BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-1, MUMBAI

CGIT-1/ EPFA/69 OF 2017

M/S. AMRUTA VAISHNAVI EDUCATION WELFARE TRUST

THANE - APPELLANT

V/s.

ASSISTANT PROVIDENT FUND COMMISSIONER

THANE - RESPONDENT

Present: Shri H. L. Chheda, AR for the Appellant.
Shri Suresh Kumar, Advocate for the Respondent

Mumbai, dated the 6th day of March 2020.

ORDER

1 The present appeal is filed to challenge the Order bearing no: MH/200339/DAMAGES/6252 dated 31.10.2014 for the period from 07/2008 to 06/2013 passed by the Assistant Provident Fund Commissioner, Thane under Section 14-B of the Employees Provident Fund and Misc. Provisions Act, 1952 levying damages on the appellant on account of delayed remittance of PF dues.

2. The facts of the case are that the respondent authority found that the appellant had defaulted in remitting the PF dues. Therefore, proceeding under Section 14B of the Act were initiated against the appellant and summon was issued to it. The representative of the appellant admitted that, since there was no sufficient means available it could not remit the monthly provident fund contributions to the Fund in accordance to the Scheme provisions for the period from 07/2008 to 06/2013 the delay made in remittance. The APFC concluded the inquiry and imposed the penal damages and interest. The appellant challenged the impugned Order by contending that there was no wilful default but delay in remittance occurred due to shortage of funds and delayed payments girl fees from the State Govt. and other mitigating conditions.

3. The appellant submitted that it is also running charitable trust for rendering social service activities in and around Kalyan area and spreading education among the illiterate children for development of the Society as a whole

4. The Learned counsel for the respondent opposed the appeal by contending that the establishment have accepted the delay in payment of dues and also accepted that due to financial calamities during 2010-2013 they could not pay the statutory dues on time and further contended that financial difficulty cannot at all be the ground for not complying with the provisions of the PF Act.

5. The learned counsel for the respondent opposed the appeal by contending that the damages have been assessed in accordance with law. The

appellant submitted that since it was running no loss no profit basis mostly basing on the donations received from the public was facing financial extremities in running the Trust. Since there was no sufficient means available it could not remit the monthly Provident Fund contributions to the Fund in accordance to the scheme provisions for the period from July 2008 to July 2013. It is next submitted that the appellant furnished the details of losses accrued by the Trust that was running educational institutions. Appeal to the Chairman, Central Board of Trustees and Central Provident Fund Commissioner requesting for waiver of damages proposed/ or levied but it was rejected by the letter dated 1.8.2014 stating therein that as no Revival scheme was sanctioned by BIFR, direction was given to remit the outstanding dues immediately. It was further contended that SICA 1985 was framed for only Factories and not for Trust and Establishment. Hence appellant cannot get itself registered with BIFR.

6. It is further contended that it is settled view that for belated remittance of PF dues, t[illegible]ity to pay the damages does not arise automatically but the same [illegible]to be decided by the PF authorities by applying mind to the merits o[illegible]and not by resorting to arithmetical calculations. Therefore, levy of d[illegible] following straight jacket formula amounts calculations of damages with[illegible]ion of mind and it is illegal and liable to be set aside. In support of abov[illegible]ns, learned counsel for the Appellant has drawn my attention towards th[illegible]f the Hon'ble Apex Court in Organic Chemical Industries vs. Union of Ind[illegible]1979 LIC page 1261. Hon'ble Apex Court held that the power of the Regional Provident Fund Commissioner to

determination of the damages should be decided only after hearing the employer and taking into consideration the facts of a particular case. The Competent Authority is required to pass a speaking order and it is must show application of

