IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18759-2017 (O&M)
Date of Decision: 20.10.2023

CENTRAL BOARD OF TRUSTEES, THROUGH ASSISTANT PROVIDENT FUND COMMISSIONER, S.C.O. 4-7, SECTOR 17-D, CHANDIGARH

…Petitioner

Versus

M/S PUNJAB WELFARE BOARD, 118-19, SECTOR 22B, CHANDIGARH, THROUGH ITS DEPUTY WELFARE COMMISSIONER

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Rajesh Hooda, Advocate for the petitioner.

Mr. A.K. Chandok, Advocate for the respondent.

HARSH BUNGER, J. (ORAL)

Petitioner (Central Board of Trustees, through Assistant Provident Fund Commissioner) has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 17.01.2017 (Annexure P-4) passed by the Employees' Provident Fund Appellate Tribunal, New Delhi (in short `Appellate Tribunal'); whereby, it has reduced the damages qua respondent (M/s Punjab Welfare Board) to 50%.

2. Briefly, respondent-M/s Punjab Welfare Board, is stated to be covered under the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (in short `the 1952 Act'). It appears that since the respondent did not deposit the provident fund dues of its employees after deducting the same from their salaries within the stipulated period of 15 days, the petitioner issued a Show Cause Notice dated

05.02.2015, along with complete statement of late deposits. Thereafter, the proceedings under Sections 14-B and 7-Q of the 1952 Act were initiated and an order dated 28.05.2015 (Annexure P-1) came to be passed by the Assessing Authority, who levied damages under Section 14-B of the 1952 Act, to the tune of Rs.7,11,129/- and interest under Section 7-Q of the 1952 Act, to the tune of Rs.5,14,410/-.

3. Being dis-satisfied with the aforesaid order dated 28.05.2015 (Annexure P-1), it appears that the respondent herein filed an appeal before the Appellate Tribunal below, wherein notice of the appeal was issued and the petitioner in return, denied the allegations made therein. The learned Appellate Tribunal, decided the appeal of respondent (M/s Punjab Welfare Board) by reducing the damages to 50% vide its order dated 17.01.2017 (Annexure P-4). Accordingly, the petitioner has filed the instant writ petition before this Court, challenging the afore-said order dated 17.01.2017 (Annexure P-4) passed by the Appellate Tribunal.

6. While referring to impugned order dated 17.01.2017 (Annexure P-4) passed by the Appellate Tribunal, learned counsel for the petitioner has submitted that the Appellate Tribunal has primarily decided the appeal by placing reliance upon the judgment rendered by the Hon'ble Delhi High Court in ***Roma Henny Security Services Pvt. Ltd. vs Central Board of Trustees, EPF Organisation through Assistant PF Commissioner, Delhi (North) 2013(1) LLJ 29 Del.*** The relevant extract of impugned order dated 17.01.2017 (Annexure P-4) reads as under :-

> *"6. In case law titled as **Roma Henny Security Services Pvt. Ltd. Vs. Central Board of Trustees, EPF Organisation through Assistant PF Commissioner, Delhi (North)** (Supra), it is held by Hon'ble High Court of Delhi*

that up to 26/09/2008 the earlier table continue to govern the assessment, which included the element of interest under Section 7Q of the Act shall prevail and from 26.09.2008 onwards the damages and interest are segregated. In case in hand more than half of the period of assessment is before 26.09.2008, so respondent was to suppose to assess the dues on the basis of earlier table, which included element of interest under Section 7Q of the Act.

7. Admittedly respondent passed impugned order not on the basis of earlier table continue to govern the assessment. Respondent calculate the dues applying maximum rates of 17%, 22%, 27% and 37%. Further respondent already assessed separately and recovered interest u/s 7Q of the Act, so respondent was duty bound to apply rates applicable 5%, 10%, 15% and 25%. As respondent not carried out its obligation within the declared line so impugned order of respondent is to go.

8. At the time of passing of impugned order, respondent not considered all the mitigating circumstances alleged on behalf of appellant, despite written submissions of appellant dated 25.03.2015 (Annexure A6). Keeping in view all the circumstances of the case, this Tribunal reached at a firm opinion that instead of remanding the matter back to respondent for fresh assessment the interest of justice would be met by imposing of 50% of the assessed damages to the appellant establishment along with assessed interest. In terms of the above, the present appeal is allowed and impugned order is hereby set aside. Any amount deposited by appellant against impugned order shall be adjusted. Copy of the order be sent to the parties as per law. File be consigned to record room after due compliance."

7. Learned counsel for the petitioner has submitted that in fact, the judgment rendered in ***Roma Henny Security Services Pvt.Ltd's*** case (supra)

was challenged before the Hon'ble Supreme Court by way of filing ***Civil Appeal No.6592 of 2014*** (***Central Board of Trustees v. Roma Henny Security Services Pvt. Ltd.) 2020(3) SCT 741,*** which was decided vide order dated 27.02.2019; whereby, the judgment rendered by the Delhi High Court in ***Roma Henny Security Services Pvt. Ltd.'s*** case (supra) has been set aside and the matter has been remitted to the Delhi High Court to consider the effect of Clause 32-A and also consider various questions afresh and decide the case in accordance with law.

