

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1**

**MUMBAI**

Present

Justice Ravindra Nath Kakkar

**CGIT-1/EPFA/70 OF 2017**

M/s Janata Seva Mandal

... Appellant

Vs.

Assistant Provident Fund Commissioner

...Respondent

Thane

Presence:

For the Appellant

:

Mr.H.L.Chheda (A.R)

For the Respondent

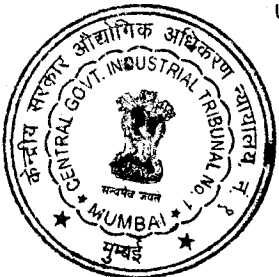
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Mr. Suresh Kumar, Adv.

Mumbai, dated 02<sup>nd</sup> August 2021.

**JUDGEMENT**

- 1) This appeal is filed u/s 7-I of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'Act') against the order dated 10-10-2014 passed by Assistant Provident Fund Commissioner – Thane u/s 14-B and 7-Q of the Act for the period from 07/2008 to 11/2013 directing Appellant to pay an amount of Rs. 211147 towards damages u/s 14-B of the Act and Rs. 102878 towards simple interest u/s 7-Q of the Act totaling to Rs. 314025.



- 2) Briefly stated facts of the case are as follows. M/s Janata Seva Mandal (hereinafter referred to as 'Appellant') is a registered trust that runs a charitable institute maintained on "no loss - no profit" basis for benefits of the people in rural areas of Thane District serving the society and spreading the awareness the need for education among the illiterate rural mass.
- 3) Heard both the parties.
- 4) It is the case of the Appellant that impugned Composite order u/s 14-B and 7-Q of the Act dated 10-10-2014 for the period from 07/2008 to 11/2013. The Appellant states that having applied for voluntary coverage u/s 1(4) of the Act in February 2011, the Respondent without any order decided the coverage u/s 2-A with effect from 2008 vide letter dated 05-09-2011 asking to comply from July 2008. Hence the pre-discovery period in the present case is from July 2008 to September 2011. It is the case of the Appellant that Appellant school is covered under the Act retrospectively, due to the mitigating circumstances the payments of contributions were remitted with little delay. The object of levying damages u/s 14-B of the Act is to penalize only on willful default. In the present case, there is no finding of the willful default by the Respondent and Appellant paid entire contribution much before the invocation of section 14-B. The bona fide of the Appellant is evident that default was not willful and being educational institute and due to present COVID-19 situation and closures the institute has suffered heavy financial losses at present. Hence, the impugned order is liable to be set-aside.
- 5) It is also the case of the Appellant that in the present case, assessment of pecuniary compensation is done by determining the interest u/s 7-Q of the Act while the balance amount u/s section 14-B is punitive in nature which Appellant is not liable to pay as the entire contributions was paid by the Appellant immediately on receipt of the code number.



6) The next point argued is Central Board of Trustee (CBT) passed the resolution that no damages should be levied for the pre-discovery period where the code number was allotted belatedly by the EPFO and the establishment was prevented from remitting the contributions in the absence of code number allotted to it by the EPFO. It is also stated that EPFO as per the directions of CBT issued the circular dated 15-06-2004 directing its field offices not to levy damages for pre-discovery period and till date CBT has not withdrawn its circular. Further, default is not willful and in spite of that maximum rates of damages as prescribed in Para 32-A of the Scheme was applied by the Provident Fund Commissioner for the pre-discovery period. In this way, the crux of the argument is that damages imposed by the Respondent at maximum rates without considering the mitigating circumstances and the discretion has not been exercised while passing the impugned order.

7) In reply to the above arguments, learned counsel for the Respondent stated that Appellant was covered u/s 2-A of the Act with effect from 01-07-2008. The contention of the Appellant that they are covered u/s 1(4) of the Act is not correct. Further stated that authority has rightly levied the damages and interest. Representative of the establishment during the inquiry proceedings agreed to pay interest imposed u/s 7-Q of the Act. It is the case of the Respondent that Act does not make any distinction between the classes of the establishment covered under the Act and it has no relevance that establishment is a trust or otherwise. The Act is applicable to all the establishments equally. Lastly argued that the damages have been rightly levied by the authority as Appellant failed to register itself in the year 2008 and there is a default on the part of Appellant not registering under the Act from July 2008. In this way, learned counsel for the Respondent supported for the impugned order passed.

