CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT 1, DELHI

Appeal No. D-1/22/2023

Misc. Application No. 49/2023

Mr. Justice Vikas Kunvar Srivastav, Presiding Officer,

Retired Judge of Hon'ble High Court of judicature at Allahabad

M/s. Wipro Limited **Appellant**

Vs.

APFC/ RPFC, Delhi (East) **Respondent**

1. Sh. Rajshekhar Rao, Sh. Dhirendra Negi, Ms. Pragya Chauhan, Ms. Tanya Tiwari & Sh. Rishabh Yadav, Advocate for the Appellant

2. Sh. Rajesh Kumar, Advocate for the Respondent.

Order:-

PROLOGUE

1. The present appeal is filed on behalf of the appellant 'M/s. Wipro Limited' under Section 7 I of the "Employees' Provident Funds & Miscellaneous Provisions Act, 1952" (which shall hereinafter be referred for brevity and convenience as "the Act" only).

2. The Applicant/ Appellant has filed an Appeal against the order dated 01.05.2023 issued on same date (which shall hereinafter be referred for brevity and convenience as "the impugned order" only) passed u/s 7-A of "the Act" by which the Regional P.F. Commissioner (EPFO, Delhi East), the Respondent has assessed an amount of Rs.332,51,71,815/- as dues to be paid by the Appellant towards P.F. Contributions for the period 04/2014 to 03/2021.

3. Along with the appeal the appellant has preferred the present application under Section 7 O of 'the Act' seeking waiver of pre-deposit of 75% of the assessed amount under Section 7 A of "the Act".

ARGUMENTS

4. The Ld. Counsel for the Applicant has stated in the said application that “the impugned order” has been passed by the Ld. Respondent illegally, perversely and is untenable on the basis of the material on record as well as settled law. The assessed demand of Rs.332,51,71,815/- is raised without giving any basis/ correlation whatsoever of computation of calculation of the quantum and / or loss sustained by the beneficiary of the said P.F. Contribution. It is further stated that based on the various grounds stated in the appeal, the applicant has a strong prima facie case on merits as “the impugned order” has been passed in clear contravention of “the Act”.

5. The Appellant further stated that the Appellant is a public listed company having more than 2,50,000 employees serving clients in 66 countries. If ultimately the impugned order is upheld, the applicant will comply with the directions passed and shall deposit the entire amount as ordered by the Tribunal. There is no chance of the Applicant escaping or evading any liability imposed on it in law. On the other stage, if the Applicant is directed to deposit 75% of ₹332,51,71,815/- (i.e. ₹249,38,78,861/-, immense prejudice would be caused to the Applicant having serious implications and causing financial hardship affecting the functioning of the Applicant company. It is also stated by the Applicant that the balance of convenience is in favour of the Applicant and if the present application is allowed, no prejudice would be caused to the Respondent.

6. It is also stated on behalf of the Appellant that the Applicant had already deposited an amount of Rs. 445.46 crores as Provident Fund for it’s BPO employees for the period 2014-2021. Though, the EPF

scheme states that the maximum amount that is required to be considered as 'basic wages' for calculation of provident fund of an employee is Rs.15,000/- per month, in the interest of it's employees, the Applicant/ Appellant herein calculates and deposits Provident Fund (including employer contribution) on the basis of the actual salary of the employees, even if the same exceeds Rs. 15,000/-. Therefore, for employees drawing a basic pay of more than Rs. 15,000/-, the applicant deposits more than Rs.1800/- per month as Provident Fund (Rs. 1800 is the maximum Provident Fund payable in a month, i.e. 12% of Rs. 15000/-). This shows the bonafide intent of the Appellant/ Applicant.

