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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 28.03.2023

+ W.P.(C) 7193/2011 & CM APPL. 43878/2022 - Release of amount
VISHNU SECURITY SERVICES Petitioner

Through: Mr. Sonal Kr. Singh, Mr. Obhirup
Ghosh, Advs.

versus

REGIONAL PROVIDENT FUND COMMISSIONER AND ANR

..... Respondents

Through: Mr. Naresh Gupta, Ms. Nikita Gupta,
Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

CM APPL. 43589/2022(CM For Restoration)

1. In view of the order passed on 11.10.2022, the present application has been rendered infructuous and is, accordingly, disposed of.

W.P.(C) 7193/2011

2. The present petition under Article 227 of the Constitution of India seeks to assail the order dated 04.07.2011 passed by the Employee Provident Fund Appellate Tribunal. Vide the impugned order, the Appellate Tribunal has rejected the petitioner's appeal against the order dated 18.08.2006 passed under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 directing the petitioner to pay a sum of Rs.2,90,417/- towards the Provident Fund dues.

3. The primary submission of the learned counsel for the petitioner is that the impugned order dated 04.07.2011 is an unreasoned order, having being passed without dealing with the submissions and documents filed by the petitioner. He submits that even though it is an admitted position that the petitioner had filed copies of its Income Tax Returns to demonstrate that it was not carrying out any business after 2002, the learned Tribunal erroneously recorded that no documents were produced by the petitioner. Even the order passed by the learned Assessing Officer on 18.08.2006 was wholly perverse as the said order presumes that the petitioner had not produced any documents whereas as a matter of fact, the sole proprietor of the petitioner had duly appeared in the proceedings before the learned Assessing Officer on 31.07.2006 and made a categorical statement that no business was being carried out by the petitioner after 2002. He submits that if the petitioner had been directed, the petitioner would have filed the relevant wage sheets and Income Tax Returns even before the learned Assessing Officer but no such direction having been issued, no adverse inference could have been drawn against the petitioner. He, therefore, prays that the impugned order be set aside and the matter be remanded back to the Appellate Tribunal for re-adjudication of the petitioner's appeal on merits.

4. On the other hand, learned counsel for the respondents seeks to defend the impugned order by contending that once the petitioner did not produce any documents before the Assessing Officer, the Appellate Tribunal was justified in not considering those documents which were sought to be produced for the first time in the appellate proceedings. He, thus, contends that the Appellate Tribunal was justified in rejecting the petitioner's appeal and therefore prays that the writ petition be dismissed.

5. In order to appreciate the rival submissions of the parties, it would be apposite to note the relevant extracts of the impugned order which read as under:

6. Though it is contended that the establishment was closed in the year 2002 no document has been placed on record to substantiate this point. The appellant had filed the information obtained by him which shows that the appellant was having the business and such information was obtained on 5.4.2006 so the document filed by the appellant itself show that the appellant was functioning. Moreover, once an establishment comes within the ambit of the Act it continues to be covered by the Act until it is proved that the establishment no more exists. In the decision reported in 2006 Vol. 1 LLJ Andra Pradesh Page 558 PF Commissioner Vs. Kajal & Sons Transport Gudiwada, wherein the lordship held that, 'once the firm was covered by the Act it continued to be covered by it, till the authorities came to a conclusion that the firm no more exists. In the absence of specific evidence regarding the winding of the firm, the respondent is founded to be liable.' In the case in hand, no document has been filed to prove that the establishment was actually closed.

7. Thus in view of the discussion held above, no infirmity is noticed in the order of the authority. Hence ordered, the appeal is dismissed. Copy of order be sent to the parties. File be consigned to record room.

6. From the submissions made at the bar, what emerges is that the petitioner's specific plea that Income Tax Returns to show that no business was being carried out by it after 2002 were filed along with the appeal, has not been denied by the respondent. However, para 6 of the impugned order passed by the Appellate Tribunal records that no documents had been filed by the petitioner to prove that the establishment was actually closed after 2002. This finding is on the face of it, factually incorrect. Not only have the

respondents admitted in their counter affidavit that Income Tax Returns were filed by the petitioner before the Appellate Tribunal but even before this Court, the respondents have not denied that the Income Tax Returns were available before the Appellate Tribunal. Their only plea is that these documents could not have been taken into consideration by the Appellate Tribunal as the same were not filed before the Assessing Officer. In my considered view, even if this plea of the respondents that the documents filed for the first time before the Appellate Tribunal could not have been taken into consideration were to be accepted, the Appellate Tribunal could not have opined that no documents had been filed when the same were infact filed with the appeal. This evidently shows that the Appellate Tribunal did not even examine the documents which were filed along with the appeal. The impugned order, therefore, suffers from non-application of mind and can therefore not be sustained.

7. For the aforesaid reasons, the impugned order deserves to be quashed and is, accordingly, set aside by remanding the appeal back to the Appellate Tribunal for fresh adjudication in accordance with law. The petitioner's appeal No. 596(5)/2006 is restored to its original position and will be listed before the Appellate Tribunal on 20.04.2023 for consideration on merits.

8. Taking into account that the appellant had deposited 50% of the amount in terms of the impugned order with the Registrar General of this Court as a pre-condition for stay, the Appellate Tribunal is directed to consider the petitioner's appeal without insisting on any further deposit but the petitioner will not be entitled to seek withdrawal of the amount deposited before this Court till the disposal of its appeal. Further, the operation of the impugned order and of the initial order dated 18.08.2006 will remain stayed

during the pendency of the appeal. Keeping in view that the matter pertains to the year 2006, the learned Tribunal will endeavour to decide the appeal as expeditiously as possible.

9. The petition is disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

MARCH 28, 2023

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