CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL/EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL, JABALPUR

EPF Appeal No.- 244/2017
Present – P.K. Srivastava
H.J.S. (Retd.)

M.P. State Handloom Weavers,
Cooperative Society Pvt. Ltd.,
Through, Assistant Manager (Accounts),
Shri Surendra Kumar Rohela,
Opposite Simplex Factory,
P.B. No. 43, Madan Mahal,
Jabalpur (M.P.) 482002

Appellant

Vs.

Regional Provident Fund Commissioner,
Sub-Regional Office,
Bhavishya Nidhi Bhawan,
Vijay Nagar, Jabalpur (M.P.)
Pin- 482002

Respondent

Mr. Uttam Maheswari : Learned Counsel for Appellant.

Mr. Abhishek Arjariya : Learned Counsel for Respondent.

JUDGMENT

(Passed on 05th day of February, 2026)

The present appeal is directed against the composite order dated 05.05.2017, passed by Respondent Authority under section ***7-Q & 14-B*** of ***The Employees Provident Fund & Miscellaneous Provisions Act, 1952*** ,hereinafter referred to as the ***'Act'***, by which the Respondent Authority has recorded a finding that the Appellant Establishment has defaulted the deposit of EPF dues of its employees within the period from December, 1992 to August, 2012 and has assessed the amount of interest under section 7-Q of the Act at Rs. 1,54,40,628/- as well damages u/s 14-B of the Act at Rs. 4,28,77,230/-

respectively, has directed to pay this amount as penal damages as well the interest.

The skeletal facts connected to present appeal are mainly that the Appellant Establishment is registered Cooperative Society and Agency of State Government, it is covered under the Act, it suffered continuous losses since 1999 and was not in a position to deposit PF dues of employees, notices were issued by the Respondent Authority in this respect under section 7-A of the Act. The Appellant Establishment was given installment facility under the direction of order of Hon'ble High Court, which they deposited but they could not deposit the interest in time. The Respondent Authority issued a notice asking the Appellant Establishment to deposit the interest and penal damages for delayed deposit of PF dues or show cause why it not be recorded from them. It is further the case of the Appellant Establishment that they appeared and stated before the Respondent Authority that they are running in continuous loss since 1999. They are Government Cooperative Organization, they did not get support from Government also, hence the circumstances were beyond their control, they requested for waiver of damages and interest which was turned down by the Respondent Authority holding that ***firstly,*** this power could be exercised by the Board and ***secondly,*** the facts and circumstances of the case did not permit any waiver/reduction in damages or interest, hence this Appeal.

Grounds of Appeal, are mainly that the impugned order as well the findings are bad in law and fact passed by the Respondent Authority, without duly exercising his jurisdiction as provided under section 14-B of the Act, the Respondent Authority committed error in law in ignoring the continuous financial condition of the Appellant Establishment.

In its counter to the Appeal, the Respondent Authority has taken a case that the Appellant Establishment had defaulted deposit of EPF dues for the period from December, 1992 to August, 2012, hence they have been charged the interest and penal damages for this period. A show cause notice dated 13.03.2014 was issued to them to show cause why the interest and penal damages under section 7-Q & 14-B of the Act not be recovered from them. The Appellant Establishment appeared and took a case that interest had been deposited by them. The department verified the statements of deposits with respect to interest as claimed by the Appellant Establishment. The department of Respondent Authority submitted a revised statement of damages and interest prepared on 18.05.2015, which was provided to Appellant Establishment for their objections if any. They did not object to the amount assessed rather took up a case that they could not deposit the EPF dues due to their bad financial condition and because they have been continuously running in loss since 1999. It was found not an adequate ground for waiver of damages. It is further the case of the Respondent Authority that the Appellant Establishment cannot be allowed to take benefit of any order of Hon'ble High Court permitting them to deposit the EPF dues in installment for claiming waiver of interest or damages for the said period. The Appellant Establishment is not a sick industrial company referred to B.I.F.R., hence they are not eligible for seeking waiver with respect to damages. Also, it has been stated that the Act is a beneficial legislation. The interest is credited to the account of the beneficiaries and damages are also deposited with the organization, interest earned is given to the beneficiaries.

