

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12837-2016 (O/M)
Date of decision : 15.11.2023

M/s Consumer Electronics (Punjab) Ltd.

..... Petitioner

Versus

The Presiding Officer, Employees Provident Fund Appellate Tribunal
and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ajay Pal Singh, Advocate
for the petitioner.

Mr. Gaurav Tangri, Advocate for
Mr. Sanjay Tangri, Advocate
for respondents No. 2, 5 and 6.

None for respondent No. 3.

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HARSH BUNGER, J.

1. Petitioner [M/s Consumer Electronic (Punjab) Ltd.] has filed the instant Civil Writ Petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the order dated 04.05.2016 (Annexure P-5), passed by Employees Provident Fund Appellate Tribunal.

2. Briefly, petitioner-M/s Consumer Electronic (Punjab) Ltd. (hereinafter referred to as 'petitioner-Company') applied to the Authorities under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as '1952 Act') seeking voluntary coverage of their company/establishment with effect from 01.05.1999. It appears that the petitioner-Company was allocated EPF Code PB/CHD/20801 with effect

from 01.05.1999 under Section 1 (4) of 1952 Act, however, since the Competent Authority for issuance of Notification for Voluntary Coverage under Section 1 (4) of 1952 Act was Central Provident Fund Commissioner, New Delhi, accordingly, necessary documents were forwarded to the said authority and the proposal for issuance of voluntary coverage qua petitioner-Company was duly published in the Gazette of India, vide Notification dated 27.04.2001.

3. From the perusal of the paperbook, it is manifest that respondent No. 3 herein (Kuldeep Singh Walia), who was an employee of petitioner-Company; sought information under the Right to Information Act by alleging that 50-60 employees of a Corporation (State Owned Undertaking) are eligible for provident fund; whereupon a squad of Enforcement Officers was deputed to examine the matter and the proceedings under Section 7-A of 1952 Act were commenced. Kuldeep Singh Walia (respondent No. 3) was seeking a direction to petitioner-Company to deposit employees' share alongwith interest from year 1991 to year 1999 on the plea that the petitioner-Company is wholly owned subsidiary of M/s Punjab Information and Communication Technology Corporation Limited (hereinafter referred to as 'PICTCL') and the petitioner-Company was operating from B-99, Phase-VIII, Mohali and the said premises were owned by PICTCL and no rent was being paid by petitioner-Company to said PICTCL. It was also stated that certain officers of PICTCL were looking after and managing the affairs of the petitioner-Company and even the telephone No. 22206 owned by PICTCL was used by both i.e. PICTCL as well as petitioner-Company and the said fact was borne out from the letter head of petitioner-Company itself. Respondent No. 3 claimed that PICTCL was having

all pervasive control over the petitioner-Company and he was given benefit of pay scales at par with employees of PICTCL. Respondent No. 3 further placed reliance upon a letter dated 08.01.1991, which is an offer of appointment to respondent No. 3, wherein Clause VII provided for terms and conditions and the relevant extracts thereof read as under :-

“VII TERMS AND CONDITIONS

The Management may entrust you with such work and duties as it may deem proper from time to time.

a) You will be liable to be transferred to any place where the Company has its office/branches including other subsidiary companies of Punjab State Electronics Development and Production Corporation Limited.”

4. It was case of respondent No. 3 that he joined as Accounts Officer on 09.01.1991 in the petitioner-Company and he was subsequently promoted as Chief Executive on 30.08.2001 and he retired on 31.03.2010 on attaining the age of superannuation. He claimed entitlement to EPF benefits from the date of his joining the services with petitioner-Company and not from the date of voluntary coverage given to petitioner-Company with effect from 01.05.1999.