7. It is also alleged by the Applicant/ Appellant that 'the impugned order ' is also inherently contradictory and contains substantial arithmetic errors as entire calculation of the purported liability of Rs.332,51,71,815/- is dubious and exaggerated with patent errors on the face of it. The total liability consists of various heads as mentioned in the table below:-

Sr. No.	Head	Amount in Rs.
1.	A/c.1:-Total PF Contribution (Employer and Employee)	202,29,01,272/- i.e. employer's contribution of Rs.47,37,74,580/- as well as the employees' contribution of Rs. 154,91,26,692/-for the period between April 2014 to March 2021
2.	A/c.2:- Administrative Charge	16,18,50,971/-
3.	A/c.10:- Pension	107,53,52,112/-

	contribution by employer	
4.	A/c. 21:- EDLI contribution	6,45,46,949/-
5.	A/c.22:- EDLI administrative charges	5,20,511/-
	Total	332,51,71,,815/-

8. The ld. counsel for appellant vide Annexure -17 further stated that the PF liability of the appellant is drastically reduced if the calculation error made by the respondent department and liability for employees who are no longer employed with the appellant is reduced. For the sake of ready reference, Annexure -17 attached with the appeal is reproduced hereunder:-

Summary of PF liability as per revised calculations for FY 2014-15 to FY-2020-21			
Sr. No.	Particulars	INR	INR
A	Total liability as per calculation prepared by the EPFO		3,32,51,71,815/-
B	Less; Reduction in total liability due to calculation errors:-		29,95,83,885/-

1.	Provident Fund administrative charges for the period April 2014 to December 2014 incorrectly calculated by the EPFO at the rate of 11% instead of 1%	7,29,89,684	
2.	Same allowances added twice by the EPFO while calculating differential PF wages in FY 2019-20 and 2020-21	22,65,94,181/-	
C= A-B	Total liability as per EPFO after correction of calculation errors		3,02,55,87,950/-
D	Total liability		1,62,64,14,669/-

	as per revised calculation for all employees after excluding four allowances from PF wages (shift allowance, engagement bonus, L2 allowance and PRS)		
E	Less:- Liability for employees who are no longer employed with WIPRO		1,27,49,42,527/-
F= D-E	Total PF liability as per revised calculation for employees of WIPRO BPO division who are employed with Wipro as on date		35,14,72,142/-

It is stated on behalf of the appellant that the liability of the appellant will come down to Rs. 162.64 crores if the above mentioned allowances and calculation errors are reduced from the assessment made by the respondent department. It is also stated that the beneficiaries are not identified and most of the employees have left the employment i.e. 1.10 lakh employees out of 1.62 lakh employees in respect of whom the assessment was made. Therefore, the appellant is not in a position to recover the employees' share of contribution in respect of these employees as the employer must only deposit the employees' share and recover the same from the employees as per the provisions of Para 30 and 32 of the EPF Scheme, 1952 (which shall hereinafter be referred for brevity and convenience as "the Scheme" only).

9. The Ld. Counsel for the respondent submitted his written objection to this misc. application and took preliminary objections that the application of the appellant is against the spirit and mandate of "Section 7O" of "the Act". Quoting the provisions of "the Act", it is stated on behalf of the respondent that the appellant has failed to show any justifiable ground for any wavier and the application is not sustainable in the eyes of law as there is no legal infirmity in the "impugned order". The respondent also took objection to the maintainability of this appeal as the appellant have not impleaded complainant "Sh. Akhil Sri Guru Teja Keethineedi" as a party. Relying upon the judgement passed by Hon'ble High Court in W.P(C) 1390/2018 titled as M/s G4S Facility Services India Pvt. Ltd. v/s Regional P.F. Commissioner, it is stated that tribunal shall not entertain an appeal unless the appellant makes a pre-deposit of 75% of the amount due and determined as referred to under "Section 7(A)" of "the Act". However, the proviso to "Section 7O" of "the Act" which is an exception empowers the tribunal to waive off or reduce the amount to be deposited for the reasons recorded in writing.