The Appellant Establishment has further filed a rejoinder wherein they have mainly reiterated their case.

I have heard argument of Learned Counsel Mr. Uttam Maheswari for the Appellant Establishment and Mr. Abhishek Arjariya for Respondent Authority. I have gone through the record as well.

After perusal of the record in light of rival arguments following point comes up for determination.

(1) Whether finding of the Respondent Authority that the Appellant Establishment does not deserve any waiver with respect to interest or damages due to their alleged bad financial condition since years has been recorded correctly in law?

(2) Whether the Appellant Establishment is entitled to any relief?

<u>Point for determination No. 1:-</u>

The impugned judgment is in two parts, one part relates to interest under section 7-Q of the Act and other part is penal damages under section 14-B of the Act. The Act and Scheme framed under the Act do not provide for waiver of interest, section 7-Q reads as under:-

> ***"7Q. Interest payable by the employer.—The employer shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:***
>
> ***Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank."***

A bare perusal of section 7-Q reveals that the interest is mandatory and the Respondent Authority or even Board does not have any authority to waive or condone it in any condition. Since, the payment of interest is mandatory, it is immaterial whether the Appellant Establishment is in financial condition to pay it or not, hence as regards to this point, the findings of Respondent Authority cannot be faulted in law or fact.

As regards, the second part of the impugned order which relates to damages under section 14-B, this provision is being reproduced as under:-

> ***"14B. Power to recover damages.—***
>
> ***Where an employer makes default in the payment of any contribution to the Fund , the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:***
>
> ***Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard:***
>
> ***Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."***

Learned Counsel further refers to *para 26 of The Employees' Provident Fund (EPF) Scheme, 1952* (in short the ***Scheme***) which grants power to the Board to grant complete or partial waiver with respect to damages, which is being reproduced as follows-

> ***"26. Classes of employees entitled and required to join the fund.***
>
> ***(1) (a) Every employee employed in or in connection with the work of a factory or other establishment to which this scheme applies, other than an excluded employee, shall be entitled and required to become a member of the Fund from the day this paragraph comes into force in such factory or other establishment.***
>
> ***(b) Every employee employed in or in connection with the work of a factory or other establishment to which this Scheme applies, other than an excluded employee, shall also be entitled and required to become a member of the fund from the day this paragraph comes into force in such factory or other establishment if on the date of such coming into force, such employee is a***

subscriber to a provident fund maintained in respect of the factory or other establishment or in respect of any other factory or establishment (to which the Act applies) under the same employer:

Provided that where the Scheme applies to a factory or other establishment on the expiry or cancellation of an order of exemption under section 17 of the Act, every employee who but for the exemption would have become and continued as a member of the Fund, shall become a member of the Fund forthwith.

(2) After this paragraph comes into force in a factory or other establishment, every employee employed in or in connection with the work or that factory or establishment, other than an excluded employee, who has not become a member already shall also be entitled and required to become a member of the Fund from the date of joining the factory or establishment.

(3) An excluded employee employed in or in connection with the work of a factory or other establishment, to which this Scheme applies shall, on ceasing to be such an employee, be entitled and required to become a member of the Fund from the date he ceased to be such employee.

(4) On re-election of an employee or a class of employees exempted under paragraph 27 or paragraph 27-A to join the Fund or on the expiry or cancellation of an order under that paragraph, every employee shall forthwith become a member thereof.

(5) Every employee who is a member of a private provident fund maintained in respect of an exempted factory or other establishment and who but for exemption would have become and continued as a member of the fund shall, on joining a factory or other establishment to which this Scheme applies, become a member of the fund forthwith.

