BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)No. 2141 of 2015
and
M.P(MD)No.1 of 2015

M/s.Madurai Nadar Uravinmurai
Jeyaraj Nadar Higher Secondary School,
Nagamalai Pudukottai,
Madurai-625 013,
Through its Secretary ... Petitioner

Vs.

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002.

2.The Branch Manager
Tamilnadu Mercantile Bank Ltd.,
Nagamalai Pudukottai,
Madurai - 19. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records from the file of the first respondent herein in No.TN/57831/M2/7Q/PDC/MDU/2014 dated 25.08.2014 and the consequent recovery proceedings issued by the first respondent to the second respondent in No.TN/MDU/57831/PDC/Circle 02/8F/2015 dated 06.02.2015 and to quash the same.

For Petitioner : Mr.C.Karthikeyan
For Respondents : Mr.K.Muralisankar - for R1
No Appearance - for R2

ORDER

This writ petition is filed challenging the impugned order, dated 25.08.2014 and the consequential recovery proceedings.

2. Heard Mr.C.Karthikeyan, the Learned counsel appearing for the Petitioner and Mr.K.Muralisankar, the Learned counsel appearing for R1. Perused the material documents available on record.

3. The brief facts as stated by the petitioner is that the petitioner is a Government Aided Educational Institution run by a Charitable Society without any profit motive. Since it is a government aided institution, the school is under the effective control of the State Government, hence the school is considered as government establishment and exempted under section 16(i)(b)(c)(d) of the EPF Act and hence the petitioner entertained a genuine doubt that the school would not come under EPF. Even if it is considered it will come under the provisions, the respondent cannot claim with retrospective effect. But the 1st respondent has passed an order, dated 10.01.2008 under 7(A) of the EPF Act, directing the petitioner to remit a sum of Rs.22,93,843/-for the periods from June 1992 to September 2006. Against the same, the petitioner has preferred an appeal in ATA 180(13) 2008 before the EPF Appellate Tribunal and based on the interim stay the petitioner had deposited a sum of Rs.9,00,000/-, Rs.17,540/-, Rs. 6,88,152/- and Rs.6,88,152/- on various dates from January 2011 to August 2011 through the Demand Drafts.

4. After lapse of 2½ years, the 1st respondent has issued a demand notice, dated 05.02.2014 demanding interest and damages for the alleged belated remittance for the period from June 1992 to September 2006. The 1st respondent has claimed damages for Rs.23,09,434/- and interest for Rs.20,37,321/-, thereby claiming 100% contribution as damages and interest, which is against law. The petitioner had preferred appeal against the damages and interest the in ATA 993(13)2014 and the Tribunal granted interim stay and directed to deposit 10 lakhs. Aggrieved over the petitioner had preferred W.P.(MD)No.253 of 2015, wherein interim order was passed directing the petitioner to pay Rs.7 lakhs and the petitioner has deposited a sum of Rs.2 lakhs and filed a petition for extension of time. Regarding the interest of Rs.20,37321/-, which is separate order and as per Judgment of the Hon'ble Supreme Court in Arcot Mills case, the petitioner has approached this Court under Section 7-I of the EPF Act and the 7-Q is not referred.

5. The contention of the petitioner is that the calculation of interest is completely wrong. Even the contribution for the months of August 2006 and September 2006 were remitted twice. Hence the petitioner raised the issue of double payment, claiming huge interest and also the merit of the case by filing representation dated 17.10.2014. The respondent replied that inspection branch would come and inspect. Another representation dated 03.02.2015 was submitted regarding the interest by relying on the judgement of Delhi High Court reported in 2008 (5) LLN 266 and the appeal filed by the EPF was dismissed by the

Supreme Court. This has been referred by Larger Bench of Delhi High Court in 2013 (1) LLJ 29. The petitioner was expecting a personal hearing for the representation but the respondent had issued 8F attachment order dated 06.02.2015. Hence the petitioner is before this Court. At the time of admission, this Court has granted an interim stay.

6. The respondents have filed counter stating that the petitioner's institution has failed to pay EPF contribution to the employees. After the deposit, the damages were levied depending upon the length of delays under Section 14(B) as a punitive and deterrent measure. Interest under Section 7Q of the Act are levied to compensate the loss of interest incurred to the funds. The petitioner establishment has failed to remit PF dues for the period from June 1992 to September 2006.