He further submitted that “the Act” is a social welfare legislation for the benefit of labour class. Financial hardship cannot be a parameter for giving any concession to the employer for non-compliance of any provision of “the Act” since the contribution to provident fund is hard earned money of the work force. Actually mandate of “Section 7O” for pre-deposit of 75% of the amount due from the establishment is the rule and waiver is an exception. In EPF matters, the interest of work force has to be taken care of. The provident fund and other contributions are required to be deposited by the employer by 15th of the next month in which the employee has worked in the establishment and the dues become payable to him because worker has already performed up to the last day of the previous month. The contributions have to be deposited by the employer only after beneficiary worker has already worked and thus, earned this amount in terms of the contract of the employment and the provision “the Act”. Any effort by the employer to deny employees the legitimate dues which they have rightfully earned in terms of the provisions of “the Act” are required to be dealt in accordance with laws. In case of failure to deposit the legitimate dues of the worker the respondent initiates an enquiry under “Section 7A” of “the Act” which is quasi-judicial process for determination of dues in respect of eligible employees. The appellant having PF code no. DS/NHP/23729 is covered under “the Act” and an enquiry under “Section 7A” for the period financial year-2006-07 to financial year 2013-14 was conducted by identifying the issue of splitting of salary and concluded against the establishment vide order dated 25.09.2020 assessing the amount of Rs.17,41,73,990/-. In response to the said order the establishment had filed an appeal before this tribunal and the appellant was directed to deposit an amount of Rs.5,22,00,000/- in compliance of the provisions under “Section 7O” of “the Act”. In continuation thereof the establishment was assigned for inspection to the Enforcement Officer and an inspection report dated 31.03.2021

recommending an enquiry under “Section 7A” for the period 04/2018 to 01/2021 for subsequent period was submitted by the said enforcement officer stating that establishment has splitted the salary into various heads i.e. basic, HRA, additional allowance, conveyance, group allowance, shift allowance etc. to reduce its PF liability. A show-cause notice dated 20.04.2021 was issued to the establishment to submit its reply. Meanwhile a complaint dated 13.04.2021 was also received from “Sh. Akhil Sri Guru Teja Keethineedi” alleging that PF benefits have been given by the establishment but on lesser wages. The said complaint was assigned to another Enforcement Officer who vide report dated 04.02.2022 recommended to initiate enquiry under “Section 7A”. Therefore, another show-cause notice dated 11.02.2022 was issued to the establishment for its reply. When establishment failed to reply within stipulated time, summons for enquiry under “Section 7A” of “the Act” for the default period 04/2014 to 03/2021 was issued to the establishment on 04.03.2022 and the complainant was also made party in the said enquiry. The enquiry was conducted following due process of law and the respondent determined that the appellant herein has split its salary into basic and various allowances to reduce its Basic Wages, thus, reducing its PF liability. After doing due analysis competent authority observed that many allowances have been paid universally, necessarily and ordinarily to the employees without them being linked to any special effort/performance/extra work made by the employee but these allowances were not considered while remitting PF and allied dues. So the competent authority demarcated between allowances which shall be made part of basic wages and which shall be excluded keeping in view the statutory wage ceiling limit of Rs.6,500 (up to August 2014) and Rs.15,000 (since September 2014). Accordingly, the dues were calculated after including the necessary allowances and the impugned order was passed to the tune of Rs.332,51,71,815/-.

10. Relying upon the judgement of Employees Provident Fund Organization v/s M.S. Raven Beck Solutions (India Ltd.), 2020 SCC Online Ker 4440, the Ld. Counsel for the Respondent stated that splitting the pay of it's employees by the establishment by classifying it as payable in form of several allowances certainly amounts to subterfuge intended to avoid payment of PF contribution by the establishment. The contention of the appellant that the impugned order contains arithmetic errors is totally misconceived and contrary to records. It is settled law that allowance paid unnecessarily, necessarily and ordinarily to the employees without them being linked to any special effort/performance/extra work made by the employee would be included while remitting PF and allied dues further it is stated that the appellant had not pointed out any error of calculation as mentioned in Para 9 of the application even after being given adequate time and opportunity for the same. The enforcement officer submitted their report on 19.10.2022 and the case was reserved for orders on 21.03.2023. The appellant also not proceeded to avail the remedy under "Section 7B" of "the Act". Stating all these averments, the Ld. Counsel for the Respondent prayed for the dismissal of this application.

11. Ld. counsel for the respondent also submitted sample sheet showing calculation of dues of 10 employees and stated that the dues are calculated after adding the sum of allowances to the basic been paid by the appellant and the PF dues are calculated upto the statutory wage ceiling of Rs. 15000/- only.