(6) Notwithstanding anything contained in this paragraph [an officer not below the rank of an Assistant Provident Fund Commissioner] may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enroll such employee as a member or allow him to contribute more than rupees [fifteen thousand rupees] of his pay per month if he is already a member of the Fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the Fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee."

34(a) Scheme;……………..

The use of word '*May*' indicates that damages are not mandatory, rather they are discretionary. Following judgment require to referred to in this respect-

Hon'ble Calcutta High Court in *Murarka Paint & Varnish Works Ltd. Vs. Union of India 1976 Lab IC 1453* has held as under:

"Though the liability of the employer to the provident fund of employees is statutory, it does not follow that belated payment would always attract

imposition of damages. The authority is obliged to find out how the beneficiaries have been affected by the non-payment of contribution to their fund."

Hon'ble Supreme Court in *ESIC vs. HMT 2008 (1) SCALE 341* has observed that:

"21. A penal provision should be construed strictly. Only because a provision has been made for levy of penalty, the same by itself would not lead to the conclusion that penalty must be levied in all situations. Such an intention on the part of the legislature is not decipherable from Section 85-B of the Act. When a discretionary jurisdiction has been conferred on a statutory authority to levy penal damages by reason of an enabling provision, the same cannot be construed as imperative. Even otherwise, an endeavor should be made to construe such penal provisions as discretionary, unless the statute is held to be mandatory in character.

25. The statute itself does not say that a penalty has to be levied only in the manner prescribed. It is also not a case where the authority is left with no discretion. The legislation does not provide that adjudication for the purpose of levy of penalty proceeding would be a mere formality or imposition of penalty as also computation of the quantum thereof became a foregone conclusion. Ordinarily, even such a provision would not be held to providing for mandatory imposition of penalty, if the proceeding is an adjudicatory one or compliance with the principles of natural justice is necessary thereunder.

26. Existence of mens rea or actus reus to contravene a statutory provision must also be held to be a necessary ingredient for levy of damagers and/or the quantum thereof."

Hon'ble Apex Court in *McLeod Russel India Ltd. Vs. Regional provident Fund Commissioner (2014) 15 SCC 263* has held as under:

"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 been 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."

Further, the Hon'ble Supreme Court in *Assistant Provident Fund Commissioner, EPFO & Anr vs. Management of RSL Textile India Private Limited (2017) 3 SCC 110* has observed as under:

"following McLeod Russel India Ltd., (2015) 15 SCC 263, since presence or absence of mens rea and/or actus reus would be a determinative factor in imposing damages under S. 14-B, High Court or appellate authority or original

authority having found no mens rea and/or actus reus, respondent(s) could not be held liable under S. 14-B"

Hon'ble Punjab & Haryana High Court in *Assistant Provident Fund Commissioner vs. Employees Provident Fund Appellate Tribunal & Anr. (2016) 148 FLR 311*, dismissing the appeal has held as under:

"5. The learned Single Judge upheld the said order passed by the Appellate Tribunal, while observing that under Section 14B of the Act, the competent authority has a discretion to impose damages which it may think fit keeping in view the facts and circumstances of a case. It has been observed that before imposing damages, the competent authority is required to see whether a default is justified or intentional in the given set of circumstance or not. The learned Single Judge has observed that in the present case, the Appellate Tribunal has rightly come to the conclusion that the competent authority without considering the facts and circumstances of the case wrongly exercised its discretion and imposed damages under Section 14B of the Act. The said order passed by the Appellate Authority has been found to be legal and the learned Single Judge has come to the conclusion that there is no ground to interfere in the discretion exercised by the Appellate Tribunal"

Hon'ble High Court of Chhattisgarh in *M/s Mohanti English Medium School vs. Employee Provident Fund & anr. 2019 (161) FLR 289 (Chhti)* has held as under:

"9. Very recently, the Supreme Court in the matter of Assistant Provident Fund Commissioner, EPFO and another vs. Management of RSL Textiles India Pvt. Ltd., Thr. Its Director, relying upon the earlier judgment rendered int eh matter of Mcleod Russel India Limited vs. Regional Provident Fund Commissioner, Jalpaiguri and others has held that imposition of damages without recording the finding of mens rea/actus reus on the part of the employer is unsustainable.