impose damages under Section 14 B is a quasi-judicial function. It must be exercised after notice to the defaulters and after giving him reasonable opportunity of being heard. Relying on this preposition of law, learned counsel argued that the rates as well as quantum of damages were fixed by the Respondent Commissioner in the summons issued to the appellant acting in the dual capacity as a quasi-judicial authority and prosecuting officer without diluting the support of the rates and quantum of damages has passed the impugned order against the appellant illogically and illegally. The respondent Commissioner ought to have while conducting enquiry first to decide whether in the case, damages are required to be levied or not and if the answer is in affirmative, thereafter he has to conduct an enquiry to decide the quantum of damages considering all the relevant materials and circumstances. It is worth to submit that learned Commissioner has fixed the rates and quantum of damages in the summons issued to the appellant in unequivocal and unambiguous terms which reflected decision on levy of damages. The pre-determined mind of the authority before hearing the appellant which explains the delay in depositing the contributions under the schemes or the Act 1952 and without application of mind to the facts of the case.

7. It is next contended that the respondent commissioner considered the table provided under the Scheme of 1952 as imperative, ignoring the admitted fact that the enacted legislation was held as a discretionary legislation and the table provided nevertheless is only a guideline. The determination of the damages should be decided only after hearing the employer and taking into consideration the facts of a particular case. The Competent Authority is required to pass a speaking order and it is must show application of

mind so that the higher Court/Appellate Authority could appreciate the reasons for passing the impugned order which has not been done by the PF Authorities in this case. In this case, the authorities confirmed the levy of damages at the maximum rates having quantified conveyed to the appellant by means of summon itself. It is further submitted on this point that the quasi-judicial authorities are required to record reasons in support of its conclusions. Recording of reasons is meant to serve the wider principle of justice that justice must not only be done but it should also appear to have been done. The reason in support of its conclusion must be cogent, clear and succinct. It should never be a pretence of or rubber stamp reasons.

8. Further relying on the decisions rendered by the Hon'ble Apex Court reported in AIR 1970 SC page 253, learned counsel submitted that an order imposing penalty for failure to carry out its statutory obligation is the result of quasi criminal proceeding. Hon'ble Apex Court further held that a penalty will not ordinarily be imposed unless the party was guilty of contumacious or dishonest or acted in conscience. Disregard of its obligations where penalty should be imposed for failure to perform the statutory obligations is a matter of discretion of the authority to be exercised judiciously and on consideration of all relevant circumstances. It was next submitted by the learned counsel for the appellant that impugned order was mechanically passed without any reasons even the submissions of the appellant has not been considered. Neither reasons have been assigned while rejecting the pleadings and submissions made by the appellant nor it sounds the reasons for imposition of maximum damages provided under the Act or Scheme. It is further contended that the stand of the Respondent cannot be accepted as it is contrary to their own circular **dated 29.5.1990**. It is well

settled that only the punitive part remains under Section 14-B and the compensatory part is considered under Section 7-Q.

9. On the point of financial difficulty, it is contended on behalf of the learned counsel for the appellant that there are several judgements of the Higher Courts in which it was held that financial difficulties beyond the control of the establishment are mitigating factors to lessen the liability although it is not a factor to exonerate waive the liability it will depend upon the facts and circumstances of each case for lessening their liability of damages. It is settled position that if the petitioner is able to elaborate certain mitigating circumstances to lessen the damages, certainly the authority must consider lessening of damages. Therefore, financial difficulty or other factors causing delay in non-payment of the amount may be taken into consideration in assessing the quantum of damages. Further, it is submitted that if the reasons cited by the employer are correct wherein financial constraints is also a matter relevant to be looked into in considering where the damages can be levied at all. Each case have to be dealt with under the special facts of the particular case.

