

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-I, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. 338(4) 2010

M/s.Hotel De-Romana

Appellant

VS.

APFC, Delhi,

Respondent

ORDER DATED:03/02 /2022

Present:- Shri S.K.Gupta, Ld. Counsel for the Appellant.
Shri Narender Kumar, learned counsel for the Respondent.

This appeal challenges the orders passed by the APFC Delhi on 31.10.2007 u/s 7A of the EPF and MP Act 1952 (herein after referred to as the Act) assessing Rs 20,77,370/-payable by the appellant establishment towards deficit PF dues of it's employees for the period 01/96 to 02/2007. The plea of the appellant taken in this appeal is that it is a proprietorship concern running it's Hotel business and covered under the provisions of the Act. Summon dated 01.03.2007 was issued to the establishment to appear and participate in the inquiry to be held 02.04.2007 u/s 7A of the Act, as it was noticed that there is deficit in deposit of PF dues for the aforesaid period.

The appellant establishment appeared and filed all the details of the deposit of PF contribution along with the copies of challans. The authorized representative of the establishment informed that due to sudden death of the owner there was some dislocation in the deposit of the PF dues and the enforcement officer be directed to visit the establishment, inspect the records and quantify the deficit deposit. On the request of the establishment the APFC directed the enforcement officer Mr V.K.Luthra to visit the premises of the appellant. But Mr Luthra never visited the premises and prepared the Report without any basis. The establishment was never proceeded ex parte for it's non appearance. On the contrary, the APFC in a fanciful manner proceeded to decide the matter and made a wrong and false observation in the impugned order that the establishment inspite of liberal adjournments granted for production of documents , failed to comply and as such the documents and materials placed on record by the department were considered and it was found that the establishment has defaulted in remittance of PF contribution in respect of it's employees for the aforesaid period. He computed the said dues up to 20,77,379/-It has also been stated

in this appeal that the said order passed u/s 7A was not communicated to the appellant establishment and they came to know about the same when recovery action was initiated. On its request the order passed u/s 7A was not supplied and the establishment filed a writ petition before the Hon'ble High Court. Then only the office of the respondent supplied the copy of the order. The appellant, thus, in this appeal pleaded that the commissioner malafidely passed the order assessing a huge amount. Not only that the respondent also initiated recovery proceeding and the appellant was harassed by issue of arrest warrant. To support the argument the details of the PF deposits made in respect of the inquiry period have been placed on record of the appeal. It is also pleaded that without identifying the beneficiaries and without assigning good reasons in support of his finding the impugned orders have been passed u/s 7A of the Act. Thereby the appellant has pleaded that the impugned order suffers from patent illegality and an outcome of improper appreciation of fact and law and liable to be set aside.

The respondent filed reply refuting the stand taken by the appellant. The main objection taken by the Respondent is that the appellant has misled the Tribunal by filing some documents in support of the deposits made during the period for which inquiry was held. The Respondent has further pleaded that the challans filed by the appellant are on dates after the assessment order dt 31.10.2007. hence the assessment was made on the information available with the Respondent then. It has also been pleaded by the Respondent that when the Recovery officer visited the Residence of the appellant for recovery of the dues, at that stage only, the appellant disclosed about the deposits made. The Respondent has also taken a stand that the impugned order was handed over to the appellant soon after it was passed. While supporting the impugned order, it has been stated that the commissioner had given ample opportunity to the establishment to file documents showing deposit of the EPF dues. But the establishment did not comply and the order was passed basing upon the documents filed by the department.

During course of argument the learned counsel for the appellant by placing reliance in the case of Himachal Pradesh State Forest Corporation VS Assistant P F Commissioner, 2008-III LLJ SC 581 and in the case of Food Corporation of India VS RPF, 1990 LLR, 64, SC submitted that the commissioner while discharging the function of a quasi judicial authority has been vested with the power of enforcing attendance of witnesses and production of documents required for adjudication. Since identification of beneficiaries is a pre requisite for assessment u/s 7A of the Act, efforts should have been made for the same. But the commissioner acted illegally while making the assessment without identifying the beneficiaries. He also argued that the assessment made on the face of the amount deposited without identifying the beneficiaries goes to the root of the matter and makes

order illegal and liable to be set aside. No rebuttal argument was advanced on behalf of the respondent.

The photocopies of the statement of the PF paid for the relevant period and a statement of the bank along with the challan copies have been placed on record being filed along with the appeal. The argument of the learned counsel for the respondent that the documents as directed were not produced during the inquiry is not accepted since the order of the commissioner speaks that whatever documents were filed by the establishment and department were perused.

It is not understood why the commissioner has not given any finding on the adequacy of the deposit made by the establishment. If at all he was of the opinion that the establishment is required to make more deposit, his order should have reflected the reason for the same including the basis of the calculation and the beneficiaries in respect of whom the deficient or no deposit was made. In absence of a finding to that effect the one and only conclusion is that the commissioner has passed the order without application of mind and without identifying the beneficiaries, which makes the impugned order not sustainable in the eye of law. It will not be out of place to observe that the EO while submitting his report of inquiry, had made least effort to identify the beneficiaries. Similarly the commissioner while discharging a quasi judicial function never summoned the salary or wage register to ascertain the beneficiaries. No explanation in this regard has been offered by the Respondent. The law is well settled that assessment under EPF & MP Act can not be made as if the liability is at par with Tax. It is well settled that the EPFO is the custodian and Trustee of the subscribers and is duty bound to return the contribution to the subscribers. The purpose of the legislation is not to levy the amount as Tax. Hence identification of the employees who are the beneficiaries for the subscription is a must before the assessment of the dues is made. Besides the view taken by the Hon'ble SC taken in the case of Himachal Pradesh State Forest Corporation referred supra, a similar view has also been taken by the Hon'ble High Court of Bombay in the case of CBT, EPFO vs M/S Shakambari Ginnining and Pressing Factory, Akola and Another ,2019 LLR,81.

In this appeal, the impugned order not only suffers from non identification of the beneficiaries, but also lacks the reason behind the assessment. The order reveals that the EO V..K.Luthra had submitted his report on 17.09.2007, i.e after the closure of the hearing on 10.08.2007 when Sh Liaqat Ali, on behalf of the establishment was present. The commissioner never made effort of supplying the copy of the EO's report to the appellant for it's rebuttal. No reason in support of that action has been observed in the impugned order. Hon'ble SC in the case of Kranti Associates Pvt Ltd vs Sh Masood Ahmed Khan and others, (2010)9 SCC 496, have held that

“insistence on reason is a requirement for both judicial accountability and transparency. If a judge or quasi judicial authority is not candid enough about his decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principle of incrementalism. Reason in support of decisions must be cogent, clear and succinct. A pretence of reason or rubber stamp reason is not to be equated with a valid decision making process”

The impugned order besides non identification of beneficiaries also suffers from want of reasons which makes the same not sustainable in the eye of law and entails to be set aside. Hence ordered.

ORDER

The appeal be and the same is allowed. The impugned order passed u/s 7A of the EPF and MP Act is hereby set aside. Consign the record as per rules.

(Presiding Officer)