

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR
COURT, No. 1 DELHI**

Appeal No. 1093(4)2015

M/s Pitambar Publishing Co. Pvt. Ltd. vs. APFC/RPFC, Delhi (North).

Present: Sh. M.K Dwivedi, Ld. Counsel for the appellant.
Sh. S.N. Mahanta, Ld. Counsel for the respondent.

Order dated-14.10.2025

1. Appellant has preferred the present appeal, assailing the order dated 30.06.2015 passed by the Ld. Assistant Provident Fund Commissioner, Gurugram, **under section 14B & 7Q of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act")**, whereby the respondent has determined the dues to the tune of Rs. 4,35,710/- and Rs. 2,49,995/- respectively, for the period 04/2008 to 03/2014.

2. Appellant has assailed the said order on several grounds inter-alia; Ld. APFC ought to have appreciated/understand that the provisions of section 14-B was enacted for discharging justice and the same should be interpreted and adopted for furthering the objects of a welfare Act; Ld. APFC ought to have appreciated that the deposit of EPF contribution with delay was not at all intentional but on account of real financial loss suffered by the appellant; Ld. APFC ought to have appreciated that the word "may" has been used in section 14B of the Act which demonstrate that in a given case power exist, if the circumstances justify the conclusion to decide against the recovery of any damages. He further submitted that Ld. APFC failed to appreciate that as per judgment delivered by the ***Division Bench of Delhi High Court in System and Stampings & Another vs. EPFAT & Others 2008 LLR 485*** which has been upheld by a larger bench of three judges in

Roma Henny Security Services Pvt. Ltd. vs. CBT, EPFO reported in 2013 [1]-29 LLJ, Delhi High Court, whereby it was held that rates upto to 25.09.2008 is inclusive of interest which has been segregated after 25.09.2008, therefore interest cannot be calculated twice, hence, the interest amounting to Rs. 11732/- u/s 7Q may kindly be dropped. He submits that the order passed by the Ld. APFC be set aside and recalled.

3. Per contra, respondent has filed a reply, opposing the prayer made in the appeal. He had first narrated the object of the **Employees' Provident Funds & Miscellaneous Provisions Act, 1952**, which meant for providing social security to employees working in any establishment engaging 20 or more persons on any day. Subsequently, he had narrated the facts that provident fund and other contributions have to be deposited by the employed by 15th of the following month. He further submitted that Hon'ble Supreme Court in the matter **RPFC Vs. SHIBU METAL WORKS, 1964-65 (27) FJR 491**, upheld in construing the material provisions of the Act. He also submitted that the Hon'ble Supreme Court in the matter **ORGANO CHEMICALS INDUSTRIES & ANOTHER Vs UOI (55 FJR 283)**, wherein it was held that while assessing the damages, the commissioner is not only bound to take into account the loss of the beneficiaries but also the default by the employer in making his contributions. He further submitted that present appeal is abuse of process of law. Appellant has the least concern for the sanctity and dignity of the judicial process for raising the false and frivolous contentions with regard to levy of the damages by the EPFO. Appellant in his endeavor to harass and humiliate the respondent has not only concealed the material facts from this Tribunal but also misrepresented the material facts. In para no. 5 of the reply of the appeal, he had mentioned that no appeal by the employer shall be entertained by a Tribunal unless he has deposited with seventy five percent of the amount due from him. Moreover, he submitted that respondent has passed the reasoned order on the basis of available records. He further submitted that

the financial condition of the appellant is not a ground for either reducing or waiving the damages. He submitted that appeal be dismissed with cost.

4. I have heard the argument at bar and gone through the record. Before proceeding further, provisions of section 14B and 7Q of the Act is required to be reproduced herein-

14B. Power to recover damages.—Where an employer makes default in the payment of any contribution to the Fund [, the [Pension] Fund or the Insurance Fund] or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 4[or sub-section (5) of section 17] or in the payment of any charges payable under any other provision of this Act or of [any Scheme or Insurance Scheme] or under any of the conditions specified under section 17, [the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf] may recover [from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:]

[Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard]:

[Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in the Scheme.]

7Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.]

Rate of levy of damages is given in para 32 A of the Employees' Provident Funds Scheme, 1952 and subsequent para 8A of the Employees' Deposit Linked Insurance Scheme, 1976 and Para 5 of the Employees' Pension Scheme, 1995 which have empowered the CPFC or any such authorised officer to recover from the employer by way of penalty, damages at the rate given below:-

<i>S.No.</i>	<i>Period Of default</i>	<i>Rate of damages (percentage of arrears per annum)</i>
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>
<i>(a)</i>	<i>Less than 2 months</i>	<i>Five</i>
<i>(b)</i>	<i>Two months and above but less than four months</i>	<i>Ten</i>
<i>(c)</i>	<i>Four months and above but less than six months</i>	<i>Fifteen</i>
<i>(d)</i>	<i>Six months and above</i>	<i>Twenty five</i>

5. In the present case, notice was issued to the appellant on 10.05.2014, asking to pay the damages and interest for the period 04/2008 to 03/2014. It is noted certain payments has been made after the respective due dates.

6. First of all, the contention of the appellant has to be dealt with respect of the fact that the authority has violated of his own circular issued

on 28.11.1990. There is no quarrel that the said circular has been issued. In the said circular, it has been emphasized that all cases under section 14 B have to be finalized within a period of three years. It is further stated that the cases in which the damages are yet to be levied as on 30.06.1990, RPFC should ensure that all such cases are disposed of within a period of three years from now and in case of fresh default, damages shall be levied within the close of three financial years. Said advisory has been issued after considering of all the aspects that limitation has not been set out in 'the Act' and division bench of Hon'ble Allahabad High Court where it is held that where the damages are not levied within a reasonable time, employer is justified in presuming that he is not liable to pay any damages. Though, the matter was reversed by the division bench but held that "the Act' was silent on the question of time limit within which the damages are required to be imposed but it should be reasonably good. Therefore, the argument of the counsel of respondent that the circular is not binding and has no legal aspect is not tenable. The circular issued therein is furtherance of the power exercised by the Central Government under Section 20 of 'the Act'. Where the time limit is not set out, the department was naturally constrained to issue the circular keeping in view the fact that after several years ranging from 1 to 20 years, department had used to impose damages for late payment. The argument that issuance of circular is an internal act and cannot bypass the law is untenable because circular has been issued in furtherance of objective of social welfare legislation and has the effect of fulfilling the dotted line which has been left by legislature while enacting the act. Therefore, the notice issued for levying damages and interest is held to be unreasonable and is liable to be set-aside for the period 04/2008 to 05/2012. However, the demand notice for the period 04/2011 to 10.05.2014 is found to be legally sustainable.

7. Since, there is an admitted delay in remittance of the EPF contributions for the aforesaid period, the interest component cannot be waived for the above said assessment period since it has to be deposited in

the depositor's account. So far so, the damages for the above said period, appellant has not produced any document that would justify the reduction in the amount assessed for the period 04/2011 to 10.05.2014. As 30% of the assessed amount under both sections 14B & 7Q has already been deposited, appellant is directed to deposit the balance amount, if any, within one month from the date of receipt of this order. Office is directed to send a copy of this order to both the parties.

Sd/-

Atul Kumar Garg
(Presiding Officer)