5. A perusal of the paperbook would reveal that the petitioner-Company did not appear before the Assistant Provident Fund Commissioner (hereinafter referred to as 'APFC') before whom proceedings under Section 7-A of 1952 Act were going on. On account of non representation on behalf of petitioner-Company, the concerned authority had issued letter to one Shri R.K. Verma, I.A.S. of PICTCL, whereupon one Shri Jaswinder Singh appeared on 20.01.2012 and sought time for production of record, however, subsequently, he also did not appear. It is borne out from the proceedings, as noticed by

APFC that the proceedings under Section 7-A of 1952 Act were attended by one Deepak Kumar, Manager Secretarial and Legal PICTCL and later on one Shri R.K. Nangia, Senior E.D. Finance and Company Secretary appeared on behalf of petitioner-Company and submitted written submissions. Thereafter, the APFC, vide its order dated 07.08.2012 (Annexure P-2), closed the proceedings under Section 7-A of 1952 Act by holding that the date of coverage in respect of petitioner-Company cannot be preponed and accordingly, it was held that EPF benefits prior to 01.05.1999, as claimed by respondent No. 3, are not admissible and the claim of respondent No. 3 was totally untenable in the eyes of law.

6. Being dis-satisfied of the aforesaid order dated 07.08.2012 (Annexure P-2), passed by APFC, respondent No. 3 preferred an appeal before the respondent No. 1-Employees Provident Fund Appellate Tribunal, New Delhi (hereinafter referred to as 'Appellate Tribunal'), which came to be allowed by Appellate Tribunal below, vide its order dated 04.05.2016 (Annexure P-5) by holding that respondent No. 3 being an employee of petitioner-Company, which is a wholly owned subsidiary of PICTCL (respondent No. 4), he (Kuldeep Singh Walia) was entitled to benefits of EPF dues. Appellate Tribunal referred to the offer of appointment letter, issued by petitioner-Company, wherein a specific condition was there that respondent No. 3-Kuldeep Singh Walia, shall be bound to work at other places where the Company has its offices/branches including other subsidiary companies of PICTCL. It was held that said condition itself was sufficient to justify the claim of respondent No. 3. Accordingly, respondent No. 3 was held entitled for employer's share from the date of his appointment i.e. 09.01.1991 till May, 1999, according to his wages.

7. In the aforementioned circumstances, the petitioner-Company has filed the instant writ petition before this Court seeking quashing of the order dated 04.05.2016 (Annexure P-5), passed by Appellate Tribunal below.

8. Learned counsel for petitioner-Company has submitted that the impugned order 04.05.2016 (Annexure P-5) is wrong, illegal and arbitrary, accordingly, unsustainable in the eyes of law. It is submitted that the impugned order gives retrospective effect to Section 1 (4) of 1952 Act from the date of appointment of respondent No. 3; instead of date on which 1952 Act actually became applicable on the petitioner-Company. It is submitted that the petitioner-Company was covered under the provisions of 1952 Act on the basis of application submitted by petitioner-Company with effect from 01.05.1999. It is thus contended that the impugned order would have no effect of covering the petitioner-Company from the date prior to 01.05.1999 when it was actually covered by way of voluntary coverage w.e.f. 01.05.1999, therefore, EPF dues would be payable to respondent No. 3 from the said date i.e. 01.05.1999 and not from the date when respondent No. 3 joined the service. Accordingly, it is submitted that the instant writ petition be allowed by quashing the impugned order dated 04.05.2016 (Annexure P-5).

9. A perusal of paperbook would reveal that respondent No. 3 has contested the instant writ petition by filing its short reply, inter alia on the plea that the entire 100% equity capital of petitioner-Company was held by PICTCL (also referred as '**Punjab Infotech**') right from the date of its incorporation and the said company was promoted by Punjab Infotech to do business of electronics and allied activities. It is the stand of respondent No. 3 that the petitioner-Company, since its inception, was being run from the building owned by Punjab

