

Before Kuldip Singh, J.

EMPLOYEES STATE INSURANCE CORPORATION—Appellant

versus

M/S FAVOURATE SMALL INVESTMENTS LTD.—Respondents

FAO No.898 of 1991

May 15, 2015

Punjab Shops and Commercial Establishment Act, 1958—Employees’ State Insurance Act, 1948—S.75—Commercial Establishment Act covered in the definition of shop—2(iv) definition of commercial establishment—Business of Banking and place of insurance stock and shares etc. is within the definition of commercial establishment—Not covered under definition of shop as under ESIC Act—Dismissed.

Held that present business of the respondent-Company is in the nature of banking business, where the deposits are returned with interest on maturity. Therefore, it is not covered under the definition of a shop as sought to be projected by the ESI authorities. Thus, I am of the view that the ESI Court has rightly allowed the application of the respondent-company and set aside the impugned order vide which the demand was raised holding the ESI Act is applicable.

(Para 8)

Further held that accordingly, both the appeals are found to be without merits and stand dismissed.

(Para 9)

B.S. Bhatia, Advocate
for the appellant.

Bindu Goel, Legal Aid Counsel
for the respondent.

KULDIP SINGH J.

(1) This judgment of mine will dispose of two FAO Nos. 898 of 1991 and 572 of 1997 as common questions of law and facts are involved therein, in which common substantial question of law has been raised as under:

Whether the establishment, which is carrying on the business of securing deposits for specific period and after

maturity of the said period, return the amount to the public subscriber with interest falls within the definition of 'shop' as given in The Punjab Shops and Commercial Establishments Act, 1958 (in short 'the Act') so as to be covered under the Employees' State Insurance Act, 1948 (in short 'the ESI Act')?

(2) Challenged in the aforesaid appeals is the orders dated 07.03.1991 and 29.10.1994 passed by the Employees' Insurance Court, Chandigarh (in short 'the ESI Court'), vide which the application filed under Section 75 of the Employees' State Insurance Act, 1948 (in Short 'the ESI Act') filed by the present respondent was allowed.

(3) Admittedly, in the present case, the respondent-Company was carrying on the business of securing deposits for a specific period and after the maturity of the said period, the amount was returned to the subscriber with the interest. The Employees State Insurance Authorities (in short 'the ESI Authorities) raised a demand on different occasions claiming that the respondent-Company is covered within the definition of shop and, therefore, covered under the ESI Act. The ESI Court allowed the application of the respondent-Company filed under Section 75 of the ESI Act and quashed the impugned orders in both the cases.

(4) The definition of shop is not given in the ESI Act but is given in the Act, which is as under:

“(XXV) “shop' means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, [go-downs, sale depots or warehouses], whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (LXIII of 1948)”

(5) It goes to show that a commercial establishment is not covered within the definition of a shop. The commercial establishment has itself defined in the said Act under Section 2(iv) as under:

(iv)“commercial establishment; means any premises wherein, any business, trade or profession is carried on for profit, and include journalistic or printing establishment and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is carried on or

which is used as hotel, restaurant, boarding or eating-house, theatre, cinema or other place of public entertainment or any other place which the Government may declare, by notification in the official Gazette to be a commercial establishment for the purposes of this Act.”

(6) The above noted definitions show that the business of banking and a place where the business of insurance stock and shares etc. is carried on is covered within the definition of commercial establishment.

(7) Learned counsel for the appellant has relied upon the authority of Calcutta High Court in case of *The Regional Director, Employees' State Insurance Corporation and others versus The peerless General Finance and Investment Company Ltd. and others*¹, where a finance and investment company was held to be covered under the ESI Act. Further reliance has been placed upon the authority of Hon'ble the Supreme Court in case of *M/s. Hindu Jea Band, Jaipur versus Regional Director, Employees' State Insurance Corporation, Jaipur*², where the firm carrying on the business of playing music on the occasions like marriages and other social function was held to be a shop and covered under the ESI Act.

(8) After considering the definitions of a shop and commercial establishment reproduced as above, I am of the view that the present business of the respondent-Company is in the nature of banking business, where the deposits are returned with interest on maturity. Therefore, it is not covered under the definition of a shop as sought to be projected by the ESI authorities. Thus, I am of the view that the ESI Court has rightly allowed the application of the respondent-Company and set aside the impugned order vide which the demand was raised holding that ESI Act is applicable.

(9) Accordingly, both the appeals are found to be without merits and stand dismissed.

Amit Aggarwal

¹ 1997 ILLJ (96)

² AIR 1987 SC 1166