10. Applying the principle of law laid down by the Supreme Court in the above stated judgements to the facts of the present case, it is quite vivid that there is no finding recorded either by the Regional Provident Fund Commissioner or by the Employees Provident Fund Appellate Tribunal with regard to mens rea/actus reus on the part of the employer and as such, in absence of finding with regard to mens rea/actus reus on the part of the employer/petitioner, action under Section 14-B of the Act of 1952 against the petitioner cannot be sustained."

Hon'ble Calcutta High Court in W.P. No. 8527 (W) of 2015 Tirrihannah Company Ltd. Vs Reginal Provident Fund Commissioner decided on 3107.2018 has held as under:

"In HMT Ltd. (supra) Supreme Court declared, conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of

> ***enabling provision cannot be construed as imperative. Existence of mens rea to contravene a statutory provision must also be held to be a necessary ingredient for levy of damages and quantum thereof.***
>
> ***In view of law declared in HMT (supra), which come after Dalgaon (supra) this Court finds no application of the view that liability under section 14B accrues immediately on default for there to be subsequent or late quantification. Impugned order having omitted to provide illumination regarding why it was thought fit to exercise discretion to impose penal damages, corresponding to omission to record opportunity given regarding a defence against imposition of penal damages or mitigation, makes it an order which violates of principles of natural justice. As such impugned order is set aside. The Authority will give opportunity to the establishment, hear out its contention regarding imposition of penal damages or mitigation and make appropriate order."***

Thus, ongoing through the principle laid down by the Hon'ble High Courts and Hon'ble Supreme Court in the case laws, cited hereinabove, it is very much clear that for conferment of discretionary jurisdiction on statutory authority to levy penal damages by reason of enabling provision cannot be construed as imperative; moreover, existence of 'mens rea' to contravene a statutory provision has also been held to be a necessary ingredient for levy of damages and quantum thereof.

Learned Counsel for the Respondent Authority has relied on judgment of ***Hon'ble Apex Court in case of Horticulture Experiment Station Gonikoppal, Coorg v/s The Regional Provident Fund Commissioner in Civil Appeal No. 2136/2012, (2022) 4 SCC 516***, with connected appeals wherein it has been laid down by a Division Bench of Hon'ble Supreme Court that *mens rea* loose significance in the case of breach of civil liability to the point still remains for that *mens rea* may not have any role in holding the defaulter liable for its civil liability when there is a discretion as mentioned under section 14-B of the Act, the Respondent Authority and this Tribunal in appellate jurisdiction are fully within its powers to consider the mitigating and aggravating the circumstances in computing the amount of damages. My this view is supported by judgment of ***Hon'ble High Court of Chhattishgarh, in the case of Regional Provident Fund Commissioner Employees' Provident Fund v/s Bilaspur Spinning Mills & Industries Ltd. & Ors., MANU/CG/0583/2022, para 19*** which is being reproduced as follows-

> ***19. From the above stated legal position, in case of Horticulture (Supra), it is quite vivid that mens rea is not an essential element for imposing penalty/damages for breach of civil obligation/liabilities by the Provident Fund authorities. But it is incumbent upon the authorities while imposing damages should consider the other relevant factors namely number of defaults, the period of delay, frequency of default and the amount involved,***

reason for delay remittance of provident fund contribution, which are paramount duty of the authority while imposing damages which the authority has failed to discharge, therefore, considering these aspects of the matter, the learned Tribunal has passed the impugned order."