Infotech and the employees of Punjab Infotech have all through been working as Directors and Director-Incharge of petitioner-Company to look after its day-to-day work, which reflects all pervasive control by Punjab Infotech on the day-to-day operations and working of petitioner-Company including control over all financial and administrative powers of petitioner-Company. It is next stated that respondent No. 3 was continuously deputed by management to work for the holding company and other subsidiary companies of Punjab Infotech (respondent No. 4) and there was complete parity of pay scales of Punjab Infotech (respondent No. 4) as well as petitioner-Company and in this regard, reference has been made to Clause VII of the appointment letter dated 08.01.1991 of respondent No. 3. It is also stated that the petitioner-Company and Punjab Infotech (respondent No. 4) have common management and common letter head, which bears the same telephone and telex numbers; both have common office/business place and employees of both entities are under the same management and enjoys the same pay scales. Respondent No. 3 has placed reliance upon judgment rendered by Hon'ble the Supreme Court in the case of *M/s L.N. Gadodia and Sons v. Regional Provident Fund Commissioner*, 2012(1) SCT 163. With the aforesaid stand, respondent No. 3 has sought dismissal of the writ petition.

10. Learned counsel for respondents No. 2, 5 and 6 (Employees' Provident Fund Organization) has also opposed the prayer of the petitioner by supporting the findings returned by the Appellate Tribunal below. It is submitted that the Appellate Tribunal below has considered the relevant material placed before it and has passed a reasoned order, which does not call

for any interference by this Court. Accordingly, prayer for dismissal of the writ petition was made on their behalf as well.

11. I have heard learned counsel for respective parties and considered the stand taken by respondent No. 3 in its reply.

12. A perusal of the EPF Act, 1952 would manifest that Section 1(3) provides for the applicability of the Act subject to the provisions contained in Section 16 thereof. As per Section 1(3)(b), the provisions of the EPF Act would be applicable to an establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the official gazette, specify in this behalf. Further, as per Section 1(5) of the EPF Act, an establishment to which, this Act applies, shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time falls below 20.

13. Further Section 2-A of the EPF Act, provides as under :-

“2-A. Establishment to include all departments 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.”

14. Hon'ble the Supreme Court in the case of ***M/s L.N. Gadodia and Sons V. Regional Provident Fund Commissioner, 2012 (1) SCT 163***, made following observations :-

“11. Now, on the question as to whether such two units should be considered as one establishment or otherwise, there is no hard and fast rule. However, guidelines have been laid down in two judgments of this Court rendered

way back in the years 1959-60 and they are followed from time to time. Thus, in The Associated Cement Companies Ltd., Chaibasa Cement Works, Jhinkpani v. Their Workmen reported in [AIR 1960 Supreme Court 56], a bench of three judges was considering the question as to whether the factory and the limestone quarry belonging to the appellant company should be considered as one establishment for the purpose of Industrial Disputes Act, 1947. This Court observed therein as follows:-

"11....What then is 'one establishment' in the ordinary industrial or business sense?It is, perhaps, impossible to lay down any one test as an absolute and invariable test for all cases. The real purpose of these tests is to find out the true relation between the parts, branches, units etc. If in their true relation they constitute one integrated whole, the establishment is one; if on the contrary they do not constitute one integrated whole, each unit is then a separate unit. How the relation between the units will be judged must depend on the facts proved, having regard to the scheme and object of the statute which gives the right of unemployment compensation and also prescribes a disqualification therefor. Thus, in one case the unity of ownership, management and control may be the important test; in another case functional integrality or general unity may be the important test; and in still another case, the important test may be the unity of employment. Indeed, in a large number of cases several tests may fall for consideration at the same. The difficulty of applying these tests arises because of the complexities of modern industrial organization; many enterprises may have

functional integrality between factories which are separately owned; some may be integrated in part with units or factories having the same ownership and in part with factories or plants which are independently owned."