10. The next contention of the learned counsel for the appellant is that imposition of damages are not imperative and the existence of mens rea **or** actus reus in contravening a statutory provision must also be found for imposition of damages. The delay in depositing the PF dues is required to be intentional before imposition of damages. In order to substantiate the above argument, learned counsel has drawn my attention towards preposition settled by Hon/ble

Apex Court in the case of Mcleod Russel India Ltd. Vs Regional Provident Fund Commissioner, jalpaigudi and others reported in (2014) 15 SCC page 263 wherein it has been held in para 11 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 there of since it is not inflexible that 100% of the arrears have to be imposed in all the cases. Alternatively stated, if damages had been imposed under section 14-B it will be only logical that mens rea and/ or actus reus was prevailing at the relevant time."***

11. Lastly, the learned counsel for the appellant made submissions that the impugned order passed by the learned respondent commissioner has ignored the mitigating circumstances submitted both verbal and in writing that appellant was not a wilful defaulter. There is neither presence of *mens rea / actus reus* and further the respondent in a mechanical way without any reasoned order mechanically levied the damages, assuming that provisions specified in para 32-A as a mandatory and non-speaking order has been passed which is required to be set aside.

12. Per contra learned counsel for the respondent contended that appellant has challenged the order passed under section 14-B and 7-Q dt.31.10.2014. Period of default is July 2008 to June 2013. Damages levied under Section 14-B is 3,49,780/- and interest under section 7 Q is Rs. 2,64,625/- It is next submitted that notice was issued on 14.3.2014 and the Appellant was given opportunity of being hear before levying the damages and interest under section

14-B and 7-Q of the Act and further the damages are imposed as per para 32-A of the Scheme. It is submitted by the learned counsel for the respondent that establishment has accepted the delay in payment of dues and also accepted that due to financial calamities during 2010-2013, they were struggling and could not pay statutory dues in time which is evident from the letter dated 5.9.2014 and further the establishment have approached the CBT for waving of damages and interest amount but the request of waiver of damages under Section 14-B has been rejected by the Competent Authority and direction was given to recover the outstanding dues immediately, as the establishment has no revival scheme sanctioned by BIFR. It is vehemently contended by the learned counsel for the respondent that financial difficulty cannot at all be the ground for not complying with the PF Act. Consequentially the damages were levied. In order to support his above argument, he has drawn my attention towards the law laid down by the Hon'ble Supreme Court in Organic Chemical Industries and Another vs Union of India (1979) 4 SC cases 573 and Hindustan Times Ltd vs Union of India (1998) 2 Supreme Court cases 242. It is next contended that since financial difficulty is not a justified ground for not depositing the PF contribution. Therefore, non-deposit of the fund whether it is deliberate intention or otherwise cannot be criteria to take lenient view. So the argument raised by the appellant with regard to the financial difficulty as the mitigating circumstances and submission that no damages to be levied or lesser damages be levied has no force at all.

13. It is next argued by the learned counsel for the respondent that PF and Miscellaneous Provisions Act 1952 is a legislation for providing social security to the employees working in any establishment engaging 20 or more persons on any day, it provides for compulsory deduction of PF from employees

and contributions from the employer which is deposited in the worker account in the EPF Office. Similarly the Act also provides for providing Insurance and Pensionary benefits to the employees. Therefore, the PF and other contributions had to be deposited by the employer by the 15th day of the next month and the dues became payable to him and in the case of failure to deposit the legitimate dues of the worker the EPF Office under section 7-A Act initiate recovery action for the purpose of compelling the employer to deposit the legitimate dues of the worker after deposit of the principal amount action is initiated to levy penalty and damages under section 7-Q and 14-B of the Act to provide for the interest on the delayed payment by the employer and also act as deterrence for them. Since in this case, the establishment has failed to deposit the PF contributions and other statutory dues as required by the law for the period of July 2008 to June 2013 and after considering facts and records available with it, exercised power given by section 14-B of the Act, and the damages assessed is Rs.6,14,405.00. Since in this case appellant failed to remit PF contributions/Pension fund contributions/Administrative charges/ Employees deposit to linked Insurance contributions within 15 days of every month for the period July 2008 to June 2013, a speaking order was passed on 31.10.2014 imposing damages Rs.3,49,780 and interest Rs.2,64,625 respectively.