Another judgment of ***Hon'ble High Court of Madras in the case of Assistant Provident Fund Commissioner v/s M/s Salem Textiles Limited, W.P. No. 14255/2020 with other writs; neutral citation 2025:MHC:221, para 7.1 to 7.3*** are being reproduced as under:-

"7.1. It is true that in Employees' State Insurance Corporation (cited supra) and certain other cases, earlier the Hon'ble Supreme Court of India had held that unless it is established that failure to contribute was attributable to mens rea on the part of the employer, levying of damages does not arise. The same was also held in the case dealing with the Provident Fund. This position later stood altered in view of the judgment of the Hon'ble Supreme Court of India in Horticulture Experiment Station, Gonikoppal, Coorg (cited supra), whereby it is held that these judgments did not take into account the earlier authoritative pronouncements and held that mens rea and actus reus are not relevant considerations for levy of statutory damages in these beneficial enactments. Under these circumstances, the matter has been dealt with in detail and answered by the Full Bench of this Court in Sun Pressings (P) Ltd., (cited supra). The Full Bench, speaking through Hon'ble Justice S.S.Sundar, framed the questions in paragraph No.5 and it is useful to extract the same as follows:-

> ***"5.This Court, having regard to the scope of Section 14-B, the relevant provisions of the Act, the EPF Scheme, and the arguments on either side relying upon several precedents, found it appropriate to frame the following issues for consideration :***
>
> ***(a) Whether an element of mens rea or actus reus is essential for levy of damages under Section 14-B of the Act or whether the default or delay in payment of the EPF contributions by the employer attract levy of damages under Section 14-B of the Act without an element of mens rea ?***
>
> ***(b) Whether levy of damages is compulsory in all cases even if it is held that mens rea is not essential ? In what cases levy of damages should be avoided ?***
>
> ***(c) What are the principles to be followed while determining the quantum of damages under Section 14-B of the Act ?"***

7.2. After considering all the relevant decisions in detail, the Hon'ble Full Bench answered the questions and it is relevant to extract paragraph Nos.38 and 39 which read as follows:-"

> ***"38.In Para 32-B of the Employee-s Provident Funds Scheme, 1952, the Central Board has been authorised to reduce or waive damages. In respect of sick companies, 100% of the damages can be waived. Similarly, waiver of damages upto 100% can be allowed as***

per the recommendations of the Board of Industrial and Financial Reconstruction (BIFR). There may be situations and variety of reasons which would justify the non-payment of contribution within the prescribed time by the employer. There cannot be a discrimination between a sick company and sick industry which does not fall under SICA. After the SARFAESI Act, to save the industry, an employer may be forced to pay huge amounts by accepting OTS proposals. There may be similar circumstances where the employer has no option but to borrow money from private financiers. A decision of a private employer to save the industry will instantly save the employment of sizeable number of employees. For variety of reasons, there may be default, despite an employer has always been honest but unable to pay the Provident Fund dues. There may be cases where the industrial operation is suspended temporarily or permanently due to power cut or labour strike or other valid reasons. In the absence of surplus funds available with the employer, it is quite possible that an employer is put to helpless situations. Therefore, there cannot be a straight jacket formula or a table which should be prescribed for levying damages under Section 14-B of the Act.

39.Therefore, following the principles reiterated by the Hon-ble Supreme Court and different High Courts including our High Court in similar circumstances, this Court holds <u>that Section 14-B of the Act is an enabling provision and it does not envisage any compulsion to levy damages in all cases, and is inclined to frame the following guidelines:-</u>

(i)Before levying damages in terms of Section 14-B of the Act, every authority is required to follow principles of natural justice. The particulars of the default, period, etc., and every adverse information that may be relied upon for levying damages should be indicated or furnished to the employer and a fair opportunity should be given to the employer to put forth his case in defence to the proposed action.

(ii)The authority, while exercising power under Section 14-B, shall keep in mind that the liability as per the table given in Para 32A of the Scheme, should be treated as upper limit within which damages can be levied for the delay in making contributions by the employer.