12. Rebutting the submissions made by the Ld. Counsel for the Respondent, a rejoinder was also filed on behalf of the appellant wherein it is stated that the Respondent has:

(a) *Contrary to the express provisions of the EPF Act considered bonus (Engagement Bonus) and overtime allowance (Shift Allowance) as part of basic wages.*

(b) *Contrary to the settled law, considered performance linked allowances (L2 Allowance, performance Reward Scheme), admittedly payable only to dew employees as part of basic wages;*

(c) *Made a calculation error of about Rs.7.29 crores since the respondent incorrectly considered the provident fun administrative charges at 11% instead of the prevailing 1.1% for the period between April 2014 to December 2014.*

(d) *Incorrectly added an amount of Rs.22.65 crores by considering the same allowances twice over as part of basic wages for calculation of provident fund between 2019-2021.*

(e) *If the number of days for which the salary is paid is considered while calculating basic wages, the liability would be further reduced by Rs.1.94 crores.*

13. Relying upon Annexure 17 of the Appeal Memo, the Ld. Counsel for the Appellant in Para 4&5 for the rejoinder stated that the liability calculated by the respondent would significantly reduce to about Rs.162.64 crores (as against Rs.332.51 crores calculated by the Respondent) if the above errors are corrected in the Impugned Order. Even for the remaining allowances (in respect of the liability of Rs.169.87 crores), the Respondent has blindly included all allowances paid by the Appellant to its employees without even considering the HR policies of the Appellant that set out the object and purpose of such allowances. There has been no effort on the part of the Respondent to identify the beneficiaries and the entire recovery proceedings are aimed at filling its own coffers. It is settled law that determination can only be made in respect of employees who are identified and in respect of whom it can be ascertained that the determined amount will be

received by the beneficiary. In the present case, there is no identification the beneficiaries by their names. Out of over 1.62 lakh employees in respect of whom the assessment has been made, only about 55,000 employees remain in the Appellant to verify which of these employees are using the same or different PF accounts and whether or not the accounts are AADHAR verified without which deposit of PF contributions is not possible. The Appellant has no possible means to trace the employees and to deposit the amounts so directed by the respondent. In fact, out of the total liability of Rs.332.51 crore calculated in the Impugned Order, an amount of Rs.281.40 crores is towards employees that are no longer employed with the Appellant.

14. It is also denied on part of the Appellant that the application is not maintainable merely because Sh. Akhil Sri Guru Teja Keethineedi, an ex-employee of the Appellant who had filed a complaint with the Respondent, has not been impleaded. There is no requirement under "the Act" to implead the complainant as party to an appeal and the objection raised on behalf of the Respondent is baseless. In any event, the objection has no relation to the application for waiver being considered by this tribunal. Further in the judgment passed Hon'ble Delhi High Court in W.P(C) No. 1390/2018, no principle of law was set out stating that complainant should mandatorily be made parties in all appeals filed under "Section 7I" of "the Act". In the facts of that particular case, the complainant was directed to be made party as the proceedings under "Section 7A" were initiated at the instance of the complainant. In the present case the proceedings under "Section 7A" were initiated independently without any complaint being filed by any party. The complainant had filed a baseless complaint after the initiation of the enquiry before the Respondent authority and therefore, the presence of such complainant is not necessary for adjudication of

the present case. Replying to the preliminary submissions made by the Ld. Counsel for the Respondent the legitimate dues stand already paid to the employees and no loss was caused to the employees of the Appellant. It is also stated that the order dated 25.09.2020 passed by the Respondent was also baseless and therefore the same was challenged by the Appellant before this tribunal by way of an appeal bearing Appeal No. D-1/44/2020. The said appeal is presently being adjudicated by this tribunal.

