(2016) 11 DEL CK 0140

In the Delhi High Court

Case No : W.P.(C) 10346 of 2016 & Cm Nos. 40689-92 of 2016

M/s Dewan Chand & Co. Pvt. Ltd. APPELLANT

Vs

Central Board of Trustee RESPONDENT

Date of Decision : 04-11-2016

Acts Referred:

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

Citation : (2017) 152 FLR 276 : (2017) LabLR 528 : (2017) 1 LLJ 553

Hon'ble Judges : Mr. Najmi Waziri, J.

Bench : Single Bench

Advocate : Mr. R.C. Chawla, Advocate, for the Respondent No. 2; Mr. P.P. Khurana, Senior Advocate with Mr. Kailash Pandey and Mr. Ranjeet Singh, Advocates, for the Petitioner

Final Decision : Disposed Off

Judgement

CM Nos.40691-92/2016 (for exemption)

Mr. Najmi Waziri, J. - Allowed, subject to all just exceptions. The applications are disposed off.

W.P.(C) 10346/2016 & CM Nos.40689/2016 & 40690/2016

2. At request of the learned counsel for the parties, the writ petition is taken up for final disposal.

3. The petitioner is aggrieved by the dismissal of his appeal ATA No. 36(16)2016 by the Employees Provident Funds Appellate Tribunal (''EPF Appellate Tribunal'') because of non-payment of the pre-deposit of 40% of the amount assessed by the Assistant Provident Fund Commissioner (APFC) under Section 7A of the Employees Provident Fund and Miscellaneous Provision Act, 1952 (for short ''the Act''). The APFC order dated 16.12.2015 had imposed a liability of Rs.2,05,36,032/- upon the petitioner, which inter alia reads as under:-

"3........On 18.07.2014, Shri Afsar Nabi, Advocate appeared on behalf of the establishment, but without any authority letter. He sought some time to produce the records which was acceded to and the proceeding was adjourned to 08.08.2014. In spite of giving several adjournments to the establishment and visits of the Enforcement Officer, the establishment failed to produce any records for the inquiry period and as such prolonged the inquiry by adopting dilatory tactics. Therefore, bailable warrant was issued to the concerned police authorities with request to ensure attendance of Sh. Vikram Kumar on 26.12.2014 along with relevant records. Letters were also issued to Registrar of Companies & Income Tax Authorities for obtaining relevant records pertaining to the establishment. On 26.12.2014, Shri T.P.S. Kang appeared on behalf of the establishment along with his vakalatnama and committed that all available records shall be produced by next date of hearing and the proceeding was adjourned to 07.01.2015. On 07.01.2015, Shri Amit Srivastava appeared on behalf of the establishment and sought one week time for production of records which was acceded to an the proceeding establishment and produced certain records/documents, but Enforcement Officer pointed out that balance sheet not yet produced by the establishment. The establishment was directed to produce complete records by next date of hearing and the proceeding was adjourned to 22.01.2015. On 05.01.2015, Smt. Kanchan Anand, Enforcement Officer obtained copies of balance sheets for the years 2003-04 & 2004-05 from Registrar of Companies. On 25.02.2015, establishment representative(s) submitted copies of balance sheets for the years 2003-04, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2011-12 & 2012-13, but failed to submit other relevant document/ records viz. Reconciliation statement of wages, wage registeres etc. The establishment was directed to submit the complete records by next date of hearing and the proceedings was adjourned to 20.03.2015. On 20.03.2015, the establishment representative(s) submitted letter dated 20.03.2015 along with copy of order dated 04.04.2006 levying damages & interest for the period 05/1997 to 02/2005 under section 14B & 7Q of the Act respectively which was taken on records, but the establishment again failed to submit the remaining records. Enforcement Officer was directed to obtain the remaining records from the establishment and the proceeding was adjourned to 09.04.2015. On 09.04.2015, none appeared from the establishment and Enforcement Officer was directed to submit the report based on the available records and the proceedings was adjourned to 27.04.2015. On 27.04.2015, the establishment again failed to appear in the inquiry proceeding and the then department representative(s) Smt. C.K. Bhatia, Enforcement Officer submitted an interim report dated 24.04.2015 wherein Enforcement Officer submitted that certain records viz. Eligibility register, cash book, ledgers, vouchers, salary register, attendance registers, list of contractors/sub-contractors with their P.F. status & TDS returns etc are required for verification in order to submit final report in the inquiry. A cost of Rs.1000/- was imposed upon the establishment for non-appearance & non-submission of records and the proceeding was adjourned to 15.05.2015. On 22.06.2015, Sh. Amarpal appeared on behalf of the establishment, but failed to produce any records. Therefore further cost of Rs.5000/- was imposed upon the establishment and the proceeding was adjourned to 29.06.2015. On 10.07.2015, none appeared from the establishment and the proceeding was adjourned to 05.08.2015. On 13.10.2015, Sh. T.P.S. Kang & Sh. Rajesh Kumar Daga appeared and they were directed to produce the remaining records i.e. missing balance sheets, muster rolls, wage register, ledger of casual/dehadi workers, voucher etc. for the entire inquiry period. The establishment representative(s) sought one last opportunity to search & produce the remaining records, if available with them. Sh. S.K. Gupta, Enforcement Officer was directed to submit his final report upon receipt of full records from the establishment duly considering the records available in the office pertaining to M/s Dewan Chand (DL/CPM/5746) as informed by the department. A further cost of Rs.5000/- was imposed upon the establishment for failing to provide full records which prolonged the inquiry with direction to produce the complete records by next date of hearing and the proceeding was adjourned to 28.10.2015. On 03.11.2015, Registrar of Companies forwarded copies of balance sheet & P&L Account for 2004-05. On 24.11.2015, none appeared from the establishment and Sh. S.K. Gupta, Enforcement Officer submitted his final report in the inquiry based on the records available which was taken on records and the proceeding was adjourned to 30.11.2015 with direction to the department to advice the establishment to attend the proceeding on next date of hearing in order to offer their rebuttal, if any, to the final report of Enforcement Officer. Accordingly, the establishment vide letter dated 26.11.2015 was directed to attend the inquiry on next date of hearing, failing which the determination of P.F. & its allied dues shall be made ex-parte.

