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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: October 14, 2015

\+ **W.P.(C) 9785/2015 & C.M. 23530/2015 & C.M. 23531/2015**

RAJINDER SINGH ..... Petitioner
Through: Mr. Tanish Malhotra, Advocate

versus

CENTRAL BOARD OF TRUSTEE & ANR. ..... Respondents
Through: Mr. Keshav Mohan, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **(ORAL)**

In an appeal under the *Employee Provident Funds & Miscellaneous Provisions Act*, 1952, vide impugned order of 8th October, 2015 *(Annexure P-1)*, respondent has been restrained from recovering more than 30% of the assessed amount till further orders.

To assail the impugned order of 8th October, 2015 *(Annexure P-1)*, learned counsel for petitioner draws attention of this Court to respondent's order of 29th May, 2014 *(Annexure A-18)* to point out that petitioner's contribution to the Employees Provident Fund has been taken as on 8th September, 2010 whereas, as per respondents' document i.e. 'Payment Position' *(Annexure A-11)*, deposit of contribution is on 8th May, 2007 is of ₹37,326/-. It was vehemently submitted that petitioner's contribution has been wrongly determined as ₹9,15,638/- and it ought to have been ₹37,000/- odd. It was submitted by learned counsel for petitioner that an application to correct this patent error in the *ex parte* order of 5th March, 2015 was filed by petitioner on 1st September, 2015 *(Annexure A-2)* but respondent, vide order of 18th September, 2015 *(Annexure A-4)* has not corrected the afore-mentioned patent error.

Lastly, it was submitted that petitioner is not required to pay ₹9,00,000/- odd, therefore, the impugned order restraining respondent from recovering more than 30% of the assessed amount, deserves to be waived and petitioner's appeal ought to be heard on merits without any pre-deposit.

This petition is strongly opposed by learned counsel for respondent, who submits that the question raised in this petition is purely of fact and need not be gone into in writ proceedings and deposit of 30% of the assessed amount is well justified on merits.

During the course of hearing, a query was put to petitioner's counsel as to under which provision of law, the aforesaid application of 1st September, 2015 *(Annexure A-2)* was filed and it was pointed out that under Section 8 D of *The Employee Provident Funds & Miscellaneous Provisions Act*, 1952, the concerned Recovery Officer is empowered to *suo moto* correct any clerical or arithmetical mistake.

Upon hearing and on perusal of the impugned order and the material on record, this Court finds that the so called patent error pointed out by learned counsel for petitioner is neither clerical nor arithmetical mistake. However, impugned order 8th October, 2015 *(Annexure P-1)* deserves to be modified only to the extent that instead of respondent being restrained from recovery of more than 30% of the assessed amount, it would be appropriate to direct petitioner to deposit 30% of the assessed amount with the authorities concerned. Since learned counsel for petitioner had sought to urge that there was no admission about the delay in remittance of the Provident Fund Contribution, therefore, observation made in the impugned order in this regard is rendered otiose. This aspect is left open to be considered in the appeal.

To the aforesaid extent, impugned order stands modified while refraining to comment upon the merits, lest it may prejudice the parties in the pending appeal.

This petition and applications are accordingly disposed of while leaving the parties to bear their own costs.

(SUNIL GAUR)
JUDGE

OCTOBER 14, 2015
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