15. The Ld. Counsel for the Appellant stated that as far as the remedy of review under "Section 7B" of "the Act" is concerned, given the manner in which the Impugned Order was passed, no purpose would have been met in seeking review since the Respondent has clearly acted with a predetermined intend to fasten liability and blatantly ignoring the materials placed before them while passing the Impugned Order. It is also not mandatory for the Appellant to seek review under "Section 7B" of "the Act" before filing the present appeal. Closing the submissions in the rejoinder, the Ld. Counsel for the Appellant sought for complete waiver of deposit under "Section 7O" of "the Act".

16. After giving a lengthy hearing to both the parties, I have gone through the materials placed before this Appellate Tribunal. Before moving further with the discussion, it is important to go through the provision of "Section 7O" of "the Act." The provision of "Section 7O" of "the Act" is quoted below for the purpose of easy reference and convenience:-

> *7-O. Deposit of amount due, on filing appeal.— No appeal by the employer shall be entertained by a Tribunal unless he has deposited with it seventy-five per cent. of the amount due from*

him as determined by an officer referred to in section 7A: Provided that the Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section.

In connection with the aforesaid provision extracted from "the Act", further the Rules framed for the purpose of the Appellate tribunal to exercise powers as such, under Section 7 I is important . The Tribunal (Procedure) Rules, 1997, in it's Rule 7 provides as under:-

7. Fee, time for filing appeal, deposit of amount due on filing appeal.— *(1) Every appeal filed with the Registrar shall be accompanied by a fee of Rupees Two Thousand to be remitted in the form of Crossed Demand Draft on a nationalized bank in favour of the Registrar of the Tribunal and payable at the main branch of that Bank at the station where the seat of the said Tribunal situate.*

(2) Any person aggrieved by a notification issued by the Central Government or an order passed by the Central Government or any other authority under the Act, may within 60 days from the date of issue of the notification/order, prefer an appeal to the Tribunal.

Provided that the Tribunal may if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the prescribed period, extend the said period by a further period of 60 days.

Provided further that no appeal by the employer *shall be entertained by the Tribunal* ***unless*** *he has deposited with the Tribunal a* ***Demand Draft*** *payable in the Fund and* ***bearing 75% of the amount due from him as determined under Section 7-A****. Provided also that the*

Tribunal may for reasons to be recorded in writing, waive or reduce the amount to be deposited under Section 7-O.

17. As the present appeal is at the stage of admission hearing and the office report shows that it is free from any other defects therefore while deciding the application filed under section 7O of "the Act" this Tribunal is of the view that for the grant of interim relief of waiver of the statutory requirement of pre-deposit to the extent of 75% of the impugned assessment under Section 7A of "the Act" or reduction to any extent as prayed by the Appellant, certain parameters have to be looked upon consisting of –

(a) Whether the appellant has succeeded in establishing a prima-facie case?

(b) Does the balance of convenience lies in the favour of the Appellant and appellant qualifies for reduction / waiver of the mandatory pre-deposit?

(c) Any order passed while deciding the application filed under Section 7O should not cause undue hardship to the Appellant/Applicant or result into irreparable loss?

DISCUSSIONS

18. **Prima-facie case-** Every order passed under Section 7A of "the Act" by the competent authority is made statutorily appealable under the Section 7I of "the Act". The appeal under Section 7I is, therefore, statutorily admissible in response of grounds of challenge to the impugned order, but the said appeal shall not be entertained unless the appellant is required under Section 7O to deposit the requisite 75% of the impugned demand of assessment determined under Section 7A. However, the waiver of or reduction in the statutorily required pre-deposit amount of 75% of assessed amount under the appeal is left upon the discretion of the Appellate Tribunal. For invocation of it's

discretion the Tribunal has to ascertain whether any prima facie case is made up and established for such waiver or reduction in the required pre-deposit to any lower extent than 75%. The appeal filed by the assesse employer under Section 7I pleads in the memo of the appeal, the material informations as the reason to challenge the impugned assessment and demand made under Section 7A by the Authority under "the Act". The pleaded informations amounting to reason for challenge to the impugned order of demand must have some evidence to show the impugnity and establish the ground of challenge, which, if opportunity is given to the Appellant, may be proved and if proved, an order finally is possible in favour of the Appellant on the basis theirof. Then, it is said the Appellant has succeeded in showing prima facie case unless the same stands unrebutted by the Respondent. However, just because a prima facie case is established, it does not mean that the Appellant shall win.