Later in paragraph 5 of Management of **Pratap Press, New Delhi v. Secretary, Delhi Press Workers' Union Delhi** reported in [AIR 1960 Supreme Court 1213], another bench of three judges explained the above proposition in **Associated Cement Company** (supra) in the following words :-

"...While pointing out that it was impossible to lay down any one test as an absolute and invariable test for all cases it observed that the real purpose of these tests would be to find out the true relation between the parts, branches, units etc. This court however mentioned certain tests which might be useful in deciding whether two units form part of the same establishment. Unity of ownership, unity of management and control, unity of finance and unity of labour, unity of employment and unity of functional "integrality" were the tests which the Court applied in that case....."

12. Accordingly, depending upon the facts of the particular case, in some cases the concerned units were held to be part of one establishment whereas, in some other cases they were held not to be so. **Regional Provident Fund Commissioner v. Dharamsi Morarji Chemical Co. Ltd.** reported in [1998 (2) SCC 446] and **Regional Provident Fund Commissioner v. Raj's Continental Export (P) Ltd.** reported in 2007(2) S.C.T. 482 : 2007(2) R.A.J. 724 [2007 (4) SCC 239] are cases where the two units were held to be independent. In **Dharamsi Morarji** (supra), the

*appellant company was running a factory manufacturing fertilizers at Ambarnath in Distt. Thane, Maharashtra since 1921. The appellant established another factory at Roha in the adjoining district in the year 1977 to manufacture organic chemicals with separate set of workers, separate profit and loss account, separate works manager, plant superintendents and separate registration under the Factories Act. The two were held to be separate for the purposes of coverage under the Provident Funds Act. In **Raj's Continental Export** (supra), **Dharamsi Morarji** was followed since the two entities had separate registration under the Factories Act, Central Sales Tax Act, 1956, Income Tax Act, 1961, Employee State Insurance Act, separate balance sheets and audited statements and separate employees working under them.*

13. *As against that in **Rajasthan Prem Krishan Goods Transport Co. v. Regional Provident Fund Commissioner, New Delhi** reported in [1996 (9) SCC 454] and **Regional Provident Fund Commissioner, Jaipur v. Naraini Udyog and others** reported in [1996 (5) SCC 522] the concerned units were held to be the units of the same establishment. In **Rajasthan Prem Kishan Goods Transport Co.** (supra) the trucks piled by the two entities were owned by their partners, ten out of thirteen partners were common, the place of business was common, the management was common, the letter-heads bore the same telephone numbers. In **Naraini Udyog** (supra) the two entities were located within a distance of three kilometers as separate small-scale industries but were represented by the members of the same Hindu undivided family. They had a common head office at New Delhi, common branch at Bombay and common telephone at Kota. The accounts of the two entities were maintained by the same set of clerks. Separate registration under the Factories Act, The Sales Tax Act and The ESIC*

Act were held to be of no relevance and the two units were held to be one establishment for the purpose of Provident Funds Act.

14. In the present case the Directors of the two petitioner companies belong to the same family. The Managing Director is common. The two senior officers i.e. Commercial Manager and Technical Manager are common. At the time of inspection, the Enforcement Officer noticed that the employees of the two companies were being swapped. Both of them have same registered address and common telephone numbers and a common gram number. The audited accounts revealed that the second petitioner-company had given a loan of L 5 lakhs to the first petitioner in the year 1988. The two companies are family concerns of the Gadodia family. Hence, in the facts of the present case we have to hold that there is an integrity of management, finance and the workforce in the two private limited companies. The two companies have seen to it that on record each of the two entities engage less than twenty employees, although the number of employees engaged by them is more than twenty when taken together. The entire attempt of the petitioners is to show that the two entities are separate units so that the Provident Funds Act does not get attracted. The material on record however, leads to only one pointer that the two entities are parts of the same establishment and in which case they get covered under the Provident Funds Act..."

Thus, no straight-jacket formula has been laid down for considering as to whether two units should be considered one establishment for the purpose of coverage under the provisions of the EPF Act. Various steps, as are required to be considered for the purpose, are in the form of unity of ownership, management, control, finance, labour, employment and functional

integrality. Place of business of two units is another factor which may be relevant.