(iii) In appropriate cases where the employer is able to provide sufficient reasons or cause justifying the delay with verifiable materials, the authority is competent to waive or fix the quantum of damages less than what is shown in the table under Para 32A of the Scheme.

(iv)When an employer is not in a position to make payment in order to save the industry from closure or on account of protecting the industry or establishment from being put to face proceedings under the SARFAESI Act or other inevitable circumstances which compels the employer to divert the funds only to save the industry and the employees, there cannot be a levy of damages.

(v)The authority under the Act has to consider all the mitigating circumstances including financial difficulties projected by the employer and pass a reasoned order.

(vi)When the employer is able to produce all the documents or verifiable material within his reach to substantiate any mitigating circumstance, the authority exercising power under Section 14-B has to pass orders giving reasons, if he is unable to find truth or bona fides in the claim of the employer.

(vii)There shall be proper application of mind objectively on the merits of each case and in any case, the authority cannot resort to the arithmetical calculation or for levying damages as per Para 32A of the Scheme without considering the mitigating circumstances.

(viii)While assessing the quantum of damages, the past and present conduct of the employer also should be taken note of. For example, there can be levy of damages as per Para 32-A of EPF Scheme in every case when the employer is a chronic defaulter despite having surplus funds or found to have diverted funds.

(ix) There may be variety of circumstances to which the employer is put to while managing an industrial establishment or a factory within the purview of the Act. The proviso to Section 14-B gives a special power to the Board to waive damages when a rehabilitation scheme is pending before the BIFR. There may be similar circumstances for the employer of any industry to save the industry from the clutches of private/public financial institutions and the employer might be facing proceedings under the SARFAESI Act. Whenever the employer is forced to make huge amounts by mobilizing funds from other resources to save the industry from closure or to avoid similar situations, such payment need not be considered as an act to avoid payment of provident fund dues.

(x)The delay in payments by profit making establishments has to be seriously viewed and every profit making employer is bound to pay the provident fund contributions promptly, unless there are strong reasons or circumstances that prevent the employer from making the payment on the due dates. If there is an element of willful negligence in payment of Provident Fund dues, the Assistant Provident Fund Commissioner or the competent authority can levy damages exercising his discretion.

(xi)Though mens rea is not an essential ingredient, there cannot be levy of damages at the maximum limit merely because there is a default. Before levying damages, there must be definite finding or reason, after considering the explanation or reasons given by the employer for the delay in payment of dues and other mitigating circumstances. The discretion vested with the Assistant Provident Fund Commissioner or the competent authority shall be exercised judiciously in tune with the settled principles of law and keeping in mind the interest of the employees concerned."

> ***7.3. Thus, it can be seen that the legal position as it holds today is that mens rea or willfulness is not an essential ingredient for invoking Section 14-B and levying damages. However, the same can be a relevant factor as a mitigating circumstance while deciding on the exercise or quantum. It is stated that S.L.P.(Civil) No.25548 of 2024, is said to be pending before the Hon'ble Supreme Court of India.***

On the other hand, Learned Counsel for the Respondent Authority has submitted that the Act is a beneficial legislation. The amount recovered as penal damages is also invested in profit earning schemes and the interest earned is distributed among the beneficiaries. He further submits that only the Board has power to waive the damages which is not in this case. Bad financial condition cannot be a ground to avoid liability when there is no such provision under the Act or the Scheme.

As it appears from perusal of impugned order, the plea of bad financial condition was raised before the Respondent Authority also. He refused to accept this plea on the ground-

"That waiver on the ground of bad financial condition is not within the criteria with respect to grant of waiver of damages by the Central Board because the industry is not a sick industry and BIFR has not recommended waiver of damages. Also that the issue of waiver has been prematurely submitted by the establishment and the Respondent Authority does not have power to waive the damages." (relevant portion reproduced)

I am inclined to record that the Respondent Authority has misdirected itself in recording the above findings. No doubt the Board has power to waive the damages in the light of provision clause 32-B of the Employees Provident Fund Scheme, 1952 (reproduced as follows) but the Respondent Authority was under obligation in law to look into this plea whether it was substantiated by evidence or not and record his finding in this respect firstly, this plea is established on record or not and secondly, was it mitigating circumstance resulting into delayed deposit of dues or not. He was further required to consider this circumstance in assessment of damages keeping in mind that the established proposition of law in this respect is that the amount of damages mentioned in para 32-A of the Scheme is the maximum damages which could be imposed.