14. Rebutting the appellant argument as aforesaid the learned counsel for the respondent contended that the very concept of the punitive damages which has been recognized by the Hon'ble Supreme Court in Organo Chemical Industries case would be defeated. Even the fact that the company is running in losses for some years would not justify committing default in respect of the payments due under the Act and there was no justification for taking a

lenient view in respect of the damages levied and further contended that mens rea is not the essential ingredient for contravention of the provision of a Civil Act. The penalties attracted because there is a contravention of the statutory obligation as contemplated by the Act. Therefore, intention of the parties committing such violations becomes immaterial. The financial hardship of the appellant would not justify committing default in respect of the payments due under the Act and the Scheme and lastly, submitted that impugned order dated 31.10.2014is valid in the eyes of law. Therefore the appeal is devoid of any merit and is ought to have been dismissed.

15. In Nutshell (substance) the present appeal following main points are raised on behalf of the learned counsel for the appellant.

(i) Appellant is an educational institution. Its function is noble/charitable helping downtrodden poor persons of the society.

(ii) Appellant institution is run under revenue grant from the government.

(iii) Para 32-A of the EPF Scheme is not mandatory. It is only a guideline/guiding factor.

(iv) The authority has levied maximum damage under section 14-B without a reasoned order.

(v) Order is non-speaking.

(vi) Representation made to the Central Board of Trustees for waiver of damages was rejected.

(vii) Financial crisis/difficulties of the institution has not been considered while passing the impugned judgement There is absence of mens rea

/and or actus reus/ wilful/intentional default on the part of the employer institution.

(viii) Challenge to calculation of the levied damages specifically with regard to rate of damages.

(ix) Cited judgment, oral and written submissions made before the Authority has not been considered rather impugned order is mechanical.

(x) While imposing damages on the appellant period of default frequency of default, continuous/different period of default/ amount involved, has not been considered.

16. In its reply, the respondent authority while highlighting the aim/object and purpose of the legislation meant for providing social security to the employees working in establishment engaging 20 or more persons on any date stated that the appellant establishment was under obligation to make deposit of PF and other contributions by 15th of the next month in which the beneficiary worker has already worked and earned the wages/salary. Appellant establishment was/is required to deposit the amount towards contributions of PF and administrative charges within 15th day of the close of every month by separate bank drafts or cheques and that financial constraints/difficulties/ hardship etc cannot be a ground for the employer to escape the liability. While denying the allegations made in the memorandum of appeal it has been stated that the appellant has defaulted the provisions of the Act for the period 7/8 to 06/13 and hence was/is liable for damages and interest as contemplated under Section 14-B and 7-Q of the Act. It is stated that the Assessing Officer has passed a reasoned order on the basis of available records while following the principles

of natural justice. As regards circular dated 28.11.1990 issued by the respondent department, it has been alleged that the said circular is in a nature of administrative direction and same cannot take shape/form of a statute. Prayer has been made for the dismissal of the appeal with exemplary cost.

17. I have heard learned counsels appearing for both the parties and have gone through the records carefully.

18. At the outset, I would like to mention that the expression "damages" occurring in Section 14-B of the Act is in substance a penalty imposed on the employer for the breach of statutory obligation that is to say for default in the payment of contribution one may say "failure in performance or failure to act". Object of imposition of penalty under Section 14-B is not merely to provide compensation for the employees but to serve two purposes namely; to penalise default employer on the one hand and to provide reparation for the amount of loss suffered by the employees. It is not a warning to employer in general not to commit a breach of the statutory requirement of Section 6 of the Act but at the same time it is meant to provide compensation or redress to the beneficiaries i.e. to re-compensate the employees for the loss sustained by them.

19. It is fairly settled that Section 14-B of the Act is a penal provision whereas section 7-Q of the Act provides for levy of interest on the defaulter till the amount in question is deposited.