15. Similarly, this Court in the case of ***Regional Provident Fund Commissioner v. Bombay Selection House, 2013(1) S.C.T. 457***; has considered the case law on the subject and returned the following findings :-

“6. Before the matter is considered on merits, I deem it appropriate to refer to the law on the subject.

*7. In **Regional Provident Fund Commissioner, Jaipur v. Naraini Udyog and others, (1996) 5 SCC 522**, Hon'ble the Supreme Court upheld an order of clubbing of two establishments finding that two establishments had common telephone at Kota for residence and factories, some of the workers in one establishment were found to be working in other and their accounts were being maintained by same set of clerks.*

*8. In **M/s. Rajasthan Prem Krishan Goods Transport Co.'s case** (supra) as well, clubbing of two entities for the purpose of coverage under the EPF Act was upheld by Hon'ble the Supreme Court considering a finding recorded by Regional Provident Fund Commissioner therein that there was unity of purpose on each count, inasmuch as the place of business and management was common, the letter heads of both contained same telephone numbers and 10 out of 13 partners were common. There was functional integrity pertaining to the employees. The trucks plied by two entities were owned by the partners which were being hired through both the establishments. On the basis thereof, legitimate inference was drawn and it was held that Regional Provident Fund Commissioner was well within his right to pierce the veil and read between the lines.*

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9. In **Regional Provident Fund Commissioner and another v. Dharamsi Morarji Chemical Co. Ltd.**, (1998) 2 SCC 446, Hon'ble the Supreme Court upheld a judgment of Bombay High Court accepting the plea of the establishment that even though both the firms were owned by one person, but still considering various parameters laid down, those could not be clubbed for the purpose of coverage under the EPF Act. Bombay High Court had set aside the order of clubbing of two establishments considering the facts and circumstances of the case, namely, that merely because both the establishments are owned by one person will not make any difference in case they have separate registration numbers for coverage under various statutes and maintain account books independently. They have separate staff at different places. The employees are not transferable from each other. There was no inter-connection in the matter of supervision, finance or management. The fact that at the initial stage, some experienced employees of the existing establishment were sent to the new establishment will also not make any difference.

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10. In **Noor Niwas Nursery Public School v. Regional Provident Fund Commissioner and others**, 2001(1) S.C.T. 369 : (2001) 1 SCC 1, Hon'ble the Supreme Court, while referring to its earlier judgment in **Pratap Press v. Secy. Delhi Press Workers' Union**, AIR 1960 Supreme Court 1213, where certain tests had been laid down to see as to whether two establishments are in fact one or not and while referring to the facts of the case in hand, upheld the order of clubbing. It was a case where two schools were being run by same management adjoining to each other. In one of the schools, staff of only two teachers, one clerk and a peon had been engaged. It was disbelieved for the reason that a

society, which runs 30 schools, would not run a separate school with such a small number of staff. The record pertaining to the school was found to be in knowledge and possession of the head clerk of other school. The link between the two was established.

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*11. In **Regional Provident Fund Commr. v. Raj's Continental Exports (P) Ltd., 2007(2) S.C.T. 482 : (2007) 4 SCC 239**, a judgment of Division Bench of Karnataka High Court setting aside the order passed by the Provident Fund Commissioner clubbing two establishments, was upheld by Hon'ble the Supreme Court. The case set up by the Employees' Provident Fund Organisation therein was that the second establishment was nothing but an extension of the existing one as the owner was common. The plea of the establishment therein was accepted for the reason that there was no financial integrity. They were registered independently under the Factories Act, Central Sales Tax Act, 1956, Income Tax Act, 1961 and the Employees' State Insurance Act. They were maintaining their accounts separately. Even if they were in same line of business, considering the fact that there was no financial or functional integrity, both could not be clubbed for the purpose of coverage under the EPF Act. The relevant paragraphs thereof are extracted below:*

*"6. In **Pratap Press v. Workmen**, it was inter alia held as follows: (AIR 1960 p. 1215, para 2)*

"2. The question whether the two activities in which the single owner is engaged are one industrial unit or two distinct industrial units is not always easy of solution. No hard-and-fast rule can be laid down for the decision of the question and each case has to be decided on its own peculiar facts. In some cases the two activities each of which by itself

comes within the definition of industry are so closely linked together that no reasonable man would consider them as independent industries. There may be other cases where the connection between the two activities is not by itself sufficient to justify an answer one way or the other, but the employer's own conduct in mixing up or not mixing up the capital, staff and management may often provide a certain answer."

