08.09.2023
sayandeep
Sl. No. 03
Ct. No. 12

MAT 27 of 2023
with
CAN 1 of 2023
CAN 2 of 2023

Regional Provident Fund Commissioner West Bengal & Ors.
-Versus-
M/s Muramen Travels & Ors.

Ms. Aparna Banerjee
Mr. Shiv Chandra Prasad
.......for the appellants
Mr. Anant Kr. Shaw
Mr. Ravi Kr. Debey
...... for the respondent No. 1
Mr. Mainak Ganguly
.....for the respondent No. 4

In Re: CAN 1 of 2023

There is a delay of 108 days in presenting the appeal.

Sufficient cause being shown for not being able to present the appeal within the period of limitation. the delay of 108 days in presenting the appeal is condoned.

Accordingly, the application for condonation of delay is allowed and disposed of.

In Re : MAT 27 of 2023

The first respondent filed writ petition No. 24257 of 2012 challenging the order dated 20th March, 2012 passed by the third respondent in the writ petition under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 clubbing together the respondent nos. 1 and 2. According to the first respondent, both respondent Nos. 1 and 2 are separate registered partnership firm, separate entities with separate PAN numbers. The first respondent is carrying on travel agent business while second respondent is doing courier service. The first respondent is carrying on business in the ground floor and second respondent is carrying on business in the second floor in the same premises. Except carrying on business in the same building in different floors, there is no connection between the two entities namely respondent Nos. 1 and 2 and pray for setting aside the order dated 20th March, 2012.

The appellants before the learned Single Judge contended that there was common partners and might be common employees. They further contended that both respondents 1 and 2 have common chartered accountant. As per the fact finding report of inspector, both respondents have money transaction and unsecured financial transaction and hence order passed by the appellant No. 3 under Section 7A clubbing both respondent Nos. 1 and 2 as per Section 2A of the Act is valid.

The learned Judge considering the above materials, disposed of the writ petition by setting aside the order of the third appellant dated 20th March, 2012 holding that respondents 1 and 2 are different entities and gave liberty to the appellants to find out whether respondents 1 and 2 can be covered in accordance with law.

Against the said order, the present appeal is filed.

The main contentions of the learned counsel for the appellant is that as per Section 2A of the said Act the appellant has rightly clubbed together both respondents 1 and 2.

Section 2A is extracted hereunder for reference:

"Establishment to include all department and branches.- For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment."

As per this Section the different departments or branches either situate in the same place or in different place can be clubbed together and the provisions of provident fund Act can be applied.

In the present case, the respondent Nos. 1 and 2 have claimed that they are separate registered partnership firm carrying on different businesses. They have registered with Income Tax department as different unit and obtained different PAN numbers. The appellant has not denied that respondents 1 and 2 are having different PAN numbers and are carrying on different business. The learned Judge considering the above materials set aside the order of the third appellant passed under Section 7A of the Act.

From the above materials and reasons given by learned Judge, we find there is no reason or circumstances warranting interference by the order of the learned Single Judge.

The appeal fails and dismissed.

It is open to the appellant to proceed against the respondent Nos. 1 and 2.

The learned counsel appearing for the appellant submitted that the first respondent filed contempt petitioner being CPAN 330 of 2023 for not complying the liberty given by the learned Single Judge and the same is pending. In view of the said submission, it is open to the appellant to proceed further as per the earlier direction of the learned single Judge within 4 weeks from today.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(V.M. Velumani, J.)

(Rai Chattopadhyay, J.)