(2016) 07 JH CK 0084

In the Jharkhand High Court

Case No : Writ Petition (C) No. 898 of 2016

M/s Sushila Publication & Printers Pvt. Ltd. Ranchi — APPELLANT

Vs

Assistant Provident Fund Commissioner Jharkhand — RESPONDENT

Date of Decision : 29-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7B

Citation : (2017) 2 AIRJharR 611

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. Prashant Pallav, Advocate, for the Petitioner; Mr. Rupesh Singh, Mr. Amrendra Pradhan, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Rongon Mukhopadhyay, J.—Heard Mr. Prashant Pallav, learned counsel for the petitioner and Mr. Rupesh Singh, learned counsel appearing for the sole respondent.

2. In this application, petitioner has challenged the order dated 10.11.2015, and order dated 23.04. 2015, whereby and where under, petitioner has been directed to deposit Rs. 68,46,164/- as employees provident fund and allied dues and Rs. 38,33,928/- as interest under Section 7Q of the Employees Provident Fund and Miscellaneous Provisions Act 1952.

3. Briefly stated it appears that petitioner is running a printing business, against whom proceeding under Section 7A of the Employees Provident Fund and Miscellaneous Provisions Act (hereinafter referred as Act) has been initiated for determination of employees provident fund and allied dues for the period 04/2008 to 02/2010. A final order passed on 10.11.2015 to deposit an amount of Rs. 68,46,164/- as employees provident fund and allied dues and Rs. 38,33,928/- as interest under Section 7Q of the Act.

4. Aggrieved by the order dated 23.04.2015, petitioner has preferred a review application by filing Form No. 9, but the same was also dismissed on the ground of delay as well as the fact that no new material or evidence has been brought on record vide order dated 23.04. 2015.

5. It has been submitted by learned counsel for the petitioner that reviewing authority has not properly considered the ground for review, which has been submitted in Form No. 9 of the employees provident fund scheme. Learned counsel submits that statutory period within which the review is to be filed is 45 days. But since there was delay of 110 days in preferring the review application, petitioner had filed a separate application for condonation of such delay, but without considering the same, as well as the ground of review sought for, the order dated 10.11.2015 was passed. Learned counsel has further referred to Section 2 F of the Employees Provident Fund Scheme 1952 and has stated that excluded employees were never considered while assessing the provident fund dues against the petitioner. Reference has also been made by the petitioner at paragraph 26 B of the scheme, wherein with respect to any question as to whether the member is entitled to continue or to become a member the same shall be referred to the Regional Provident Fund Commissioner for its decision.

6. Learned counsel further has referred to Section 29 of the Limitation Act and has submitted that when no specific provision is present in the Act or the scheme with respect to condonation of delay, Section 29 of the Limitation Act shall be made applicable. But without considering this fact, the review application preferred by the petitioner under Section 7B of the Act had been rejected.

7. Countering the argument advanced by learned counsel for the petitioner, Mr. Rupesh Singh, learned counsel for the sole respondent has submitted that petitioner is trying to circumvent the order of the Authority on the pretext that he is trying to delay the matter and thereby depriving the employees, who worked under him, in getting their provident fund dues. Submission has been advanced that in the proceeding under Section 7 A of the Act the petitioner had regularly participated and in fact was well aware regarding the change which was made with respect to the extension of the period. Learned counsel further has referred to Section 80 of the Scheme of 1952 and has submitted that newspaper, establishment and excluded employees has been specifically defined to substantiate the definition of the excluded employees, as has been made in paragraph 2 (f) of the Scheme. It has further been submitted that review application does not contain any means for review, as neither any evidence or any material has been sought to be projected or is reflected in the said application, which is one of the pre condition for getting the order under Section 7A of the Act reviewed. Learned counsel submits that petitioner should have availed statutory remedy of appeal, as provided under Section 7 (I) of the Act, instead of preferring a review application which is without any basis and in absence of any material, the reviewing authority has rightly passed the impugned order dated 10.11.2015 and in such circumstances, this writ

application is liable to be dismissed.

8. It appears that after the order was passed by the Assessing Authority under Section 7 A of the Act, the application for review under Section 7 B of the Act was preferred by the petitioner, although after a delay of 110 days. The review application was challenged under Form No. 9 as enumerated in the Employees Provident Fund Scheme and the same was accompanied by the application for condonation of delay of 110 days. The impugned order dated 10.11.2015 has merely taken note of the ground on which the review has been sought for and has quoted provisions of Section 7 B of the Act. While coming to the conclusion that the review application has been preferred beyond the prescribed period and that no facts/evidences has been brought by the establishment so as to specify the two pre requisite condition for getting the order of assessment reviewed, no consideration or mention has been made to the application for condonation of delay filed by the petitioner. Even if the statute does not prescribe him to include the provision with respect to condonation of delay, but the same is automatically guided by the provision of the Limitation Act. It further appears that apart from the production of new material or evidence which was not within the knowledge of the establishment and the time to assess the other ground on which review application can be entertained, if there is mistake or error apparent on the face of the record as appearing in Sub Section 1 of Section 7B of the Act. Since the impugned order dated 10.11.2015 is a cryptic and non speaking order, as it has not taken into consideration the application for condonation of delay and since no appropriate reasons have been assigned in the said order so as to make it sustainable the impugned order dated 10.11.2015 is hereby quashed and set aside. The matter is remanded back to the sole respondent to decide the issue afresh within the period of two months from the date of receipt/production of the copy of this order.

9. This application stands disposed of.