7. In *RPF Commr. v. Dharamsi Morarji*

Chemical Co. Ltd. it was held that unless there is clear evidence to show that there was any supervisory, financial or managerial control, it cannot be said that one is the branch of the other. As noted by the learned Single Judge, the respondent was separately registered under the Factories Act. It was separately registered under the Central Sales Tax Act and the Employees' State Insurance Act. It has also been found by the learned Single Judge that there was total independence of the two units. The learned Single Judge and the Division Bench were right in their conclusion that the respondent is not a branch of M/s Continental Exporters."

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15. What can be culled out of the various judgments on the issues, as referred to above, is that no straight-jacket formula has been laid down for considering as to whether two units should be considered one establishment for the purpose of coverage under the provisions of the EPF Act. Various steps, as are required to be considered for the purpose, are in the form of unity of ownership, management, Page 13 of 14 control, finance, labour, employment and functional integrity. Place of business of two units is another factor which may be relevant. The mere

fact that both the units are owned by one person or some of the partners are common may not be sufficient to treat two units as one establishment...”

16. Coming to the case in hand, the Appellate Tribunal below, while deciding the appeal of respondent No. 3, passed the impugned order dated 04.05.2016 (Annexure P-5), wherein the following observations were made :-

“6. Impugned order dated 31.08.2012 perused carefully and minutely. It is observed by Ld. APFC that EPF code was allotted to CEPF w.e.f. 01.05.1999 and before that said establishment was not coverable under the provisions of the Act. It is also held by respondent no. 3 that before 01.05.1999, less than 20 workers were working with CEPL, so CEPL was not bound to pay any PF contribution. Now at this juncture it is to be seen by this Tribunal whether there is any integrity and connectivity in-between CEPL and PICTCL. There is also no dispute that these two institutions are working in same compound and CEPL is wholly owned subsidiary of PICTCL. Despite service none for respondent No. 1 and 2 filed any reply to the appeal. There is no reason to dissolve story of appellant regarding integrity in-between CEPF and PICTCL. Finding of Respondent no. 3 that CEPL is entirely a separate identity and having no concern with the other company, is based on surmises and conjunctures. It is not disputed on behalf of PF department that PICTCL is having independent PF code number and that institution is deducting PF dues with regard to its employees. Being employee of CEPL, which is wholly subsidiary of PICTCL, appellant is entitled for the benefit of dues, as being provided to other regular employees of PCTCL. It is admitted case of appellant

that CEPL never deducted any employees share from the salary of appellant. It is pertinent to mention here that during course of arguments, appellant confined his arguments with regard to seeking employer's share only. Interestingly in offer of appointment, CEPL also made a condition that appellant shall be bound to work at other place, where company has its office/branches including other subsidiary companies of PICTCL. This condition itself is sufficient to justify the claim of appellant.

7. Accordingly by allowing present appeal, impugned order passed by respondent no. 3 dated 31.08.2012 set aside. It is held that appellant is entitled for employer's share from the date of his appointment i.e. 09.01.1991 till May, 1999, according to the wages of appellant. Respondent no. 3 is directed to calculate dues (employer's share) pertaining to appellant within two months of this order. Respondent no. 1 and 2 shall disburse such dues to the appellant within two months of such assessment failing which appellant shall be entitled to recover dues along with interest @ 12% per annum from the date of assessment, till its realisation. Appellant is also supposed to cooperate with respondent no. 3, in proving his salary/wages record, if any, so that proper employer's share may be assessed. Respondent no. 3 is free to join respondent no. 1 and 2 in such assessment. Copy of the order be sent to the parties as per law. File be consigned to the record room after due compliance.”

