

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT
FUND APPELLATE TRIBUNAL, JABALPUR**

EPF Appeal No.- 57/2017

Present – P.K. Srivastava

H.J.S. (Retd.)

**M/s. M. Sons Engineers & Builders,
B-35, Near Gidwani Park,
Bairagarh,
Bhopal – 462012 (M.P.)**

Appellant

Vs.

**Regional Provident Fund Commissioner,
Sub-Regional Office,
132, Zone-II, M.P. Nagar,
Bhopal – 462011 (M.P.)**

Respondent

Shri Uttam Maheswari : Learned Counsel for Appellant.

Shri J.K. Pillai : Learned Counsel for Respondent.

JUDGMENT

(Passed on 03rd July, 2025)

Feeling aggrieved by order of Respondent Authority dated 01.03.2012, passed by him under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (in short the 'Act'). The Appellant Establishment has preferred this appeal. The Respondent Authority has recorded a finding in the impugned order that the Appellant Establishment is liable to deposit EPF dues of its Employees for the period 05/2002 to 12/2009 and has held the Appellant Establishment liable to deposit the dues assessed at Rs. 4,13,428/-

Facts connected are mainly that, the Appellant Establishment is a partner firm, created by a partnership deal executed between its partners on 01.04.2001 and has been engaged in the Work of Civil Contract-ship, it was brought within the pervue of the Act w.e.f. 01.05.2002 and PF Code MP/13374 was allotted to it. It reported compliance under the Act till 31.03.2005 and there after, it was dissolved on 01.04.2005 as per deed of dissolution of partnership dated 01.04.2005. The Respondent Authority initiated proceedings under Section 7A of the Act for the period between May/2002 to December/2009 and issued a notice to Appellant Establishment

on 08.12.2011 with a direction to attend the proceedings in the Office of Respondent Authority on 19.12.2011. A copy of inspection report of the Enforcement Officer of the department dated 01.12.2011 was also sent with the notice.

According to the Appellant Establishment, they appeared in response to notice and intimated the Respondent Authority about the dissolution of partnership business w.e.f. 01.04.2005, also they informed that since few of the ex-partners have expired, books of accounts for the period prior to 01.04.2005 is not available with them. They also submitted a certificate dated 07.01.2012, issued by the Chartered Accountants/Auditors, confirming that income tax return up to assessment year 2005-06 has been filed and no return was filed thereafter by the Establishment. Respondent Authority passed an impugned order ignoring the objection on the documents of the Appellant Establishment, hence this Appeal.

Grounds of Appeal, taken in the memo of Appeal, are mainly that, the impugned order is illegal, void and not sustainable in law. It is not based on book of accounts of the Appellant Establishment nor on the basis of any record available with the Office of Respondent Authority. The Respondent Authority has recorded its findings only on the basis of report of the Enforcement Officer dated 31.01.2012. A copy of which was never served on the Appellant Establishment, thus committed error in law.

The Respondent Authority recorded the impugned finding ignoring the provisions under Section Payment of Wages Act, 1936 and Rules of 1937, Minimum Wages Act, 1948, and Rules of 1950 in this respect as well settled principle of law in this respect. After initiating proceedings, after 6 years of dissolution of partnership business without intimating beneficiaries, hence has committed error in law and fact.

In its counter to the reply, the Respondent Authority has taken a case that the Act is a beneficial legislation, every Establishment engaging 20 or more persons at a day is covered under the Act, and is under legal obligation to deposit Provident Funds deducted from its employees with employer's contributions up to 15th of the next month in which the employee has worked. Any failure to deposit these dues attracts recovery action under Section 7A of the Act. In the case in hand, the Appellant Establishment in spite of being covered in the Act, failed to report compliance for the period May, 2002 to December, 2009 and an enquiry was instituted in which Appellant Establishment was directed to submit its records but they failed to submit any record. Hence, Enforcement Officer calculated the dues on minimum strength of 20 employees and on minimum wages. The Respondent Authority passed

the impugned order recording the impugned findings and assessment which cannot be faulted in law or fact.

In its rejoinder, the Appellant has mainly re-treated its case.

I have heard argument of Mr. Uttam Maheswari for Appellant Establishment, and Mr. J.K. Pillai for Respondent Authority and have gone through the record as well. Both the parties have filed written arguments which are part of the record. I have gone through the written argument filed from both the sides.

On perusal of record in the light of rival arguments, following issue comes up for determination.

“Whether the impugned finding and assessment recorded by Respondent Authority can be faulted in law or fact?”

The main submission on behalf of Appellant Establishment is that, the Appellant Establishment is a partnership firm, which was created by way of partnership deed on 01.04.2001 and was dissolved by dissolution deed on 01.04.2005. Since the Respondent Authority did not consider the fact that, the partnership business was dissolved on 01.04.2005, hence there was no question of the any employee with the Appellant firm, after date of its dissolution i.e. on 01.04.2005.

According to Learned Counsel, since the Respondent Authority passed an impugned finding and assessment for the period even after 01.04.2005 ignoring the fact of dissolution of partnership business is correct in fact.

Learned Counsel for Respondent Authority has further submitted as it is established from the report of the Enforcement Officer dated 16.11.2011, no document with respect to dissolution of the firm and closure of the firm was shown to Enforcement officer at the time his inspection. and also the record discloses that on requiring the Appellant Establishment to produce documents with respect to dissolution of the partnership business namely registered disconnection, dissolution deed, registration cancelled, and opinions in this respect given to various authorities before him, it the Appellant Establishment who never complied with this order, hence there was no record before the Respondent Authority to assume that the Partnership was dissolved and the establishment was closed.

Learned Counsel also submits that, it is for the first time, the Appellant Establishment has filed deed of creation of partnership, deed of dissolution of partnership business, and other relating documents before this Tribunal. Learned Counsel submits that, it is not disputed that the Appellant Establishment is covered under the Act.

This Tribunal being a Court of first Appeal is a Court of Appeal in law and fact. The documents regarding dissolution of the partnership business filed by the Appellant Establishment, show that business was dissolved on 01.04.2005 and thereafter the Appellant firms ceased to exist. There is no evidence in of rebuttal form the side of Respondent Authority in this respect.

Since, the Appellant Establishment ceased to exist as a Establishment from 01.04.2005 that is the date of dissolution which is further corroborated by the income tax return and certificate of the Auditor and there is no written evidence from the side of Respondent Authority, the fact of dissolution of the Appellant Establishment from 01.04.2005 is held proved. Consequently, it can be assumed that, the erstwhile employees of the Appellant Establishment also ceased to be its employees from date of its dissolution.

Hence, in the light of above discussion and findings of Respondent Authority with respect to default from 01.04.2005 to December, 2009 is held to be recorded against fact and it is held that the Respondent Authority has committed error in law as well in fact in recording it, requires to be set-aside. As regards, the finding with respect to May 2002 to April, 2005, the finding and assessment is held to have been recorded correctly in law and fact because there is no material before Respondent Authority or before this Tribunal which militates against this finding of this period.

The point for determination is answered accordingly.

No other point was pressed.

In the light of above discussion and findings the Appeal deserves to be allowed partly.

ORDER

Appeal is allowed partly. Impugned order dated 01.03.2012 is set aside to the extinct of finding and assessment under Section 7A of the Act for the period 01.04.2005 till December, 2009 is set aside and finding as well assessment with respect to the period May, 2002 to March, 2005 is affirmed.

No order as to cost.

Date:- 03/07/2025

**P.K. Srivastava
(Presiding Officer)**

Judgment Signed, dated and pronounced.

Date:- 03/07/2025

**P.K. Srivastava
(Presiding Officer)**