IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9560-2013 (O&M)
Decided on: 27.07.2017

M/s. Sandhu Brik Klin .... Petitioner

Versus

Employees Provident Fund Appellate Tribunal, New Delhi and another

..... Respondents

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

Present: Mr. Raj Karan Singh, Advocate,
for the petitioner.

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

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P.B. BAJANTHRI, J (ORAL)

In the instant writ petition, the petitioner has questioned the order dated 10.09.2007 and 15.09.2011 (Annexures P-1 and P-3) respectively.

The provident fund for the period from 08/2005 to 07/2007 was stated to have not been remitted by the petitioner. In this regard, the respondents issued notice to the petitioner for their appearance before the authority on 28.05.2007, 13.06.2007, 29.06.2007, 25.07.2007, 22.08.2007 and 29.08.2007. Despite number of notices, the petitioner remained ex-parte in the 7A proceedings conducted by the Assistant Provident Commissioner, Amritsar. The respondents have proceeded to pass an order under Section 7A of EPF Act against the petitioner on 10.09.2007.

Aggrieved by the order dated 10.09.2007 of the Assistant Provident Fund Commissioner, the petitioner preferred an appeal before the Appellate Tribunal, New Delhi. The petitioner's appeal was rejected vide order dated 15.09.2011. Hence, this petition.

Learned counsel for the petitioner submitted that the petitioner has deposited provident fund amount from August 2005 to July 2007 and produced the copy of challans vide Anneuxre P-4 to contend that the petitioner has paid the amount of provident fund timely. The Assistant Provident Fund Commissioner in 7A proceeding, determined the amount, which is due to the extent of Rs.1,82,070/- for the assessment period from August 2005 to July 2007 including the interest under Section 7Q of the EPF & MP Act, 1952. He further submitted that if the mater is remitted to the Assistant Provident Fund Commissioner for a fresh proceeding under 7A, he is able to establish that provident fund for the assessment period from August 2005 to July 2007 was paid by him would be established to avoid the determination of interest under Section 7Q.

Per contra learned counsel for the respondents submitted that despite giving ample opportunity to the petitioner, he has failed to submit reply and also failed to avail the opportunity for producing the documents like Annexure P-4. Therefore, there is no infirmity in the order dated 10.09.2007 so as to set aside or remit the matter.

Heard learned counsel for the parties.

Perusal of Annexure P-1 dated 10.09.2007, a table has been prepared for calculating Rs.1,82,070/-, which is due from the petitioner in respect of provident fund as well as interest for the assessment period from August 2005 to July 2007. The table do not disclose relating to payment made by the petitioner vide Annexure P-4 for various period whether the payment made by the petitioner to the extent of Rs.325/- etc. has been deducted while determining the provident fund by the authority in the order dated 10.09.2007. In other words, there is no specific determination of provident fund to the extent of Rs.1,62,564/- whether it is excluding whatever the payment made by the petitioner vide Anneuxre P-4 or not. Therefore, order dated 10.09.2007 is, hereby, set aside so also appellate authority order dated 15.09.2011. The Assistant Provident Fund Commissioner/competent authority is, hereby, directed to proceed a fresh proceeding under 7A against the petitioner for the assessment period from August 2005 to July 2007 within a period of three months from today.

The petitioner is, hereby, directed to coordinate in deciding the 7A proceeding with the respondents within the stipulated period as stated above.

The petition is allowed, subject to payment of cost of Rs.40,000/-. Cost shall be paid by the petitioner to the respondent-department within a period of two months from today.

(P.B. BAJANTHRI)
JUDGE

27.07.2017
Dinesh

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No