(2013) 02 P&H CK 0180

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3905 of 2013

Khanna Poultry Farm APPELLANT

Vs

Regional Provident Fund Commisioner and Another RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7B
Income Tax Act, 1961 — Section 133A(3)

Citation : (2013) 137 FLR 833 : (2013) 2 LLN 780 : (2013) LLR 773

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Sandeep Punchhi, for the Appellant;

Final Decision : Dismissed

Judgement

Rajiv Narain Raina, J.—Though, the petition has been brought in the name of M/s. Khanna Poultry Farm through its sole proprietor Banty Khanna son of Shri J.R. Khanna, resident of House No. 1036, Sector 21-B, Chandigarh, in the body of the petition the petitioner refers to as Banty Khanna.

It is claimed that M/s. Khanna Poultry Farm at village Nagla near Zirakpur, District Ajitgarh (Mohali) was closed down in the year 2005 due to spread of bird flu in India. The income tax authorities conducted a raid at the business premises of the proprietor in December, 2005 in exercise of powers u/s 133-A(3) of the Income Tax Act, 1961. It is averred that the entire record containing the account books was impounded by the Income Tax authorities by an Order dated 22.12.2005.

On 20.2.2006, the Regional Provident Fund Commissioner, Chandigarh initiated proceedings u/s 7-A of the Employees Provident Fund and Miscellaneous Act, 1952 (for short ''the Act'') against the poultry farm for assessment for the period February, 2005 to January, 2007. In these proceedings the proposed dues were calculated on the basis of minimum wages amounting to Rs. 3,08,133/-. The proposal originated with a provisional assessment order dated 13.2.2007 passed by the Enforcement Officer, Patiala. The Assistant Provident Fund Commissioner passed the final order u/s 7-A and determined a sum of Rs. 3,08,133/- against the petitioner towards statutory dues accrued and payable for the period February, 2005 to January, 2007, The report of the Enforcement Officer was accepted. In the report it was recorded that despite many opportunities granted to the petitioner-Banty Khanna did not produce record for verification and therefore, assessment on the basis of best judgment was made at rates of minimum wages declared by the State Government. On eight occasions, the case was fixed but the petitioner failed to produce record. There is a significant development recorded in the final assessment order u/s 7-A dated 9.3.2007 that the petitioner deposited Rs. 8295/- in the accounts of the Provident Fund for the period August, 2006 and September, 2006 out of the total period under assessment, February, 2005 to January, 2007. After passing the final order u/s 7-A of the Act, the Recovery Officer of the respondent organization issued notice of payment dated 9.5.2007 to the defaulter. The notice calls upon the petitioner to deposit the amount of Rs. 3,38,795/- within a specified period.

2. Dissatisfied with the final assessment order, the petitioner filed a Review Petition u/s 7-B of the Act which has been dismissed vide order dated 9.6.2008 (Annexure P-8). Against both the orders, the petitioner filed an appeal before the Employees'' Provident Fund Appellate Tribunal, New Delhi. The Tribunal vide order dated 14.7.2011 has rejected the appeal. Against the appellate order, this petition has been filed.

3. Learned Counsel for the petitioner submits that non-production of record does not deserve to be used against the petitioner since the record was seized by the Income Tax Department in the raid. It was for the Enforcement Officer under the Act to have visited the Income Tax Department for the purposes of verification from record lying in custody of the department. He prays that the order u/s 7-A deserves to be set aside and the matter remanded for reconsideration on merits to the assessing authority.

There is no merit in the submission of Mr. Sandeep Punchhi, learned Counsel for the petitioner. If the petitioner was serious enough it was always open to it to make a request to the Income Tax Department to supply authenticated photocopies of the record ceased by it for production before the PF authorities in defence of the notice of proceedings. No such application was made. The provisional assessment notice was not replied to nor any explanation given or dropping of proceedings as meritless. The petitioner cannot take shelter of the Income Tax raid or to lay the blame on the Enforcement Officer for not making a visit to the Income Tax Department to verify facts for himself. The order impounding books of accounts/documents u/s 133-A(3) of the Income Tax Act, 1961 (P-1) shows that certain books of accounts and documents found during raid and the documents mentioned in the seizure memo/list of documents mentioned in the Annexure were prima facie found not entered in the regular books of accounts of the assessee. The wages register or attendance register showing employment strength were neither seized by the Income Tax Department nor produced at any stage up to the appellate authority. The petitioner did not co-operate before the authorities from day one and remained ex-parte in section 7-A proceedings. Learned Counsel for the petitioner was unable to show that the deposit of Rs. 8,296/- in the account of the Provident Fund Commissioner for the period 8.8.2006 and September, 2006 was either under protest or without prejudice to his rights with respect to coverage under the Act. The burden was clearly on the petitioner to show its employment strength to enable it to make a head count. In any case, deposit of amount without demur is tantamount to acceptance of coverage. Therefore, the petitioner can have no advantage of failure on the part of the Enforcement Officer to mention in his report the names of employees, the period of service and wages paid to them. The petitioner accuses the Enforcement Officer of his inability to collect facts and figures. No evidence of closure of the poultry farm in the year 2005 was produced or that the petitioner suffered heavy business losses due to bird flu. No corroborative evidence has been placed on record, such as claim for insurance etc., nor any contemporaneous documents have been produced from which one can say with certainty that the business was closed down. In any case, closure of business may or may not have any effect on the liability created by the passing of the appellate order. The petitioner has failed to disclose the particulars of workers employed by it before, during and after the period in question. No supporting facts or figures drawn from authentic documents have been pleaded in the petition for this Court to examine, even for the first time to see if they were sufficient to turn the tide. I therefore reject the prayer of Mr. Sandeep Punchhi that the matter should be remanded back for re-consideration on merits.

The petition is devoid of merits and is dismissed.