8. In ***Central Board of Trustees's*** case (*supra),* Hon'ble Supreme Court observed as under: -

> *"Leave granted in SLP [C] No.19610 of 2017.*
>
> *2. Heard learned counsel for the parties at length.*
>
> *3. Learned counsel for the appellant(s) has brought to our notice the provisions contained in Clause 32-A of The Employees' Provident Funds Scheme, 1952 and has urged that the provisions Section of 7Q was inserted in the Employees' Provident Funds and [Miscellaneous Provisions] Act w.e.f 01.07.1997 whereas the provisions contained under Clause 32-A were inserted on 16.8.1991. The provisions contained in Clause 32-A of the Employees' Provident Funds Scheme is extracted hereunder:*
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> > *"32-A.* ***Recovery of damages for default in payment of any contribution:-*** *(1) where an employer makes default in the payment of any contribution to the Fund, or in the transfer of accumulations required to be transferred by him under sub-Section (2) of Section 15 or sub-Section (5) of Section 17 of the Act or in the payment of any charges payable under any other provision of the Act or Scheme or under any of the conditions specified under Section 17 of the Act, the Central*

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I attest to the accuracy and
authenticity of this order/judgment

Provident Fund Commissioner or such officer as may be authorised by the Central Government, by notification in the Official Gazettee, in this behalf, may recover from the employer by way of penalty, damages at the rates given below:-

Period of default	***Rate of damages (percentage of arrears per annum)***
(a) Less than two months	*Seventeen*
(b) Two months and above but less than four months	*Twenty-two*
(c) Four months and above but less than six months	*Twenty seven*
(d) Six months and above	*Thirty seven*

(2) The damages shall be calculated to the nearest rupee, 50 paise or more to be counted as the nearest higher rupee and fraction of a rupee less than 50 paise to be ignored."

4. The Full Bench of the High Court has not considered the effect of the aforesaid Clause 32-A of the Scheme. It does not provide that the interest is included in the penalty specified in the provisions under Clause 32-A of the Employees Provident Funds Scheme, 1952 at the rate of 17%, 22%, 27% and 37% respectively, on the basis of period of default. It has also not gone into question whether the Circular of 1990 issued by the Central Provident Fund Commissioner would hold the field in view of the statutory provisions of Clause 32-A of the Scheme introduced in 1991. The High Court has also not taken into consideration whether Clause 32- A of the Scheme can be taken to include interest when provision for interest 7Q was not in force. It has also not gone into the question whether the Circular of 1990 can prevail upon the statutory provisions contained in Clause 32-A of the Scheme which prescribes the rate of damages.

Question is whether damages so specified include the component of interest. May be that 1990 Circular included the component of interest in rate of damages but that was not so provided under the statutory provisions of Clause 32-A of Scheme. The effect of provisions of Section 7Q as inserted in 1997 is also required to be considered.

5. We have no hesitation to set aside the judgment and order of the High Court and remit the case to the High Court to consider the effect of Clause 32-A and also consider various questions afresh and decide the case in accordance with law.

6. Circular dated 29.5.1990 has also been brought to our notice which provides that interest component has to be separate than the damages. Let it be placed on record before the High Court and it may also be taken into consideration.

7. With the aforesaid observations, the appeals are disposed of..."

9. Learned counsel for the petitioner contends that since the impugned order passed by the Appellate Tribunal was based upon the decision rendered by the Delhi High Court in ***Roma Henny Security Services Pvt. Ltd's*** case (supra) and the same having been set aside by the Hon'ble Supreme Court, consequently, the impugned order dated 17.01.2017 (Annexure P-4) is also liable to be set aside and the matter be remitted to the Appellate Tribunal below for deciding the appeal afresh, in accordance with law.

10. On the other hand, learned counsel appearing for therespondent has not been able to dispute the afore-stated position as contended by learned counsel appearing for the petitioner.

11. I have heard learned counsel for the respective parties and perused the paper book with their able assistance.

12. Considering the afore-mentioned circumstances, it is observed that the impugned order dated 17.01.2017 (Annexure P-4) was passed by the learned Appellate Tribunal by placing reliance upon ***Roma Henny Security Services Pvt. Ltd's*** case (supra), as decided by the Full Bench of Delhi High Court. Concededly, the judgment rendered by the Full Bench of Delhi High Court, has since been set aside by the Hon'ble Supreme Court in ***Civil Appeal No.6592 of 2014***, decided on ***27.02.2019***; accordingly, in my considered view, the matter is required to be remitted to the Appellate Tribunal below for deciding the appeal filed by the respondent afresh, in accordance with law.

13. Accordingly, the instant writ petition is partly allowed and the matter is remanded to the Appellate Tribunal below, for deciding the same afresh, in accordance with law.

14. Upon receipt/presentation of the certified copy of this order, the Appellate Tribunal below shall post the appeal for hearing within the next ten days thereof by intimating the said date of hearing to all concerned and proceed to decide the appeal afresh.

15. Disposed of in the afore-stated terms.

16. All pending application/s, if any, shall stand closed.

October 20, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No