IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

TUESDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CIVIL MISCELLANEOUS APPEAL NO: 420 OF 2023

Appeal Under Section 82 of ESI Act against the order dated 12.05.2023 made in E.I.C. No. 53 of 2018 on the file of the Employees Insurance Court and Chairman, Industrial Tribunal - I at Hyderabad.

Between:

M/s. Manjeeth Enterprises, 723, HMT Colony, Miyapur, R.R. District - 500049 Rep. by its Proprietrix, Smt. Manjeeth Kaur

...APPELLANT/PETITIONER

AND

1. M/S. Employees State Insurance Corporation, 5-9-23, Hill Fort Road, Hyderabad - 500063 Represented by its Deputy Director
2. The Recovery Officer, ESI Corporation, 5-9-23, Hill Fort Road, Hyderabad.

...RESPONDENTS/RESPONDENTS 1 & 2

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay the operation of the order dated 12.05.2023 passed in E.I.C.No. 53 of 2018 on the file of the Employees Insurance Court and Chairman, Industrial Tribunal-I at Hyderabad including the order No. AP/INS-II/52-00-028289-1001, dated 05.01.2018 passed by the Respondent under Section 45-A of ESI Act, 1948 and consequential C-19 Order No.TS/INS-II-5200-028289-000-1001, dated 20.04.2018.

Counsel for the Appellant: Sri M. Kiran Kumar

Counsel for the Respondents: Sri Pasham Srinivasulu

The Court delivered the following JUDGMENT:

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SHRI JUSTICE ANIL KUMAR JUKANTI

C.M.A.No.420 OF 2023

JUDGMENT: *(per Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. M.Kiran Kumar, learned counsel for the appellant and Mr. Pasham Srinivasulu, learned counsel for the respondents. Perused the record.

2. The present is an appeal which has been filed under Section 82 of the Employees State Insurance Act, 1948 (for short 'the Act'). The challenge is to the order passed under Section 75(1) (g) of the Act by the Employees Insurance Court dated 12.05.2023 in E.I.C.No.53 of 2018.

3. Vide the impugned order, the learned Employees Insurance Court has dismissed the petition filed by the petitioner challenging Section 45-A order dated 05.01.2018 to the extent of issuance of notice of recovery for an amount of Rs.5,94,595/- for the periods from 01.12.2012 to 31.12.2016 and 01.01.2017 to 30.09.2017.

4. The primary contention by the learned counsel for the appellant is that the appellant has not been given a fair and reasonable

opportunity of defence. According to the appellant, it was not given reasonable period of time for furnishing of the relevant records in support of his contentions. Lastly, it was contended that the authorities have failed to appreciate the fact that from 2010-2011, the business of the appellant's establishment was closed and the firm was not functional which has been further ignored by the authorities while passing the order under Section 45-A of the Act.

5. Upon perusal of the impugned order and the documents supported along with the appeal, what is clearly reflected is that it is not a case where the appellant was not granted a fair and reasonable opportunity to appear before the authorities. The impugned order itself would show that the notice, at the first instance, which was issued by the ESIC was received by the appellant. However, there has been no response given to the said notices. Subsequently, personal hearing was fixed on 21.11.2017 on which date also, the appellant stood absent. The matter was thereafter taken up on 22.12.2017, on which date the representative of the Proprietor i.e., the husband of the Proprietor S.Gurmukh Singh appeared before the Authorised Officer and informed the Corporation about the closure of the business and

sought time to produce the records in that regard. As prayed for by the appellant, time was extended and the date was fixed for 29.12.2017, on which date also, the appellant though was represented but no documents were furnished in support of their contention of the business having been closed. That since the appellant was reluctant in producing the material records to show the non-operation of their business, the authorities were, therefore, left with no option but to pass the order under Section 45-A of the Act on 05.01.2018.

6. The Authorised Officer while passing the impugned order had assessed only for the period from 01.12.2012 onwards and the earlier period prior to 01.12.2012 was waived of as those were time barred claims which were sought to be raised. What is further reflected from the proceedings is that though the appellant has been strongly banking upon the contention of their business having been closed from 2011 onwards, but no documentary proof to substantiate the same was produced before the authorities in spite of repeat opportunity. Further, what is also reflected is that the appellant did produce the income tax returns for the period between 2008-2009 to 2011-2012 reflecting the nil returns for the said period contending that the business stood

closed. However, the income tax returns for the subsequent period have not been produced by the appellant before the authorities concerned for reasons best known. It was admitted by the appellant that they have, in fact, submitted their income tax returns for the subsequent period also but those returns were not produced before the Court with which it could had been easily ascertained whether there was any business carried out by the appellant's establishment subsequent to 2011 onwards. In the absence of such material informations made available, the authorities concerned could not have taken any other view other than the one which has been taken by them.

7. The present is an appeal which has been filed under Section 82 of the Act. Sub-Section (2) of Section 82 specifically enumerates an appeal to the High Court from an order of ESI Court to be maintainable only in the event of it involving substantial question of law. In the instant case, all these contentions which have been raised by the appellant are all factual matters and all of which have been considered and deliberated upon by the Court and as well as those cannot be termed to be substantial question of law.

8. We do not find any substantial question of law made out by the appellant for assailing the impugned order.

9. This appeal fails and is, accordingly, rejected. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

Sd/- V. KAVITHA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Employees Insurance Court and Chairman, Industrial Tribunal - I at Hyderabad.
2. One CC to Sri M. Kiran Kumar, Advocate [OPUC]
3. One CC to Sri Pasham Srinivasulu, Advocate [OPUC]
4. Two CD Copies

VII/gh

HIGH COURT

DATED: 10/12/2024

HIGH COURT FOR THE STATE OF TELANGANA
FEB 2025
DESPATCHED

JUDGMENT

CMA.No.420 of 2023

REJECTING THE APPEAL

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