IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 391 of 2013

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Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Sub-Regional Office, Bhavishya Nidhi Bhawan, Adampur Chowk, Bhagalpur

.... Appellant/s

Versus

M/S Nand Lal And Company Through Its Partner, Sri Murlidhar, Son Of Sri Sawak Ram Tilkamanjhi, Bhagalpur

.... Respondent/s

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For the Appellant/s : Mr Prashant Sinha, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

&

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 28-03-2016

A supplementary affidavit has been filed on behalf of the appellants in regard to the action proposed to be taken against their employees who had not filed proper response in the appellate proceedings. Let the same be kept on record. Court directs that those proceedings, which have been initiated, be taken to their logical end at the earliest.

2 Heard learned counsel for the appellant, and, with his consent, this appeal is being taken up for the purposes of final disposal at this stage itself.

3 We have gone through the order passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions

Act, 1952 (for brevity, *the Act*) as also the order of the appellate authority, New Delhi. We have also seen the order of the learned Single Judge. We find no reason to interfere in the matter inasmuch as, in our view, the case is squarely covered by the decision of the Apex Court in the case of *Food Corporation of India –Versus-Provident Fund Commissioner & Others* since reported in *(1990) 1 Supreme Court Cases 68.*

4 Let it be noted that the procedure for assessment under Section 7A of the Act is for assessing the dues payable under the Act which is for the benefit of identified individuals. The first question would be whether those individuals would be treated as employees of the establishment for the purposes of compliances of the Act or not. That is the first finding that is to be recorded by the authorities. Then the amounts due, vis-à-vis each employee, has to be quantified.

5 We are of the view that the assessment under Section 7A of the Act should not be confused with an assessment of tax. The assessing authority has made an assessment as if he is a taxing authority, and realizing tax from a tax payer. Unfortunately, these are provident fund dues which are to accrue to an individual and not a tax, and, not an amount payable to the Provident Fund Commissioner. Unless the nature of employment and the names of employees are identified with certainty, the assessment cannot be said to be in accordance with law. The Apex Court has clearly held so.

6 We have, therefore, no reason to interfere in the order of the appellate authority or the learned Single Judge. This appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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