20. There is also no dispute about established preposition of law that the proceedings under section 7 – A of the Act are of a quasi-judicial nature and the Competent Authority dealing with such proceedings is required to act impartially while following the principles of natural justice and is also required to pass a speaking and reasoned order passed on the relevant material/evidence in the form of a document filed by the respective parties on record. While fixing the amount, the Regional Provident Fund Commissioner is required to take into consideration various factors namely; the period of delay, the frequency of default and the amount involved.

21. On the touchstone of the anvil of the above stated legal preposition, I have given my thoughtful consideration regard to the submissions raised by the appellant that there was no wilful or intentional delay on the part of the appellant. It has also been argued that there was no mens rea on the part of the appellant in delay of remittance of PF dues and further no finding regarding the mens rea on the part of the appellant has been given by the respondent authority. Hence, the impugned order is not sustainable in the eye of law.

22. Rebutting the above argument, learned counsel appearing on behalf of the respondent vehemently contended that it was not incumbent upon the respondent authority to necessarily deal with the mens rea on the part of the appellant who neither took any steps to satisfy the respondent authority to waive the penalty under section 14-B of the Act nor produce any material to show any explanation for the delay of remittance. In this context, perusal of the impugned

judgment/ order shows that no finding that mens rea/ or actus reus on the part of the appellant was prevailing at the relevant time of the default has been given by the Competent Authority. In a similar situation in the case titled Assistant PF Commissioner and another vs Management of RSL Textile India Pvt Ltd (2017) 3 SCC 110 Hon'ble Madras High Court had held that since there was no finding rendered by the authority with regard to mens rea or actus reus except saying financial crisis action under Section 14-B of the Act cannot be sustained. The Competent Authority moved before the Hon'ble Supreme Court by filing Civil Appeal bearing No. 96-96 – 2017 titled as Asstt. PF Commissioner and another vs. Management of RSL Textile India Pvt Ltd (2017) 3 SCC 110. Hon'ble Apex Court while dismissing the appeal observed that the issue is wholly covered in view of its earlier decision in the case of Mcleod Russel India Ltd vs. Regional PF Commissioner (2014) 15 SCC page 263 wherein it was held that

> *"11.....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% of the arrears have to be imposed in all the cases. Alternatively stated if damages had been imposed under Section 14-B it will only be logical that mens rea and/or actus reus was prevailing at the relevant time"*
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> Keeping in view the law above enunciated and the fact that there has been no finding rendered by the respondent authority about the mens rea / actus reus which is determinative factor, the impugned order under Section 14-B is unsustainable.

23. Further I would like to mention that even if it is assumed for the sake of argument that the employer establishment had not put forth any reasons for the delayed payment that would not absolve the respondent authority from dealing with the question of mens rea as required under the law. Though the expression "mens rea" is normally used in respect of criminal law so as to fasten the liability upon the delinquent person but the same has now been imported under Section 14-B of the Act so as to fasten damages which are admittedly penal in nature upon erring employer. In this regard it is appropriate to refer to the recent decision in the cases of DCW Employees Co-operative Canteen Ltd vs. Presiding Officer EPF Appellate Tribunal and other 2018 LLR page 672 wherein Hon'ble High Court of Madras (Madurai Bench) dealt at length with the requirement of mens rea and ingredient which are essentially required to be proved by the Competent Authority before imposing damages under Section 14-B of the Act. Hon'ble High Court observed as under:

> *"Therefore, from the perusal of the above decision of this Court as well as of the Hon'ble Supreme Court, it is evident that unless existence of mens rea is pleaded and established against the employer, the levy of damages under section 14-B of the Act cannot be done automatically. It is not that every delay is wilful and intentional. It depends on the facts and circumstances of each case more particularly based on the reasons stated for making such belated payments".*

24. Thus, it is clear from the perusal of the above cited rulings that it is imperative under law to plead and prove existence of mens rea so as to fasten liability/damages upon the employer establishment.