In the case in hand, there is an order of Joint Commissioner, Cooperative and Registrar Cooperative Societies dated 26.08.2010 by which holding that the Appellant Establishment is in continuous loss since 31.03.2000 (detailed mention in order Annexure-A/1 to the memo of Appeal) and appointed official liquidator for liquidation of the Appellant Establishment. There is on record copy of order of Hon'ble High Court in W.P. No. 2600/2005 and connected writs passed by the various employees of the Appellant Establishment in which holding that the Appellant Establishment is under process of liquidation, Hon'ble High Court directed vide its order dated 09.11.2010 to grant voluntary retirement as per Scheme to the petitioner employees and release their benefits within two months from the order on priority basis in comparison to other creditors (Annexure-A/2 to the memo of Appeal).

Also, there is on record a memorandum of standing between the Appellant Establishment through its official liquidator and M.P. Finance Corporation on 07.11.2013 with regards to liquidation and sale of assets of the Appellant Establishment which is (Annexure-A/3 to the memo of Appeal). Furthermore, there is on record order of Hon'ble High Court of M.P. dated 06.02.2012 passed in W.P. 2930/2012 whereby the Appellant Establishment filed a writ through its official liquidator seeking facility of installments with regards to payments of provident fund dues of its employees assessed by the EPFO which was granted and Appellant Establishment was allowed to deposit the dues in installments as mentioned under the said order which is Annexure-A/6 to the memo of Appeal.

The facts referred to in the above paragraph are not disputed by the Respondent Authority. Hence, it is established that the Appellant Establishment has been in continuous financial loss since 1999 till 2012 and thereafter which is the period of assessment, official liquidator was appointed for liquidation of the Appellant Establishment and it was liquidated thereafter.

Established bad financial condition as it is in the case in hand is a mitigating circumstance with respect to delayed deposit of EPF dues which was required to be considered by the Respondent Authority. By not considering these factors while imposing the amount of penal damages @100% rate as prescribed under para 32-A of the Scheme, the Respondent Authority is held to have acted mechanically and thus, is held to have committed error in law. Being a Court of First Appeal on fact and law both, it is a fit case for interference and fix the amount of penal damages in the light of these mitigating circumstances. I find it in the interest of justice to reduce the amount of penal damages u/s 14-B of the Act to 50% of the assessed amount.

Point for determination No. 1 stands answered accordingly.

Point for determination No. 2

In the light of above findings, holding the Appeal against order u/s 7-Q of the Act not maintainable, the amount u/s 14-B of the Act is reduced to 50% to which the Appellant Establishment is held liable to pay.

Point for determination No.2 stands answered accordingly.

No other point was pressed.

In light of above discussion and findings, the Appeal is disposed as by following order.

ORDER

"The appeal succeeds partly. The impugned order u/s 7-Q dated 05.05.2017 is held not appealable before this Tribunal. The Appellant Establishment is at liberty to pursue remedy before proper Forum.

The impugned order dated 05.05.2017 and assessment passed u/s 14-B of the Act is modified. The amount assessed u/s 14-B of the Act in the impugned order is reduced to 50% to which the Appellant Establishment is held liable to pay as penal damages."

No order as to cost.

Date:- 05/02/2026 **P.K. SRIVASTAVA**
(PRESIDING OFFICER)

Judgment Signed, dated and pronounced.

Date:- 05/02/2026

P.K. SRIVASTAVA
(PRESIDING OFFICER)