7. The notice, dated 05.02.2014 was issued. After conducting proper enquiry on various days, after giving sufficient opportunity to the petitioner, the petitioner’s representative had accepted the delay in payment, thereafter the impugned order was passed. Therefore, there is no discrepancies in the impugned order. Initially the Rs.23,09,434/- was imposed as damages and Rs.20,37,321/-was imposed as interest, but on verification the amount is modified as Rs.22,93,840/- for damages and Rs.20,27,251/- for interest. According to the present modification the damages has not been levied beyond more than 100%. The petitioner had challenged damages in the Tribunal and the petitioner has challenged the interest and attachment order in the present writ petition, but the petitioner is trying to confuse the Court. The allegation of twice remittance is already considered, as far as the twice remittance the matter is referred to the inspection branch. As far as the twice remittance of interest and damages, it is already clarified that there is no twice remittance under the head of interest and damages. For the plea of judgment of Delhi High Court, it is also clarified that the a case of Central Board of Trustees Vs. Roma Henny Security Services (Private) Ltd. is filed before Supreme Court in SLP No.4160 of 2013 and Civil Appeal No.6592 of 2014 is the same issue is still pending. But the petitioner is trying to confuse. As far as 7Q interest, the same is imposed on the belated payments at the rate of 12% simple interest per annum and the same was notified with effect from 01.08.1997. And the interest is chargeable in addition to damages and a circular dated 03.7.1998 is issued to this effect. On 2007.1998 the

Central Government clarified that the 1991 amendment, the damages were recovered as penalty under section 14-B, which is similar to section 221 of Income Tax Act and which is in addition to section 14-B damages. Since the petitioner had not remitted the interest 8F proceedings were initiated and the same is in accordance to law. Therefore, the respondents prayed to dismiss the writ petition.

8. After hearing rival submissions, this Court has given anxious consideration. The contention of the respondent is that the petitioner had challenged the order passed under section 14-B before the Tribunal. However, the petitioner submitted that that the respondents have imposed 100% interest and 100% damages which is against the rate fixed under the Employees Provident Fund Act. Hence the petitioner has challenged under the question of jurisdiction.

9. Admittedly 7Q was imposed based on Amendment Act 33 of 1988 but the same is notified only on 01.07.1997. Section 14-B was inserted by Amendment Act 37 of 1953. Therefore, a doubt was raised by the companies whether the interest is in addition to damages and the same was clarified by the

EPF organisation as well as the Central Government.

10. It is seen from the impugned order that the respondents have imposed 7Q interest for the period from 1992 to 2006. The 7-Q was levied after it was notified, which is notified only on 01.07.1997. Therefore, the respondents in having power to imposed interest only for the period from 01.07.1997 and hence the levy of interest from 1992 to 01.07.1997 is without any jurisdiction. However, the respondent is empowered to levy from 01.07.1997 to 2006. Hence the impugned order is quashed to the extent from 1992 to 30.06.1997.

11. The learned counsel appearing for the respondent submitted that the petitioner had preferred an appeal before the Appellate Tribunal for the order passed under Section 14-B order. But the Learned Counsel appearing for the petitioner submitted that the respondents cannot impose 100% damages when the provisions of the Act states to impose less amount and hence the damage is imposed without jurisdiction. Since the issue of jurisdiction is raised the issue may be considered as far as jurisdiction is concerned. On verification of the rates of damages, the rate leviable is 17%, 22%, 27% and 37% as per earlier provisions with effect from 01.09.1991 until 2008. From 2008 onwards the rate leviable is

5%, 10%, 15% and 25% as per the amendment section. In the present case, since the respondents have levied 100% damages which is without any jurisdiction and hence the same is liable to be quashed and the same is quashed.

12. Hence the 7-Q order is quashed to the extent from 1992 to 30.06.1997. The 14-B order is quashed since the respondents are not having power to impose 100% damages. Consequently, the attachment order is also quashed. The case is remitted back to the respondents to recalculate as stated supra and thereafter the petitioner shall pay the amount. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of the order. With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
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26.06.2023

<u>To</u>

1.The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002.

2.The Branch Manager
Tamilnadu Mercantile Bank Ltd.,
Nagamalai Pudukottai,
Madurai - 19.

S.SRIMATHY, J

ksa

Order made in
W.P.(MD)No. 2141 of 2015

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