IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13578 of 2016

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Central Board of Trustees, Employees Provident Fund Organization through the Assistant Provident Fund Commissioner (Legal), Regional Office, Patna having his office at R. Block, Road No.6, P.S.-Sachivalaya, District – Patna.

... ... Petitioner

Versus

M/s K B I, Kamal Bricks Industries, Mahdeva, Bariyarpur, P.S.- Bariyarpur, District-Munger.

... ... Respondent

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Appearance :

For the Petitioner/s : Mr.Prashant Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 19-02-2019

Heard learned counsel for the Central Board of Trustees, Employees Provident Fund Organization. No one appears from the side of the respondent.

2. By way of this petition, the petitioner has prayed for the following relief:-

(i) For issuance of writ in the nature of certiorari for quashing of the order dated 05.05.2016 passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in A.T.A. No.773 (3)/2015, whereby the appeal preferred by the respondent has been allowed without considerations of the merit of the case.

(ii) For any other direction, which your Lordship may deem fit and proper in the facts and circumstances of the case."

3. This Court vide order dated 15.05.2017 issued notice to sole respondent. On perusal of the service report, it appears that the establishment has been closed down and upon that this Court has passed an order for substituted service of notice upon sole respondent. The notice was published in the daily news paper, namely, Hindustan, but no one has appeared to contest the present case. In such view of the matter, this case is being disposed of on the basis of the submissions made by learned counsel for the petitioner.

4. In the present case, the industry, in question, is a brick-kiln industry, there primary work is to manufacture the brick, which is consumed in the market. The Inspector of Provident Fund has visited the establishment of the sole respondent and found that 21 persons were employed in the said establishment and whereafter he submitted the report and on that basis a 7A proceeding was initiated against the establishment and vide order dated 31.01.2009 the authority has decided the applicability of the Act as well as assessed an amount of Rs.1,27,476/- under Section 7A and also assessed the amount of Rs.33,440/- under Section 7Q of the Act, total comes to Rs. 1,60,916/-. The same was challenged before the Appellate Authority in A.T.A. Appeal No. 391 (3) of 2008 and the Appellate Authority has recorded that this industry does not run entire period of the years as it remains closed during the rainy season, but the Assessing Authority has made an assessment of the entire period, which is not sustainable and accordingly, interfered with the order passed by the Assessing Authority. The same was challenged before this Court in C.W.J.C. No.3915 of 2010 and this Court vide order dated 04.07.2012 has interfered with the order of the Appellate Authority to the extent that this Court has directed to make the assessment for the period it remains operational i.e. determining half of the year and whereafter again a proceeding was initiated under Section 7A of the Act and the Assessing Authority passed the order dated 01.06.02.15, which was challenged before the Appellate Authority in A.T.A. No. 773 (3) of 2015.

5. Learned counsel for the petitioner submits that the appeal has been allowed simply on the ground that the petitioner has failed to file reply as was directed by the Tribunal and the Tribunal has not examined the case on its merit, which was to be established by the appellant, even though the petitioner failed to file the reply, the Tribunal *ipso facto* should not have set aside the order of the Assistant Provident Fund Officer, but he was to examine the order on its merit and record a finding with regard to the illegality committed by the Assessing Authority, but no such finding has been recorded in the order, but merely interfered with the order

6. The order of the Appellate Authority suffers from illegality as the Appellate Authority should not have set aside the order merely failure to file reply but it has to be decided on its merit and it is the appellant who has to make out his case before the Appellate Authority and point out the illegality committed by the Assessing Authority and only on that strength the Appellate Authority should have interfered with the matter, but in the present case the Appellate Authority has not applied his judicial mind.

7. In such view of the matter, the order dated 05.05.2016 passed by the Employees Provident Fund Appellate Tribunal, New Delhi, in A.T.A. No. 773 (3) of 2015 is set aside. It has been informed that the power has been conferred to the CGIT, Dhanbad. Hence, this Court directs that entire record should be transferred to CGIT-1, Dhanbad, to taking decision on merit.

8. Accordingly, this writ petition is allowed to the above extent.

(Shivaji Pandey, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	28.02.2019
Transmission Date	