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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9043-2000 (O&M)
Date of Decision:17.12.2024

THE REGIONAL PROVIDENT FUND COMMISSIONER & ANR.
.... Petitioners

Versus

EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL & ANR.
... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

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

Mr. Himanshu Mehta, Advocate
for respondent No.2.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 11.08.1999 (Annexure P-5) passed by EPF Appellate Tribunal.

2. Mr. Himanshu Mehta, Advocate has put in appearance on behalf of respondent No.2 and filed his power of attorney. The same is taken on record. Registry is directed to tag the same at an appropriate place.

3. The respondent is a proprietorship concern. It set up its establishment in October' 1992. It applied under the Employees' Provident Fund & Misc. Provisions Act, 1952 (for short '1952 Act') in October' 1995. It did not contribute under 1952 Act because a new Unit is entitled to 5 years exemption. This period is known as 'infancy' period. The petitioner on receipt of application for registration initiated proceedings under Section 7A of 1952 Act. The proceedings under

Section 7A culminated in assessment of liability of Rs.80,352/-. The Respondent before Appellate Tribunal preferred an appeal which came to be allowed vide order dated 11.08.1999 (Annexure P-5). The operative portion of order dated 11.08.1999 is reproduced as below:

> "*5. Now it is well settled that one person, one joint family and one limited company or partnership firm may have different establishments and because of only common ownership and common supervision of the owner of the units cannot be clubbed together. There should be some interdependence or interconnection between the two establishments of common owner for clubbing them together. In the present case nothing has been pointed out by the Department except that the owner of the present establishment is family member of the owner of M/s. Hind Motors which is a limited company. Nature of transporting scooters from the factory to the dealers is quite different from the work of a dealer in mother car or in scooter when the factory is owned by some other company. In the present case appellants are transporting scooters of Bajaj Auto Ltd. Hind Motors are dealing in Bajaj Ltd. but the establishment is not devoted for the work of Hind Motors (Scooter Branch). Transport agency is itself an establishment specified by notification. It cannot be said to be an extension of the dealership. A dealer in scooter sells the scooters locally is not supposed to sell them in bulk beyond the District or State. As I have said there is nothing on record except that the owners are members of one family to club the establishments, therefore, this order is liable to be set aside.*
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> *ORDER*
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> *The appeal is allowed. The impugned order is set aside. It is held appellant's establishment is Independent and new one. It is not a branch of any other establishment.*"

4. Learned counsel for the petitioners submits that respondent

and Hind Motors were located at the same premises and owner of both the entities was same, thus, respondent was not entitled to benefit of infancy period.

5. Learned counsel for the respondent submits that respondent No.2 is a proprietorship concern whereas another entity was a Public Limited Company. Both were located at a distance of 4 Kms, thus, petitioner assessed liability as per its own notions. There was no basis to club both the Units.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. From the perusal of record, it is evident that both the Units were located at a distance of 4 Kms and respondent's Unit was owned by an individual whereas another Unit was owned by a Public Limited Company. There was no question to club both the Units and deny benefit of infancy period. Firstly, the petitioner without making proper inquiry created the liability and thereafter dragged the respondent to unwanted litigation. It is unfortunate that petitioner has filed instant petition despite categoric findings of Appellate Tribunal. The act of petitioner is not appreciable.

8. Dismissed.

9. Pending misc. application (s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

17.12.2024
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No