A perusal of the above extracted findings given by Appellate Tribunal below would show that petitioner-Company and respondent No. 4 (PICTCL or Punjab Infotech) are working in same compound; petitioner-Company is wholly owned subsidiary of respondent No. 4 (PICTCL). Learned Appellate Tribunal has further referred to the terms and conditions of

appointment of respondent No. 3 with petitioner-Company, which clearly bounds respondent No. 3 to work at other place, where the petitioner-Company has its office/branches including other subsidiary companies of PICTCL i.e. respondent No. 4. The Appellate Tribunal below has further observed that the finding of Ld. APFC in its order dated 31.08.2012 (Annexure P-2) holding that the petitioner-Company is entirely a separate entity and having no concern with other company; is based on surmises and conjunctures.

17. I have gone through the order dated 31.08.2012 (Annexure P-2), passed by Ld. APFC and a perusal thereof makes it apparent that indeed the said authority while deciding the issue as to whether two units should be considered as one establishment or otherwise; has not considered the vital aspects of unity of ownership, management and control, functional integrity or general unity, financial integrity, unity of employment, unity of finance, common place of business, common management, letter heads etc. of two establishments, as indicated in the judgment(s) referred above.

18. In this case, respondent No. 3 has placed on record documents to show the following aspects :-

- a) that respondent No. 4 and petitioner-Company, both have common management;
- b) there is 100% investment in the petitioner-Company by respondent No. 4-parent Company;
- c) letter head of respondent No. 4 and petitioner-Company bears the same telex numbers;
- d) respondent No. 4 has complete say on the petitioner-Company in day-to-day matters so much so that the daily account and annual accounts are being maintained by the common employees;

- e) both respondent No. 4 and petitioner-Company are having common office/business place and an employee of both entities is under the same management and enjoys same pay scales.

The petitioner-Company has not controverted/refuted the aforesaid assertions of respondent No. 3.

19. Further, in para No. 3 and 4 of writ petition, the following averments have been made :-

“3. That the background of the case is relevant. Department of Industries and Commerce is functioning under the overall control of State Government of Punjab. Various corporations, including Punjab Information and Communication Technology Corporation Ltd. (Respondent No. 4) function under the said Department. Further, various public sector companies function as subsidiary companies of Respondent No. 4. Some of such companies are Punjab Communication Ltd., Consumer Electronics (Punjab) Ltd. (i.e. the petitioner), Punjab Records Ltd. and so on. It is relevant to mention that the Consumer Electronics (Punjab) Ltd. is a company which is not undertaking any substantial activities since long. It is further relevant to mention that although the said companies are 100% owned subsidiaries of Respondent No. 4, yet, such companies are having their own service rules, memorandum of association, independent Board of Directors and a separate and independent legal entity, being registered under the Companies Act, 1956.

4. That the respondent no. 3 was appointed in the petitioner company by the appointment letter dated 08.01.1991 in the designation of Accounts Officer. In the appointment letter, it was categorically mentioned in clause VII (a) that the appointees would be liable to be

transferred to any place where the company has its office/branches, including other subsidiary companies of Respondent no. 4. The said appointment letter is annexed herewith as Annexure P1.”

A perusal of the above extracted para-3 and 4 of the writ petition would clearly indicate that the petitioner-Company is 100% owned subsidiary of respondent No. 4-Punjab Infotech and there is unity of management and employment.

20. Considering the totality of circumstances in the light of legal position indicated above and also considering that the 1952 Act is a beneficial legislation and respondent No. 4 exercised pervasive control/management over petitioner-Company; I do not find any reason to interfere with the impugned order dated 04.05.2016 (Annexure P-5), passed by Appellate Tribunal below. Resultantly, the instant writ petition fails and the same is dismissed.

21. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

15.11.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No