4. The case was finally heard on 30.11.2015. The final report dated 20.11.2015 submitted by Sh. S.K. Gupta, Enforcement Officer was accepted and the case was reserved for orders as none appeared from the establishment in spite of specific directions that in the event of non-appearance the inquiry shall be concluded ex-parte & the establishment also failed to produce complete records and the establishment was adopting dilatory tactics which has delayed the finalization of the inquiry, in spite of several telephone calls, reminders & adjournments which is evident from the following costs imposed upon the establishment which are yet to be deposited:-

S. No. Date of Order Cost Imposed

1 27.04.2015 1000

2 22.06.2015 5000

3 10/07/15 3000

4 13.10.2015 5000

Total 14000

After verification of whatever records produced by the establishment & the records available in this office and on the basis of directions issued vide ACC

[DL&UK] letter dated 18.01.2010, the Enforcement Officer concluded that the evasion in question relates to M/s Dewan Chand & Company Private Limited (DS/ NHP/17060) & M/s Dewan Chand, C/o BPTP (HR/FBD/13400). Enforcement Officer further reported that M/s Dewan Chand, C/o BPTP (HR/FBD/13400) has deposed in the High Court of Delhi that they have deposited remittance for the period 2001-02 to 10/2007 i.e. from date of its set up to 31.10.2007 under Code No.DS/NHP/17060, which needed thorough verification as the evasion of P.F. dues to the tune of Rs.11827868 was worked out by then EO Shri R.K. Verma of Regional Office, Delhi (North) and M/s Dewan Chand, C/o BPTP (HR/FBD/13400) has deposited very meagre amount towards P.F. contribution for the period 2001-02 to 10/2007 under Code No.DS/NHP/17060 as evident from its remittance statement. However, RPFC, Regional Office, Faridabad vide 7A order dated 29.11.2012 had converted the coverage of M/s Dewan Chand, C/o BPTP (HR/FBD/13400) from Section 1(3) into Section 2(A) of the Act, being the part & parcel of M/s Dewan Chand & Company Private Limited (DS/NHP/17060) and also assessed net P.F. dues of Rs.6,55,380/- for the period 11/2007 to 06/2012."

4. Mr. R.C. Chawla, the learned counsel for respondent No.2, who appears on receipt of advance copy of the writ petition, submits that despite 26 hearings before the APFC, the petitioner company has failed to produce the relevant records and indeed, costs of Rs.14,000/- were imposed upon them for repeated defaults on four different dates. Hence, the APFC had to compute the aforesaid payment as per the records available. He submits that other documents in this regard had to be procured by the APFC from the Office of the Registrar of Companies because of lack of cooperation from the petitioner Company. He submits that despite the EPF Appellate Tribunal having reduced the pre-deposit amount from 75% to 40% keeping in view the alleged dire financial constraints of the petitioner, the latter has failed to make the payment. Consequently, their appeal was dismissed for nonprosecution.

5. Mr. P. P. Khurana, the learned Senior Advocate for the petitioner submits that through two letters dated 03.02.2014 and 01.11.2015, the petitioner communicated to the APFC that they had submitted all the relevant documents as were available with them. Furthermore, with the demise of Mr. Tilak Raj, the Promoter of the company, the working of the company had ceased since 2007.

6. The Court would, however, note that the APFC was constrained to compute the amount in the impugned order on the basis of the previous records because apart from the balance sheets, the relevant documents, i.e., muster rolls, wage register, ledger of casual/dehadi workers, voucher etc. were not submitted. Hence, insofar as the petitioner has admitted that the company was functioning at least till 2007, the requisite records as available with them ought to have been presented and mere presentation of Balance Sheets would prima facie not suffice for the purpose of 7A proceedings. Hence, the APFC had no other option but to make the aforesaid calculation. However, for the subsequent period after 2007, the calculation is perhaps based on the premise that the similar amounts would

be payable by the petitioner even thereafter. If the company/ establishment has not functioned after 2007, there may be a corresponding reduction in its statutory liability. Hence the Court is of the view that insofar as there is an admission that the Company functioned till 2007, i.e., for half of the assessed period, therefore, it must deposit at least half of the pre-deposit amount as directed by the Appellate Tribunal. Accordingly, without prejudice to the rights and contentions of the parties, 50% of the pre-deposit of 40%, as directed by the EPF Appellate Tribunal vide order dated 31.03.2016, shall be deposited by the petitioner before the Appellate Tribunal within four weeks from today. Upon such deposit having been made, the appeal would stand restored. The petitioner''s account attached by the APFC shall stand released and the appeal will be decided on its merits.

7. However, because of the non filing of the requisite documents which led to the litigation before the EPFA Tribunal and the non-deposit of the predeposit which led to this writ petition, the petitioner shall pay an amount of Rs.1,25,000/- as costs, out of which (i) Rs.75,000/- shall be paid to the Delhi High Court Mediation and Conciliation Centre, (ii) Rs. 25,000/- shall be paid to the Delhi High Court Staff Welfare Fund and (iii) Rs.25,000/- shall be paid to the respondent No.2 within four weeks from today.

8. Nothing stated herein above shall be deemed to be an observation or opinion on the merits of the case.

9. The writ petition and the pending applications are disposed off in the above terms.

