IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.3051 of 2011

Date of decision: 05.12.2017

Sudarshan Weaving Factory …..Petitioner

Versus

Presiding Office, Employees Provident Fund Appellate Tribunal & another …..Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Vivek Salathia, Advocate for the petitioner.

Mr.Sanjay Tangri, Advocate for respondent No.2.

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P.B. BAJANTHRI, J (ORAL)

In the instant petition, the petitioner has challenged the order dated 04.08.2010 (Annexure P-1) of the first respondent and order dated 11.11.2002 (Annexure P-2) of the second respondent. He has further sought for a direction to the respondents to re-assess the liability of the petitioner and for affording opportunity of hearing to the petitioner.

The petitioner is a firm. They are into the business of weaving. The respondent EPF Department proceeded to assess the EPF amount for the period from May, 1997 to March, 2001.

Despite giving 18 opportunities to the petitioner by the Assistant Provident Fund Commissioner before drawing the proceedings under Section 7-A of the Employees Provident Funds and Miscellaneous Provision Act, 1952 (for short “the EPF Act”), the same has not been utilised by the petitioner. Thus, with reference to available records, EPF department had proceeded to determine the EPF amount to the extent of

Rs.1,28,802/-.

Feeling aggrieved by the determination of EPF by the Assistant Provident Fund Commissioner under Section 7-A of the EPF Act dated 11.11.2002, petitioner preferred an appeal before the appellate Tribunal. The appellate Tribunal decided the petitioner's appeal on 04.08.2010 while affirming 7-A proceedings stating that petitioner has not produced any material so as to interfere with the 7-A proceedings. Thus, the present petition questioning 7-A proceedings as well as appellate Tribunal order.

Learned counsel for the petitioner submitted that the petitioner was a partnership firm and there was a dispute between the brothers consequently, the firm was closed in the month of December, 1997. Hence the question of assessment for the period from May, 1997 to March, 2001 is impermissible. It was further submitted that the Assistant Provident Fund Commissioner while drawing 7-A proceedings relied on old records available with the office and determined the amount. There is even no reference with regard to the old record so as to determine the amount mentioned in 7-A proceedings and to that extent 7-A proceedings are arbitrary and illegal. Consequently, order of the appellate Tribunal is also liable to be set aside on the score that the appellate Tribunal has failed to appreciate the contention of the petitioner in respect of what is basis to determine the EPF amount under 7-A proceedings. Learned counsel for the petitioner relied upon the following decisions:

(1) M/s Ramala Sakhari Chini Mills Ltd. Vs. Employee’s Provident Fund Appellate Tribunal, 2000(9) SCC 540;

(2) H.P. State Forest Corporation Vs. Regional Provident Fund Commissioner, 2008(5) SCC 756;

(3) Food Corporation of India Vs. Provident Fund Commissioner & others, 1990(1) SCC 68 and

(4) CWP No.10011 of 2011 (O&M) & connect matter titled as The Service Club Vs. Presiding Officer and another, decided on 24.08.2012 by a Coordinate Bench of this Court.

In order to support the contention that 7-A proceeding assessment is resorted to where without there being any material in that event the matter is required to be remanded.

Per contra, learned counsel for the respondent resisting the petitioner's claim vehemently contended that it is evident from the finding of the Assistant Provident Fund Commissioner under 7-A proceedings that the petitioner has been granted sufficient opportunities of 18 times to assist in the 7-A proceedings, but the same has not been availed by the petitioner. Consequently, he cannot contend that 7-A proceedings are arbitrary and illegal. It was further contended that if the petitioner firm was closed in the month of December, 1997, it was the bounden duty of the petitioner to inform the EPF Department as and when the firm was closed in the year 1997 whereas it has been informed only on 19.09.2001**.** That apart, it was further contended that before the appellate Tribunal the petitioner had opportunity to produce necessary material, but the same has not been utilised by the petitioner as is evident from para 6 of the appellate Tribunal order. Having regard to the conduct of the petitioner, no interference is called for in respect of 7-A proceedings and the appellate Tribunal decision.

Heard the learned counsel for the parties.

After perusal of the 7-A proceedings, it is evident from para 2 of order dated 04.08.2010 that the petitioner had been given 18 times of opportunities to lead necessary material so as to decide the 7-A proceedings. Petitioner has not availed opportunities to lead evidence. In other words, there is no cooperation from the petitioner in conducting 7-A proceedings by the Assistant Provident Fund Commissioner. Therefore, the Assistant Provident Fund Commissioner based on the old record available with the office, has come to the conclusion and determined the EPF amount to the extent of Rs.1,28,802/- as a total amount. Even before the Tribunal, petitioner has not availed the opportunity of submitting necessary material as is evident from para No.6. Having regard to the conduct of the petitioner, question of interference with 7-A proceedings and appellate Tribunal is not warranted. However, in view of the Hon'ble Supreme Court’s decision cited supra where the Hon'ble Supreme Court has set aside the 7-A proceedings and remanded the matter only on the score that 7-A proceedings have been drawn in the absence of any material, in the present case also due to non-cooperation of the petitioner the necessary material was not available. Whereas, the Assistant Provident Fund Commissioner with reference to old record available with the office determined the EPF amount. While determining so, he has not furnished the details of the available old record so as to how he has come to the conclusion that the petitioner is liable to pay total determined amount of Rs.1,28,802/-.

Therefore, order of the Assistant Provident Fund Commissioner dated 11.11.2002 and appellate Tribunal order dated 04.08.2010 are set aside and the matter is remanded back to the Assistant Provident Fund Commissioner for redrawing 7-A proceedings.

Petitioner is hereby directed to appear before the Assistant Provident Fund Commissioner on 06.02.2018. The petitioner is also hereby directed to furnish all materials which are available with them for the purpose of drawing 7-A proceedings and to cooperate in drawing 7-A proceedings by the Assistant Provident Fund Commissioner.

The Assistant Provident Fund Commissioner is hereby directed to redraw 7-A proceedings within a period of three months from receipt of the petitioner's application and record produced, if any. If the petitioner fails to produce any record within two months, in that event, order dated 11.11.2002 and 04.08.2010 of the Assistant Provident Fund Commissioner and EPF Tribunal, holds good.

Petition is allowed. However having regard to the conduct of the petitioner in 7-A proceedings and in appeal proceeding, petitioner is liable to pay cost of Rs.One lakh. The costs shall be paid by the petitioner to the EPF Department within a period of two months from today.

At this stage, learned counsel for the petitioner submitted that determined of EPF amount under 7-A proceedings on 11.11.2002, has been paid in two instalments i.e. one on 01.07.2010 thereafter in the month of August or September, 2011, and the same shall be adjusted depending upon the aforesaid directions and orders passed. Respondents-EPF authorities are hereby adjust the amount if any after drawing proceedings. Respondent-EPF are at liberty to proceed in accordance with law.

(P.B.BAJANTHRI)
JUDGE

05.12.2017
Anjal

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No