Further, the provision of Section 8 A are also quoted for ready reference:-

> [***8A. Recovery of moneys by employers and contractors***.—*(1) [The amount of contribution (that is to say the employer's contribution as well as the employee's contribution in pursuance of any Scheme and the employer's contribution in pursuance of the Insurance Scheme)], and any charges for meeting the cost of administering the Fund paid or payable by an employer in respect of an employee employed by or through a contractor may be recovered by such employer from the contractor, either by deduction from any amount payable to the contractor, under any contract or as a debt payable by the contractor.*

(2) A contractor from whom the amounts mentioned in sub-section (1) may be recovered in respect of any employee employed by or through him, may recover from such employee the employee's contribution [under any Scheme] by deduction from the basic wages, dearness allowance and retaining allowance (if any) payable to such employee.

(3) Notwithstanding any contract to the contrary, no contractor shall be entitled to deduct the employer's contribution or the charges referred to in sub-section (1) from the basic wages, dearness allowance, and retaining allowance (if any) payable to an employee employed by or through him or otherwise to recover such contribution or charges from such employee.

Explanation.—In this section, the expressions, "dearness allowance" and "retaining allowance" shall have the same meanings as in section 6.]

In connection with the aforesaid provision extracted from "the Act", relevant paras of "the Scheme" are also important. "The Scheme" in its para 30, 34 & 36B provides as under:-

30. Payment of contributions

(1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member (in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution

payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and ***also administrative charges.***

Explanation: For the purposes of this paragraph the expression

"administrative charges" means such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which Provident Fund Contribution are payable as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.

34. Declaration by persons taking up employment after the Fund has been established

The employer in relation to a [factory or other establishment] shall, before taking any person into employment, ask him to state in writing whether or not he is a member of the Fund and if he is, ask for the Account

Number and/or the name and particulars of the last employer. If he is unable to furnish the Account Number, he shall, require such person to furnish and such person shall, on demand, furnish to him for communication to the Commissioner, particulars regarding himself and his nominee required for the Declaration Form. Such employer shall enter the particulars in the Declaration Form and obtain the signature or thumb impression of the person concerned:

Provided that in the case of any such employee who has become a member of the Family Pension Fund under the Employees' Family Pension Scheme, 1971, the aforesaid Declaration Form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

36-B. Duties of contractors

Every contractor shall, within seven days of the close of every month, submit to the principal employer a statement showing the recoveries of contributions in respect of employees employed by or through him and shall also furnish to him such information as the principal employer is required to furnish under the provisions of the Scheme to the Commissioner.

19. **Balance of Convenience:-** When the coverage of the Act over the establishment and establishment of fund in EPFO in furtherance to the provisions of beneficial statute known as Employees' Provident Funds & Miscellaneous Provisions Act, 1952 every employee employed for working under the control and management of the appellant establishment must have been registered as member of the fund. This creates a liability for the establishment who is employer to

deduct the contribution of the provident fund not only of his own share but also that is to to be deducted from the salary/ wages of the employees unless the employee declares himself not covered with the membership of the fund established under the EPFO or the employer has declared on prescribed format under the act known as Form 11 under the scheme them as excluded employees.

20. By way of **Annexure -17**, the appellant has carved his grounds for waiver / reduction in the pre-deposit. In the above context to decide the prayer of waiver/ reduction in deposit of 75% of the statutory dues as mandated under Section 7 O of 'the Act', a point wise analysis of the Annexure -17 of the appeal memo is necessary which is done as follows:-

Sr.B1 of Annexure 17:- Charging the administrative charges @11% instead of 1.1%, it is not out of point to mention that the rate of administrative charges are decided in terms as mentioned in Para 30(3) of 'the Scheme' and as per the information displayed on the website of the respondent department, the EPF administrative charges payable by the employers of un-exempted establishments for the period 01.08.1998 to 31.12.20214 was @1.10%. In the absence of any explanation as to charging the administrative charges @11% instead of @1.1% makes the calculation, arbitrary as well without application of mind.

