

EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL
NEW DELHI
ATA No. 94(13)2002

M/s. Hotel Pratap Plaza

.... Appellant

Vs

RPFC, Madras

.... Respondent

ORDER

DATED: 13th. February, 2012

Present: None for the appellant.

Sh. E. Nandkumar, Enforcement Officer for the respondent.

The present appeal is filed to challenge the Order dated 08.05.1996 passed by the RPFC Madras under Section 7-A of the EPF & MP Act 1952, assessing the liability of the appellant for PF dues from 1970 onwards.

2. The admitted facts of the case are that the appellant is a partnership firm consisting of Mr. M.P. Rao, Mr. M V Subba Rao, Mrs. V Rajalaxmi and Mrs. K. Lakshmikanthamma as partners. All the partners belonged to the same family. The firm was constituted vide Deed of Partnership dated 23.02.1970. Consequent to the retirement of Mrs. V. Rajalaxmi from the partnership firm, the fresh deed of partnership was executed on 22.01.1987 in continuation to the existing firm. Mrs. M.Rajini was taken in as a new partner. Subsequently, due to demise of Shri M.V. Subba Rao, the partnership was reconstituted on 03.02.1993 and in this partnership his grandson Mr. SK Prasad was admitted as a partner in place of Shri m v Subba Rao. All through these years, the partnership property was never divided amongst the partners but it was continued to remain in the possession of the partnership firm. Initially, the firm was engaged in the finance business and subsequently, firm's business activities were changed and now it is engaged in the business of hotel. In the appeal one of the grounds taken to assail the impugned order is that the appellant was not allowed to avail the infancy protection under Section 16(i) of EPF & MP Act. The learned counsel for the appellant submitted that it has every right to change his business and so it is entitled for the infancy protection.

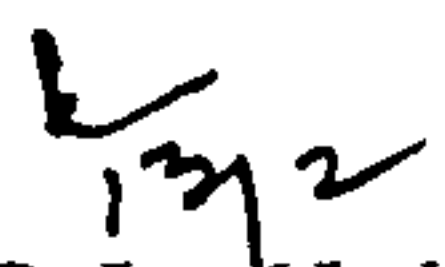
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3. It is no doubt true that every person or a firm has a right to engage in any business or activity. Right from the date of its constitution in the year 1970, the appellant is engaged in one business activity or the other. The appellant firm continued in business operation till the date of passing of the impugned order though it is having different activities at different intervals. It has also started new business activities but all these activities remain the activities of the appellant without discontinuation of its business activities and also all these activities were in consonance with the provision of terms and conditions of the executed deed of partnership. So there was no occasion that a new firm was created or established and the said new firm has started the new business of its own. Therefore, the appellant may not be entitled for to avail the protection of infancy period. Further in case the appellant is allowed to avail the infancy protection every now and then on changing its business activities, it would defeat the very purpose of providing infancy protection under the Act. Therefore, the submission of the appellant that it had been denied infancy protection is not sustainable. Since the appellant's firm is having different business activities and all such business activities were controlled by the appellant, it's all different business houses shall be treated as one and liable to be clubbed for the purpose of assessing PF dues etc.

4. In terms of the above, the present appeal fails, there is no infirmity in the order of the RPFC, copy of the order be sent to the parties. The file be consigned to the record room.

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(R.L. Koli)
Presiding Officer, EPFAT