25. I would like to mention that learned counsel for the appellant has drawn my attention towards circular dated 28.11.1990 issued by the respondent authority. In view of it, the levy of damages beyond a period of 3 years, prior to the date of issue of show cause notice dated 14.3.2014 was not permissible but the Competent Authority has in violation of the same has initiated action against the appellant in respect of the period prior to 3 years from the date of issuance of show cause notice as such the impugned order also bad in law and may be set aside.

26. Per contra, learned counsel for the respondent vehemently argued that the circular dated 28.11.1990 issued by the respondent department is in the nature of administrative direction and same cannot take shape/form of statute. With regard to the aforesaid contention of both the parties, I am of the view as per section 20 and 21 of the Act power has been given to Central Government to issue such directions and to make rules to the Central Board as it think fit for the efficient administration and effective implementation of the substantive provision of the Act. Legal position is well settled that if a circular/guideline has been issued in pursuance of the provisions of the Act, Rule or regulation by an authority having such powers in that eventuality circular has an element of force of law and such circular cannot be ignored by the Competent Authority. More so in this context, respondent could not cite any authority or ruling to the contrary wherein a view has been taken that administrative circular issued in pursuance of the

provisions of Section 20 and 21 of the Act do not have any force of law. It is also to be noted that the above said circular has not yet been withdrawn so far by the Central Government or by the Authority. To my mind, Competent Authority is under moral and legal obligation to adhere to the guidelines in the form of circular issued by the respondent department because such guidelines having persuasive value was binding upon the authority specially when the said circular has admittedly been issued with the approval of Central Board Trustee, EPF organisation. At the same time, it is fairly settled legal position that Section 14-B of the Act does not provide for any limitation of proceedings for levy of damages and the delay in issuing show cause notice by itself cannot vitiate the proceedings for levy of damages but such power should be exercised within reasonable period. What is reasonable period would depend upon facts and circumstances of each case.

27. Further prima facie and cursory reading of the impugned order also reflects that no analytical approach of the fact and figure relating to default in remittance of the due amount on the part of the employer establishment has been adopted by the respondent, in as much as in the impugned order exact period of delay of each default, frequency of defaults and the amount involved have not been specifically dealt with rather it has been simply stated that in the present case, the employer has committed default and remitted PF and allied dues belatedly. Even it has not been specified as to on what percentage under section 14-B of the Act damages had been assessed and levied upon the employer establishment. Simply stated in the impugned order that damages are levied at the rate envisaged in para 38 of the EPF Scheme, Para 3 of the Employee Pension

Scheme and para 8 of the Employee Deposit Linked Insurance Scheme 1976 including PF contributions, administrative charges etc.

28. So far as submissions made on behalf of the learned counsel appearing for appellant that respondent authority without considering the mitigating circumstances and without application of mind passed the impugned order requiring the appellant to deposit Rs... 3,49,780.00 towards penalty damages and Rs... 2,64,625.00 towards simple interest totalling Rs 6,14,405.00. One of the ground taken by the appellant in this appeal was that there is no mandatory provision of the Act for imposing damages as much as section 14-B of the Act used the words "may recover" which clearly gives discretion to the concerned authority to apply his mind as to whether penal damages should be imposed in the given facts and if so, what should be the quantum of such damages. Further contended that without application of mind, the respondent imposed maximum amount of penalty without considering the mitigating/aggravating circumstances. Further argued that impugned order shows that authority has acted in a manner as if the levy of damages is automatic since determination of damages is a quasi-judicial function so the concerned authority is obliged to pass an order on proper application of mind. The facts oral and written submitted on behalf of the appellant before authority has not been considered, the grounds for Non-levying of damages or levying of damages at a reduced rate, was not examined by the respondent.

