232 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP-1812-2020
Date of Decision: 09.12.2022

M/s Sudarshan Weaving Factory ...... Petitioner

Versus

Regional PF Commissioner .... Respondent

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Vaibhav Narang, Advocate,
for the petitioner.

Mr. Sanjay Tangri, Advocate,
for the respondent.

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RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondent to pay interest on the amount which stood deposited for more than 09 years with the respondent; along with certain other prayers.

It is submitted by the learned counsel for the petitioner that the Assessing Authority had passed the assessment order dated 11.11.2002 (Annexure P-1) assessing an amount of Rs.1,28,802/- as the provident fund deposit default liability of the petitioner. Since, the order was passed by the Assessing Authority ex-parte, therefore, an appeal was filed by the petitioner. But even the said appeal was dismissed by the Appellate Authority, vide order dated 04.08.2010. Aggrieved against the orders passed by the statutory authorities, the petitioner had preferred CWP-3051-2011, which was disposed of by this Court; vide order dated 05.12.2017 (Annexure P-2) and the matter was remanded to the Assessing Authority for conducting fresh assessment after granting opportunity of hearing to the petitioner. On re-assessment, the Assessing Authority has found the liability of the petitioner only to the extent of Rs.13,656/-. However, since the petitioner had already deposited an amount of Rs.1,28,802/-, therefore, excess amount was refunded by the respondent to the petitioner on 25.09.2018. On these facts, the learned counsel for the petitioner has argued that since the respondent-authorities charge interest on delayed payment of provident fund contributions, therefore, they are also liable to pay the interest on the excess amount deposited by the petitioner; in case of refund of the same by the authorities. Learned counsel for the petitioner has relied upon a judgment rendered by the Patna High Court in **M/s Super Kisan Udyog Vs. Regional Provident Fund Commissioner, (Patna), 2019(163) FLR 959**.

On the other hand, learned counsel for the respondent has submitted that the initial assessment had to be made ex-parte because the petitioner had not produced the record despite being served in the proceedings and even after getting 18 opportunities. Even the appeal against the assessment order was dismissed by the Appellate Authority. Although, in the writ petition, this Court had remanded the matter to the assessing authority for making re-assessment after hearing the petitioner, however, this order was passed by this Court only after imposing the costs of Rs.1,00,000/- upon the petitioner. Therefore, the petitioner himself is liable for the delay in proper assessment and the consequent delay in refund of the excess amount which was deposited by the petitioner as per the assessment against him in the first instance. Moreover, the respondent-department has never charged any interest from the petitioner by passing any order under Section 7(Q) of the Employee Provident Fund Act. Therefore, there is no question of any interest being paid by the respondent-department on the refunded amount.

Having heard the learned counsel for the parties, this Court does not find any substance in the arguments raised by the learned counsel for the petitioner. It is not even in dispute that the initial order of assessment was passed by the Assessing Authority on account of non-production of the documents and the records by the petitioner even after getting as many as 18 opportunities. Even, the appeal was dismissed, thereby upholding the assessment made by the Assessing Authority. Although in the writ petition this Court had set aside the orders passed by the respondent-authorities, however, that had come only at a cost against the petitioner. Therefore, even the order of the High Court was not based on any default on the part of the authorities, rather the same was passed only to grant an opportunity to the petitioner to rectify its mistake and to produce the material before the authorities. On being shown the record, the Assessing Authority has passed the corrected order; which has reduced the liability of the petitioner qua deposit of the amount, which has resulted in refund of excess amount assessed earlier. Therefore, in this entire sequence of facts, it cannot be said that the respondent-authorities were at fault in any manner.

Moreover, the respondent-authorities are the statutory authorities having powers of making assessment of liability. Any wrong assessment and the consequent refund of the excess amount on re-assessment; if any, cannot invite any interest on the excess amount unless there is a provision in the EPF Act providing for such an interest payment. Dehorse any such provision, since the authorities under the EPF Act are only discharging their statutory duties occasioned only by default of assessee, therefore, they cannot be burdened with any interest on account of variance in the assessment. Even the reduced liability on re-assessment is based on default of assessee and not on fault of assessing authorities. Therefore, the general proposition of refund carrying interest is not applicable on statutory assessments. Learned counsel for the petitioner has failed to point out any provision in the EPF Act entitling him to any interest on refund of the amount pursuant to any re-assessment done by the Assessing Authority. Therefore, this Court does not find any ground or legal basis to award interest to the petitioner.

In view of the above, finding no merits in the present petition, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

09.12.2022
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No