(1997) 05 AHC CK 0212

In the Allahabad High Court

Case No : C.M.W.P. No. 12508 of 1997

E. Hill and Co. Ltd. APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 13-05-1997

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A, 7A(1), 7A(3)

Citation : (1998) 1 LLJ 76 : (1997) 2 UPLBEC 1016

Hon'ble Judges : S.R. Singh, J

Bench : Single Bench

Advocate : H.S. Nigam, for the Appellant; Rakesh Tewari and J.N. Tewari, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—Heard Sri H. S. Nigam appearing for the Petitioner and Sri J. N. Tewari appearing for the Respondents.

2. Impugned herein is the order dated 1.1.97 (Annexure 11) passed by the Regional Provident Fund Commissioner, U.P., Varanasi u/s 7A of the U.P. Employees Provident Fund and Miscellaneous Provisions Act, 1952. By means of the said order, the Regional Provident Fund Commissioner, U.P., Varanasi has determined the dues payable for the period under reference by the Petitioner on account of Provident Fund Contribution (Difference of Interest) Employees and Employers'' Share) payable into A/c. No. 1 to the tune of Rs. 12,67,608. The period under reference is 1987-88 to 1991-92.

3. It brooks no dispute that the Petitioner had filed its reply to the show cause notice served to it before passing the impugned order. It has also not been disputed and rightly so, in view of Division Bench decision of Patna High Court in M/s. Indian Mica and Micanite Industries Ltd. v. Regional Provident Fund Commissioner 1974 LIC 415, that proceedings u/s 7A of the Act, have the complexion of quasi-judicial proceedings and the order of assessment must be a

speaking order. A perusal of the impugned order would denote that the Regional Provident Fund Commissioner, has passed the order without addressing himself to the replies submitted on behalf of the Petitioner. Such an order, in my opinion, cannot be characterised as an order passed in conformity with the requirement of law. The fact that Sub-section (1) of Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act, enjoins Regional Provident Fund Commissioner to conduct such enquiry as he may deem necessary and the fact that Sub-section (3) of Section 7A provides for reasonable opportunity to be given to the employer of representing his case, make it abundantly clear that in case the reply is filed, the same has to be reckoned with and that is why the law requires the authorities u/s 7A of the Act to decide the dispute or determine the amount due from the employer by a speaking order. The impugned order does not fulfill the test of a speaking order. Sri J. N. Tiwari has fairly conceded that the matter may be relegated to the Regional Provident Fund Commissioner, U.P. to pass a fresh order after considering the reply submitted on behalf of the Petitioner.

4. In the result, the Petitioner succeeds and is allowed. The impugned order dated 1.1.97 (Annexure 11) is hereby quashed. The parties are directed to present themselves before the Regional Provident Fund Commissioner, U.P., Varanasi on or before 19th June, 1997 and the Regional Provident Fund Commissioner shall dispose of the matter within six weeks next thereafter.