29. Per contra, the learned counsel appearing on behalf of the respondent contended that the Act of 1952 provide for compulsory deduction of PF from the employees and contributions from the employer and such

contributions are ought to be deposited within stipulated time. Delay in remittance of PF dues attracts Section 14-B of the Act. Impugned order is speaking order with proper application of mind. Enquiry under section 14– B was conducted. Sufficient opportunity of hearing was accorded to the appellant and lastly argued that contribution of PF and its remittance to the concerned authority is a mandatory statutory obligation of the appellant. The impugned order under section 14-B was passed after considering all written and oral objections raised by the appellant during the enquiry proceedings. Calculation of damages etc were done by authority as per the provisions of Para 32-A of EPF Scheme 1952 which stood amended in the year 2008 and lastly, argued that the PF authority conducting enquiry under section 14-B is not vested with the power of reducing or waiving of penal damages but can exercise the discretion of not levying the penal damages if the reasons for delayed remittance are proved beyond doubt that the delay was due to the reasons which are not under human control of the management and there is no mens rea for the delay. In the instant case, beforehand appellant prays for the waiving/reducing damages before CBT which was earlier rejected. Hence appeal is to be dismissed.

30. Reference has been made by the appellant citing ruling of APFC Commissioner vs. High Tech Vocational Training Centre LPA 629/2011 wherein it was held that para 32-A of the EPF Scheme 1952 has given enough discretion to the authority in respect of recovery of penalty. The relevant part of the judgment reads as under:

> *"The legislature has used the word "may" twice. Firstly, with reference to recovery itself apparent from the use of expression "may recover" and*

secondly with reference to quantum, apparent from the use of expression " "not exceeding the amount of arrears" as may be specified in the scheme."

While considering a para materia provision under Employees State Insurance Act 1948, in the decision reported at (2008) 3 SCC 35 ESI Corporation vs HMT Limited wherein Hon'ble Supreme Court held that the "statute does not mandate that in every case a penalty has to be levied and has left it to the discretion of the authority to decide whether penalty is to be levied, as also quantum thereof....."

31. By the impugned order the respondent levied interest under Section 7-Q and damages under Section 14-B amounting Rs.6,14,405.00 with regard to imposition of interest under section 7-Q, there appear no reason to interfere with. However, the respondent appeared to have imposed penal damages under section 14-B without consideration of aggravating and mitigating circumstances and also on understanding that the prayer for waiving the penalty would be dependent on fulfilment of conditions mentioned in the second proviso to section 14-B only. The respondent authority appeared to have completely ignored the fact that the power to levy penal damages and quantum thereof under section 14-B of the Act is discretionary and any order under such power has to be backed by clear and cogent reasoning. The impugned order in regard to imposition of penal damages under section 14-B of the Act appear to have been passed without sufficient reasons on the assumption that it had no discretion in law to determine the quantum of damages which is not the correct position of law as held by the Hon'ble Delhi High Court in Asstt. PF Commissioner (supra).

In the light of aforesaid discussions, I summarize my conclusions as follows:

(i) The requirement of mens rea and/or actus reus is a determinative factor for imposition of quantifying damages under section 14-B of Employees Provident Fund and Miscellaneous Provision Act 1952. There is no finding to this effect in the impugned order.

(ii) The authority is to exercise his discretion looking at the mitigating and aggravating fact and circumstances of the case which has not been done by the concerned authorities while passing the impugned order.

(iii) Impugned order passed by the respondent authority is not a reasoned order.

(iv) Respondent has imposed damages mechanically without considering cause of the delay in remittance of EPF contributions.

32. In view of the above discussions, the appeal is allowed. The impugned order dated 31.10.2014 of the respondent authority is hereby set aside and the matter is remanded back to the respondent authority for consideration of matter afresh in the light of observation made herein above.

33. Copy of this order may be sent to both the parties and also be file be consigned to the record.

(JUSTICE RAVINDRA NATH KAKKAR)
PRESIDING OFFICER