Sr.B2 of Annexure 17:- Same allowances added twice by the EPFO while calculating differential PF wages in financial year 2019-20 and 2020-21 is concerned, in the absence of any explanation as to charging the amount makes the calculation arbitrary as well without application of mind. Moreover, this is a penal provision and so far as the nature of penal provision is concerned, unless heard and disposed off in the light of objection raised by the aggrived party (the appellant), no such charge can be imposed for the purposes of recovery under 'the Act'.

Sr. D of Annexure 17- Total liability as per revised calculation for all employees after excluding four allowances from PF wages (shift allowance, engagement bonus, L2 allowance and PRS)- Any part of the wages and allowances permissible under 'the Act' whether fall under the excluded category or not for charging of PF liability is a matter of evidence. The objection in this regard challenging the total liability imposed by the respondent for all employees after excluding several allowances from PF wages is a matter need to decided after perusing and evaluating the evidences on record produced and adduced by the parties to the appeal. Therefore, at this interim stage of disposing the prayer under Section 7 O of 'the Act' in terms of the provision incorporated therein by 'the Act' is left reserved for decision on merit at the time of final disposal of **the appeal.**

Sr. E of Annexure 17:- Liability for employees who are no longer employed with WIPRO -Likewise the objection raised as to the liability that it would be less because employees who are no longer employed with the appellant is suffering from obscurity in absence of employment register, records of the working employees, their tenure and the nature of their employment as well whether excluded under 'the Act' in terms of the provisions legislated therein. Therefore, this objection shall also does not seem material for the purposes of deciding the application under Section 7 O of 'the Act' at this interim stage. The decision shall remain left on the point on merit while disposing off the appeal finally.

21. **Irreparable Loss & Undue hardship:-** there is establishment legal principle that one cannot take advantage of his own wrong. The provisions of 'the Act' and 'the Scheme' framed thereunder referred hereinabove clearly show that the appellant was under bounded duty and responsibility to deduct contribution and deposit the same in the fund against the employees who are the members of the fund. It doesn't matter that the employees who are working or had already

worked on any point of time within the span of assessment years i.e. 04/2014 to 03/2021 and now not on the role of the employees by any reason whatsoever may be. The purpose of the fund is beneficial to the employees. They are registered with the fund with their name and address. If any amount is deposited in the fund as presctribed under 'the act' and 'the scheme ' shall be directly available to the concerned employee. The employer is not paying any penny from his pocket but it is to be paid out of the 'basic wages' on prescribed contribution share as per law. Any failure which seems to be willful and knowingly cannot termed as loss in legal sense. Question of irreparable loss doesn't arise.

22. Lastly, before parting with the matter, the tribunal considers about the hardship by passing the order under Section 7 O. The tribunal has already opined that the appellant remained unsuccessful in establishing a fit case for complete waiver, however, the calculation errors made by the respondent while passing the impugned order is definitely needs to be addressed and therefore, the appellant may be relaxed to a little extent of reducing the quantum of prescribed pre-deposit from 75% of the assessed amount to 65%.

ORDER

The misc. Application no. 49/2023 of the appellant filed under Section 7 O of 'the Act' is partly allowed. Appellant is permitted to deposit as precondition @65% of the impugned assessed amount commuted by the respondent instead of depositing the amount @75% of the total liability within a period of eight weeks from the date of this order by way of fixed deposit receipt favouring 'Registrar CGIT' initially for a period of one year having auto renewal mode thereafter.

The office is directed to place the record for entertaining the appeal after compliance of the deposit of precondition amount as prescribed herein above to a reduced extent of 65%. The respondent, if has not filed written reply to the appeal , may file within three weeks

from the date of order providing copy thereof to ld. counsel for the appellant. Rejoinder, if any, may also be filed within two weeks thereafter by the appellant.

Sd/-

Justice Vikas Kunvar Srivastav

Presiding Officer,

CGIT-cum-Labour Court No.1, Delhi.

Retired Judge of Hon'ble High Court of judicature at Allahabad

Date: 18/November/2024_

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