BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.8094 of 2010
and
M.P.(MD)No.1 of 2010

Ashoka Lodge,
represented by its Managing Director,
R.Selvakumar. ... Petitioner

Vs.

1.The Employees Provident Fund Appellate Tribunal,
Scope Minar,
Core-II, 4th Floor,
Laxmi Nagar District Centre,
New Delhi-110 092.

2.The Assistant Provident Fund Commissioner,
E.P.F. Organisation,
Sub-Regional Office,
18, Shree Complex,
Madurai Road, Trichy-8. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari calling for the records of the first respondent in the proceedings in A.T.A.No. 632 (13) of 2005, dated 31.03.10 and quash the same by which the order of the second respondent dated 19.01.2005 was confirmed.

For Petitioner : Mr.S.Karthik

For Respondents : Mr.N.Dilip Kumar for R.2
: No Appearance for R.1

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ORDER

This Writ Petition is filed seeking issuance of a writ of certiorari to call for the records of the first respondent in the proceedings in A.T.A.No. 632 (13) of 2005, dated 31.03.10 and quash the same by which the order of the second respondent dated

19.01.2005 was confirmed.

2. The case of the petitioner is that the Ashoka Lodge is run by a partnership firm from the year 1967 and it is functioning at 93, Abraham Pandithar Road, Thanjavur-1. Thereafter, Ashoka Lodge (Boarding) started a restaurant in the year 1967 by another partnership firm at 79, Abraham Pandithar Road, Thanjavur-1. Few partners are common for both the partnership firm. Both establishments were maintaining separate books of accounts, having separate registrations under the Income Tax Act and the employees were separate and they were not inter-transferable between the two establishments. Ashoka Lodge (Boarding) was independently covered under the provisions of the EPF Act and Ashoka Lodge (Boarding) was closed on 07.09.1999. Since Ashoka Lodge has never employed 20 or more persons, it is not covered under the provisions of the EPF Act and Ashoka Lodge is still functioning.

3. While so, the second respondent issued a summon dated 09.07.2004 under Section 7-A of the EPF Act to the petitioner to determine the PF contribution amount for the period from September 2001 to April 2004. The petitioner gave a reply dated 04.01.2005 denying the coverage under the EPF Act. The petitioner produced the attendance registers, wages registers, balance sheets, Day books and ledgers, at the time of personal hearing before the second respondent. The second respondent passed the order dated 19.01.2005 holding that both the above two establishments got unity of management, financial nexus and same objective and hence, the petitioner was liable to pay Rs.1,22,036/- towards arrears of contribution amount.

4. Against the said order, the petitioner preferred a review petition before the second respondent under Section 7-B of the EPF Act. However, the second respondent confirmed the earlier order dated 19.01.2005, by order dated 19.01.2005. Aggrieved by the order of the second respondent dated 18.05.2006, the petitioner filed an appeal before the EPF Appellate Tribunal. However, the Appellate Tribunal confirmed the order passed by the EPF authority, vide order dated 31.03.2010. Challenging the same, the present writ petition is filed.

5. Learned Counsel appearing for the petitioner would submit that Ashoka Lodge and Ashoka Lodge (Boarding) are different entity and functioned in the different places and both entities have no nexus in each other and the registration was obtained separately under the Income Tax Act and the employees were separate and they are not inter-transferable and while so, the EPF authority erroneously passed the impugned order.

6. Per contra, the learned Counsel appearing for the second respondent would submit that the adjudicating authority viz., the EPF authority elaborately considered the issue after hearing the petitioner and on a perusal of the materials, arrive at conclusion that the partners of both entities are one and the same and they are functioning within close proximity and functioning in the same street and all the factual disputes are fairly considered by the original authority and the same was confirmed by the appellate authority, which cannot be interfered by this Court under Article 226 of the Constitution of India.

7. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the second respondent and perused the materials placed on record.

8. Admittedly Ashoka Lodge is run by a partnership firm from the year 1967 and it is functioning at 93, Abraham Pandithar Road, Thanjavur-1. Thereafter, Ashoka Lodge (Boarding) started a restaurant in the year 1967 by another partnership firm at 79, Abraham Pandithar Road, Thanjavur-1. Few partners are common for both the partnership firm. Both establishments were maintaining separate books of accounts, having separate registrations under the Income Tax Act and the employees were separate and they were not inter-transferable between the two establishments. Ashoka Lodge (Boarding) was independently covered under the provisions of the EPF Act and Ashoka Lodge (Boarding) was closed on 07.09.1999. Since Ashoka Lodge has never employed 20 or more persons, it is not covered under the provisions of the EPF Act and Ashoka Lodge is still functioning.While so, the second respondent issued a summon dated 09.07.2004 under Section 7-A of the EPF Act to the petitioner to determine the PF contribution amount for the period from September 2001 to April 2004. The petitioner gave a reply dated 04.01.2005 denying the coverage under the EPF Act. The petitioner produced the attendance registers, wages registers, balance sheets, Day books and ledgers, at the time of personal hearing before the second respondent. The second respondent passed the order dated 19.01.2005 holding that both the above two establishments got unity of management, financial nexus and same objective and hence, the petitioner was liable to pay Rs.1,22,036/- towards arrears of contribution amount. On appeal, the same was confirmed by Appellate Tribunal, vide order dated 31.03.2010.

9. On a perusal of the records, it would reveal that the adjudicating authority viz., the EPF authority elaborately considered the issue after hearing the petitioner and on a perusal of the materials, arrive at conclusion that the partners of both entities are one and the same and they are functioning within close proximity and functioning in the same street and all the factual disputes are fairly considered by the original authority and the same was confirmed by the appellate authority.

10. For the reasons aforesaid, the concurrent conclusions arrived at by the authorities below, being essentially in the nature of facts and the inference drawn upon the same being legitimate inferences, this Court is of the considered opinion that no interference is warranted with the well considered findings rendered by the authorities below. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

SSL

To

1.The Employees Provident Fund Appellate Tribunal,
Scope Minar,
Core-II, 4th Floor,
Laxmi Nagar District Centre,
New Delhi-110 092.

2.The Assistant Provident Fund Commissioner,
E.P.F. Organisation,
Sub-Regional Office,
18, Shree Complex,
Madurai Road, Trichy-8.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-13666[F] dated 25/03/2021)

+1 CC to M/s.S.KARTHIK, Advocate (SR-13761[F] dated 25/03/2021)

W.P(MD)No.8094 of 2010
24.03.2021

GS (04.05.2021) 4P 5C