(1) of the Act, it is clear that an employer has a right to prefer an appeal against an order under Section 14B of the Act. The factual position is considered in the background

of legal principle enunciated in the aforesaid judgment and in my view the petitioner is not liable to pay an additional amount of Rs.10 lakhs.

13. In view of the aforesaid discussion, the impugned order dated 13.10.2014 is modified to the extent that Employees' Provident Fund Appellate Tribunal shall hear the appeal without insisting on deposit of additional amount of Rs.10 lakhs and decide the case in accordance with law.

14. The petition stands disposed of accordingly.

CM 21006/2014

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

JANUARY 06, 2015
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