IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

227-4 **CWP-2072-2017 (O&M)**
Date of decision:22.02.2018

Tirath Ram Naresh Kumar BKO

...Petitioner

Versus

Employee's Provident Fund Organization & Ors.

.... Respondents

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

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

Mr. Sanjay Tangri, Advocate for the respondents.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has challenged interim order of the Employees' Provident Fund Appellate Tribunal (for short 'EPFAT') dated 18.01.2017 (Annexure P-1).

2. Petitioner-Institute is covered under Employees' Provident Fund & Miscellaneous Provision Act, 1952 (for short 'EPF Act'). Respondent-department determined EPF amount. Thereafter, due to delay in remiting EPF amount proceeded to pass order under Section 14-B of the EPF Act on 05.01.2017 while levying the damages. Feeling aggrieved by the order dated 05.01.2017 petitioner presented appeal under Section 7-I of the EPF

Act before EPFAT. EPFAT passed interim order to restrain respondent from recovery of amount assessed u/s 14-B of the Act. Hence present appeal insofar as challenge to interim order dated 18.01.2017 passed by EPFAT, New Delhi.

3. Learned counsel for the petitioner submitted that Tribunal cannot insist to restrain respondent from recovery of amount assessed u/s 14-B of the Act in respect of appeal preferred against order passed under Section 14-B. He relied on provisions of the EPF Act like Sections 7-A, 7-I and 7-O. He also relied on Rule 7 of EPF Appellate Tribunal (Procedure) Rules, 1997. In support of his contention that tribunal cannot insist to restrain respondent from recovery of amount assessed u/s 14-B of the Act he relied on the following decisions:-

1. ***Sri Naga Nanthana Mills Ltd., Vakkanankundu Post, Aruppukottai Taluk, Virudhunagar District, through its Director versus The Presiding Officer, Employees Provident Fund Appellate Tribunal and another*** [W.P.(MD)No.18195 of 2013]
2. ***M/s Bedi & Bedi Associates (Regd.) versus Central Board of Trustees*** [W.P.(C)8576/2015 & C.M.No.18547-48/2015]
3. T.R.M. Public School versus Asstt. Provident Fund Commissioner Employees Provident Fund Organization [W.P. (c) No. 9268/2014.
4. ***Old Village Industries Ltd versus Asstt. Provident Fund Commissioner, Employees' Provident Fund Organization and another*** reported in 2004 (115)DLT 510.

He has also pointed out and distinguished with reference to decision cited by counsel for the respondents ***M/s Talaguppa Playwood***

Products (P) Ltd. Versus Employees Provident Funds Appellate Tribunal, New Delhi and another reported in 2006 LIC 1015 with reference to later decision of the Delhi High Court. In view of the principle laid down in the aforesaid decision in terms of the direction dated 18.01.2017 to restrain respondent from recovery of amount assessed u/s 14-B of the Act for entertaining the appeal may not be correct. Therefore, Annexure P1 is liable to be set aside.

4. Per contra, learned counsel for the respondents while resisting the petitioner's contention specifically pointed that Annexure P1 dated 18.01.2017 is an admitted appeal. As an interim measure EPFAT directed the petitioner to to restrain respondent from recovery of amount assessed u/s 14-B of the Act. Therefore, it is not relating to restrain respondent from recovery of amount assessed u/s 14-B of the Act for the purpose of entertaining appeal under Section 7-I of EPF Act against the order under Section 14-B of the EPF Act. It was further contended that restraining respondent from recovery of amount assessed u/s 14-B of the Act can be insisted even for the orders passed under Section 14-B in view of the language employed in 7-A(b) of the EPF Act. In support of the said contention he relied on decision passed in ***M/s Talaguppa Playwood Products (P) Limited's*** case (supra).

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether EPFAT by interim order dated 18.01.2017 has directed to restrain respondent from recovery of amount assessed u/s 14-B of the Act for the purpose of

entertaining the appeal or not or is it relating to as interim measure? During pendency of the appeal petitioner was directed to restrain respondent from recovery of amount assessed u/s 14-B of the Act. Extract of the order of the EPFAT dated 18.01.2017 reads as under:-

> "P*resent appeal filed by the appellant under Section 7-I of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter shall be referred as 'the Act'), against the orders dated 29.12.2016 & 05.01.2017 passed by the respondent.*
>
> *Now come upon 24.02.2017 for filing counter reply on behalf of respondent. Till then respondent is restrained from recovery of amount assessed u/s 14-B of the Act only.*
>
> *Sd/- (Harish Gupta),*
> *Presiding Officer. EPFAT"*

Perusal of the aforesaid order it is evident that appellant/petitioner was heard. Appeal is admitted for consideration. Further petitioner was directed to restrain respondent from recovery of amount assessed u/s 14-B of the Act. In view of the admission of the appeal it is evident that EPFAT has entertained the petitioner's appeal. Therefore, petitioner's contention that by virtue of interim order dated 18.01.2017 EPFAT has insisted to restrain respondent from recovery of amount assessed u/s 14-B of the Act is untenable and cannot be accepted. Once the issue is not relating to restrain respondent from recovery of amount assessed u/s 14-B of the Act for entertaining appeal under Section 7-I of the EPF Act, question of considering the issue relating to restrain respondent from recovery of amount assessed u/s 14-B of the Act in respect of an appeal under Section 7-I against order passed under Section 14-B of the EPF Act do not arise in the present petition. Accordingly, petitioner has not made out a case in respect of interference with interim order of the EPFAT dated 18.01.2017 (Annexure P1).

7. Accordingly, CWP stands dismissed.

(P.B.BAJANTHRI)
JUDGE

22.02.2018
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No