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(2023) 04 DEL CK 0146

In the Delhi High Court

Case No : Civil Writ Petition No. 4740 Of 2023

Ipsaa Holdings Pvt Ltd — APPELLANT

Vs

Regional Provident Fund Commissiner, EPFO — RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Employees? Provident Funds Act and Miscellaneous Provisions Act, 1952 — Section 7A, 7B, 7I

Citation : (2023) 04 DEL CK 0146

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Dr.M.K.Pandey, Chakradhar Panda

Judgement

Rekha Palli, J

CM APPL. 18305/2023

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 4740/2023 & CM APPL. 18306/2023 (stay)

3. The petitioner, who was the appellant before the learned Central Government Industrial Tribunal in an appeal bearing No. D2/36/2022, has approached this Court seeking to assail the order dated 16.02.2023 passed by the learned Tribunal. Vide the impugned order, the learned Tribunal has rejected the petitioner’s appeal under section 7‘I’ of Employees’ Provident Funds Act and Miscellaneous Provisions Act, 1952 on the sole ground that the petitioner had failed to deposit the amount as per directions issued by the learned Tribunal on 20.12.2022 within the time granted by the Tribunal i.e by 01.02.2023.

4. The brief factual matrix as necessary for adjudication of the writ petition may be first noted. It is the common case of the parties that the petitioner herein preferred an appeal before the learned Tribunal under section 7’I’ of the

Employees' Provident Funds Act and Miscellaneous Provisions Act, 1952 (the Act) , assailing the orders dated 13.08.2020 and 12.08.2022 under section 7A and 7B of the Act passed by the Regional Provident Fund Commissioner, Gurgaon.

5. On 20.12.2022, the learned Tribunal, while taking up the petitioner's appeal for admission granted 6 week's time to the petitioner to deposit by way of an FDR, 30% of the assessment amount and adjourned the matter to 01.02.2023. The appeal could, however, not be listed on 01.02.2023 on account of administrative reasons and was therefore listed on 16.02.2023.

6. On 16.02.2023, when the appeal was taken up for consideration by the Tribunal, even though the petitioner pointed out that FDR for the amount as directed was ready, the learned tribunal rejected the appeal. The tribunal held that the petitioner having failed to deposit the amount by 01.02.2023 was in breach of the terms of the order dated 20.12.2022 and consequently the appeal was liable to be dismissed.

7. Being aggrieved, the petitioner has approached this Court.

8. Learned counsel for the petitioner submits that while passing the impugned order, the learned Tribunal has failed to appreciate that the FDR for the amount as directed was already ready on 15.02.2023 itself, therefore it could not be said that the petitioner had not complied with the terms of the order dated 20.12.2022. He submits that once the appeal was not listed before the Tribunal on 01.02.2023, and the FDR for the amount as directed was ready on the date next fixed i.e 16.02.2023, the learned Tribunal instead of dismissing the appeal ought to have decided the appeal of the petitioner on merits. He, therefore, prays that the impugned order be set aside and the matter be remanded back to the Tribunal for fresh adjudication.

9. Issue notice. Learned counsel for the respondent accepts notice and seeks to defend the impugned order by contending that once the petitioner had failed to deposit the amount in compliance with the order dated 20.12.2022, the learned Tribunal was justified in dismissing the appeal. Further, having failed to deposit the amount within the time the petitioner cannot now contend that the learned Tribunal erred in rejecting the appeal.

10. Having considered the submissions of learned counsel for the parties, I find that the only issue for consideration before this Court is as to whether, despite the petitioner being ready and willing to deposit the amount on the date on which the matter was taken up for consideration, the Tribunal was justified in rejecting the appeal by holding that the petitioner had failed to comply with the directions.

11. In the light of this short question, no counter affidavit is called for by the respondent and the petition is, with the consent of the parties, taken up for disposal today itself.

12. Having considered the submissions of the learned Counsel for the parties, I

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find that they are ad idem that the FDR for the amount, as directed by the Tribunal was ready on 15.02.2023 and was, therefore, available before the Tribunal when the appeal came to be dismissed on 16.02.2023. They are also ad idem that the appeal, though directed to be listed on 01.02.2023, was listed before the Tribunal only on 16.02.2023. In these circumstances, even though the respondent is justified in urging that the amount was not deposited within the six week's time granted by the learned Tribunal, the fact remains that the FDR for the amount was available on the date when the appeal was taken up for consideration. Ultimately the purpose of the directions issued on 20.12.2022 was to ensure that the petitioner deposits 30% of the assessment amount before it's appeal was taken up for consideration on merits. Once the petitioner was ready with the amount on 15.02.2023, the learned Tribunal instead of taking such a hyper technical approach and dismissing the appeal on 16.02.2023 ought to have considered the petitioner's appeal on merits by taking the FDR on record.

13. The impugned order is, accordingly, set aside and the appeal is remanded back to the learned Tribunal for fresh adjudication on merits. List before the learned Tribunal on 10.05.2023.

14. The petitioner will, however, ensure that the amount in terms of the Tribunal's order dated 20.12.2022 is deposited within one week from today.

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