8) At the very inception, it would be relevant to mention that this appeal is filed against the Composite order passed u/s 7-Q and 14-B of the Act. Since, appeal against the order



passed u/s 7-Q of the Act is not entertainable, therefore the only the portions of order passed u/s 14-B of the Act is the subject matter of this appeal.

- 9) The primary contention of the Appellant is with regard to the damages imposed for the pre-discovery period as it made the application u/s 1(4) of the Act for coverage on 01-02-2011 whereas the PF code number was allotted by the Respondent with coverage effective from 01-07-2008. In order to appreciate and adjudicate on this issue, it would be pertinent to establish which section of the Act is the basis to cover the establishment under the purview of Act. Here, it would be relevant to reproduce Sections 1(4) and Section 2-A of the Act. Section 1(4) is reproduced as below.

*“(4) Notwithstanding anything contained in sub-section 3 of this section or-subsection 1 of section16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.”*

Whereas, Section 2-A of the Act is reproduced as below,

*“Establishment to include all departments and branches.—For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches, whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.”*

On plain reading of the Section 1(4) reveals that establishment can voluntarily registered itself for coverage of the Act whereas Section 2(A) states when there are



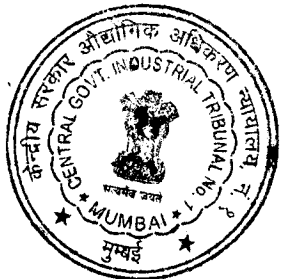
several branches of the main establishment then irrespective of their locations they should be treated as one establishment.

10) It transpires from the visit note of Enforcement Officer dated 06-07-2011 and PF code allotment letter No. MH/204280/THN/Circle II/538 dated 26-08-2011 that Enforcement Officer made the visit for verification proposal for applicability of the Act to M/s Janata Seva Mandal (the Appellant). Enforcement Officer requested the documents from the Appellant after which EPF Authority communicated that Appellant already has an existing PF code number MH/201795 allotted to its main branch namely M/s Vivekanand English Primary School thereby allotting a sub-code MH/204280 for the new application. Also, it is evidently clarified in the allotment letter that "the said Branch/Head Office/Establishment will be treated as one along with your main establishment".

11) It would not be out of place to mention that Appellant did not oppose this decision of authority applying Section 2-A while allotting PF code number to the branch either during the inquiry or in this appeal. Therefore, the contention of the Appellant with regards to the date of coverage is not acceptable.

12) Coming to the issue of imposing damages for the pre-discovery period, I would like to refer to the Para 14 of the judgment rendered by Hon'ble Bombay High Court in the case of Navnilal K. Shah (Dr.) vs Union of India And Another on 11 July 2003 reported in (2004) ILLJ 632 wherein it held,

*"...it cannot be heard to contend that merely because the decision under Section 7-A of the said Act was taken after the date from which the Act was applicable to the establishment that it would automatically postpone the date for imposition of the damages under Section 14-B of the said Act. Certainly, it does not mean to say that in a*



*given situation, the authorities should not exercise their discretion under Section 14B while imposing the penalty but it cannot be said that the authorities cannot impose damages for pre-discovery period. This conclusion is clearly revealed from the above referred two decisions of the Apex Court in relation to the powers of the authorities under Section 14-B of the said Act and at the same time it is also revealed that such-authorities are duty bound to consider the issue of imposition of damages under the said provisions of law in accordance with the statutory guidelines."*

In view of the above judgment and discussions made above, imposing damages for the pre-discovery period can said to be legal and proper.

