

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

Present:

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

M/s. Air France

Appellant

Vs.

APFC, Gurgaon

Respondent

Appeal No. 676 (16)2013

ORDER DATED:- 20 November, 2020

**Present:- Shri Anil Makhija, Ld. Counsel for the Appellant.
Shri S.N. Mahanta, Ld. Counsel for the Respondent.**

This appeal challenges the legality of the order dt 23/7/13 passed by the APFC Gurgaon u/s 7A of the EPF & MP ACT (here in after referred to as The ACT) assessing rs6,71,120 payable by the appellant towards the unpaid dues for the period 1/2009 to 6/2012.

Facts not disputed by the parties are that the appellant is a company incorporated under the laws of France. It has an office in India as the company has been engaged in the business of operation of Aircrafts in India as a Foreign Airline. In order to safeguard the interest of its employees, the company had formed a provident fund trust in the name of Air France Local Staff Provident Fund on the basis of a trust deed created in the year 1955, which was duly recognized by the Income Tax Department of India. The appellant company was also diligently depositing the provident fund dues of its employees in the said fund until 1st April 2001, when the provisions of EPF & MP ACT were made applicable to the AirLine Industries. A code no being allotted under the Act, the appellant started depositing the contribution of its employees, other than the excluded employees, with the EPFO. In the year 2007 some amendments were made to the Income Tax Act, which made it mandatory for the appellant company to get either covered under the EPF&MP ACT or to get an exemption from the operation of the act in terms of sec 17 of the Act.

Furtherance to the amendment, when appellant applied for the exemption in respect of its excluded employees to the RPFC New Delhi, it was advised to make the application to RPFC Gurgaon as most of the employees were working in Gurgaon. Another EPF Code was also allotted by the RPFC Gurgaon w.e.f. 1st January 2009. Though a fresh application was filed by the appellant before RPFC Gurgaon for exemption u/s 17, no order was passed on the same and squad was constituted to inspect the office of the appellant and report on the eligibility for the exemption applied for. The squad

submitted its report for initiation of 7A inquiry and at the same time advised the appellant to deposit both employer and employees share under the provident fund scheme, employee's pension scheme and administrative charges for both the accounts along with employer's contribution and administrative charges under the employees' deposit linked insurance scheme.

The grievance of the appellant is that the commissioner during the 7A proceeding did not consider the objections taken by the establishment and proceeded to accept the report of the EO in toto. The impugned not being with proper reasoning's is liable to be set aside.

The respondent has filed a written objection supporting the impugned order and describing the same as a reasoned and speaking order.

The learned counsel for the appellant addressed this tribunal while drawing attention to the amendment made to Rule 4 of schedule 4 of the Income Tax Act 1961 brought in by the Finance Act 2007, which in order to retain the recognition under the Income Tax Act made it mandatory for the establishment either to enroll it under the EPF & MP Act or to get the exemption u/s 17 of the said Act. Since the appellant establishment had already been allotted code no for contribution of its eligible employees, made an application for exemption in respect of its excluded employees covered under its own scheme as it was necessary for retaining the recognition under the Income Tax Act. Since the officers of the squad advised for deposit of the employer and employees' share under the provident fund scheme, pension scheme and deposit linked Insurance scheme for the period 1/2009 to 6/2012, the appellant complied the same. But the APFC Gurgaon during treated the same as recovery and directed payment of administrative charges under the EPF Scheme and Deposit Linked Insurance scheme, which is unjust and improper. He also argued that the impugned order clearly shows that the amount was deposited on the advice of squad officers and not as the defaulted amount. In such a situation no administrative charges are payable by the appellant.

It is found from the impugned order that the commissioner without assigning any reason has accepted the report of the EO in toto which is nothing but a repetition of the recommendation by the squad in their reports dated 11/1/2010 and dated 12/1/2012. In both the reports the squad has recommended for deposit of administrative charges payable by the establishment for its application u/s 17 of the ACT praying exemption. The impugned order further reveals that the EO in his report had assessed Rs.149438449/- and the appellant during the inquiry made deposit of Rs.148767329. The commissioner has directed for deposit of the balance amount of Rs671120/- towards administrative charges only. Under the EPF Scheme 1952 and EDLI Scheme 1976, provisions have been made to meet the administrative charges from out of the said fund in order to meet the expenses for implementation of the scheme. But here is a case, where the deposits

were made for a retrospective period for its excluded employees by the appellant pending disposal of its application for exemption u/s 17 of the Act, which was necessary for retention of the recognition under the Income Tax Act. Hence for such deposit no administrative charges are payable by the appellant as has been held in the impugned order. The order dt23/7/2013 not being a speaking and reasoned order is liable to be set aside. Hence, ordered.

ORDER

The appeal be and the same is allowed. The order dated 23/7/2013 passed by the APFC Gurgaon and challenged in this appeal is hereby set aside.

Sd/-
Presiding Officer