- 13) Consequent to determining that imposition of damages u/s 14-B of the Act is proper for the pre-discovery period in this case, the next is to determine whether the imposed damages at maximum rates on the Appellant is proper and justified and whether the impugned order requires for any interference.
- 14) To address this subject, it would be significant to rely on the verdict of Hon'ble Apex Court in *Mcleod Russel India Limited vs Regional Provident Fund Commissioner, Jalpaiguri* reported in (2014) 15 SCC 263 held that *"...to proceed on the premise that the levy of penalty under the Act was not a mere formality, a foregone conclusion or an inexorable imposition; and that the circumstances surrounding the failure to deposit the contribution of the employees concerned would also have to be cogitated upon"*. Moreover, Hon'ble Apex Court in Civil Appeal No. 96-97 Of 2017 [Special Leave Petition (C) Nos. 1879-1880 Of 2015] in the Assistant Provident Fund Commissioner, EPFO & Another v/s The Management of RSL Textiles India Pvt. Ltd. Through its Director reiterated its view in *Mcleod Russel India Limited (Supra)* that *".....the presence or absence of mens rea and/or actus reus would be a determinative factor in imposing*

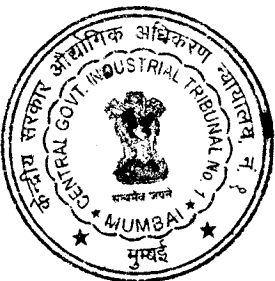


damages under Section 14-B, as also the quantum thereof since it is not inflexible that 100 per cent of the arrears have to be imposed in all the cases. Alternatively stated, if damages have been imposed under Section 14-B, it will be only logical that mens rea and/or actus reus was prevailing at the relevant time."

15) In the light of the judgments referred above, this Tribunal finds that imposing damages at maximum rates should not be mechanical but supported with sufficient causes especially with regard to the determinative elements of mens-rea and/or actus-reus in the actions of Appellant and also the scrutiny of the mitigating circumstances.

16) It would be relatable to note that Appellant had voluntarily applied for the allotment of the PF code number by moving an application u/s 1(4) of the Act that was not discussed in the impugned order. Moreover, impugned order does not speak about any grounds or reasons to assert that there exist mala fide intentions on the part of Appellant. Also, the impugned order does not specifically mentions the reasons for levying damages at maximum rates for the entire period including pre-discovery and post-discovery. Besides, it is nowhere apparent that Appellant would have utilized the money in any profit making activity by remitting the dues belatedly. However, this Tribunal also observes that Appellant should have known that if one of its branch is already covered under the purview of the Act then its another branch will be treated as the part of the main branch as prescribed under section 2-A of the Act.

17) In the view of aforesaid reasons and considering that a substantial portion of the period for which damages have been levied belongs to the pre-discovery period, this Tribunal is satisfied to reduce the percentage of damages originally assessed at maximum rates in the impugned order. Based on the amount of damages involved in this case, extent to which Appellant has been able to convince the Tribunal on the grounds of this appeal, and in order to maintain substantial justice between the parties, this Tribunal while upholding the decision of imposing the damages u/s 14-B of the Act for the pre-



discovery period also deems to reduce the quantum of entire damages u/s 14-B of the Act in the impugned order to 40% (Forty percent).

18) Therefore, this Tribunal pass the following order:

- a. Impugned order dated 10-10-2014 is set-aside to a partial extent of reducing the damages imposed u/s 14-B of the Act.
- b. Penal damage assessed is reduced to 40% (Forty percent) of the original assessment.
- c. If any amount of damages has been deposited during proceedings of this appeal, the same is to be adjusted against the final amount.
- d. No order as to cost

19) The copy of the order be sent to both the parties, file be consigned to the record room after due compliance, and this order be uploaded over official web-portal of this Tribunal.



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TRUE COPY

*Nabany*  
Secretary to the Court  
Central Government Industrial  
Tribunal-cum-Labour Court No. I  
Mumbai

*sd/-*  
(JUSTICE R.N. KARKAR)  
PRESIDING OFFICER