



सत्यमेव जयते

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM**

Present: Shri.V.Vijaya Kumar, B.Sc., LLM, Presiding Officer.

(Friday the 8<sup>th</sup> day of January, 2021)

**APPEAL No.160/2019**  
(Old No.1200(7)2015)

Appellant : M/s.Vajra Creations (P) Ltd  
XXVIII/621-J2  
Pulimoottil Roy Rogers Towers  
Temple Bypass Road  
Thodupuzha  
Idukki - 685584

By M/s.Menon & Pai

Respondent : The Assistant PF Commissioner  
EPFO, Regional Office, Thirunakkara  
Kottayam – 686001

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 11.12.2020 and this Tribunal-cum-Labour Court on 08.01.2021 passed the following:

**ORDER**

Present appeal is filed from order no.KR/KTM/20432/ENF-I(4)/2015/11075 dt.14.09.2015 assessing dues on various allowances U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 04/2011 to 03/2013. The total dues assessed is Rs.4,49,906/-.

2. The appellant is a private limited company registered under the Companies Act, 1956. The company is engaged in the sale of jewellery and allied products. The appellant is covered under the provisions of the Act. The Enforcement Officer of the respondent conducted an inspection and reported that the appellant is splitting wages into various allowances and not paying contribution on those allowances to the detriment of the employees. The respondent initiated an enquiry U/s 7A of the Act to consider whether the trainees engaged by the appellant can be treated as employees and also to examine whether the allowances paid by the appellant to its employees will attract provident fund deduction. The appellant was paying allowances such as uniform allowance, washing allowance, city compensatory allowance, education allowance, medical allowance, graduation allowance, risk allowance and badge allowance to its employees. A representative of the appellant appeared before the respondent and explained that the trainees are governed by Industrial Employment Standing Orders Act and they are not coverable under the provident fund Act. With regard to the allowances it was pointed out that these allowances are compensatory in nature and hence do not form part of basic wages and therefore no contribution is payable on those allowances. The respondent issued the impugned order ignoring the above contentions. However held that the appellant is not liable to extend provident fund benefits to its trainees.

Sec 2(b) and Sec 6 of the Act and Para 29 of EPF Scheme specifically excludes all the allowances except those that are specifically included in the provisions.

3. The respondent filed counter denying the above allegations. The Enforcement Officer of the respondent during the regular inspection noticed that the wages paid to the employees of the appellant was split into various allowances and evaded PF contribution on those allowances to the detriment of the employees. The Enforcement Officer also reported that 12 trainees were not enrolled to provident fund. The respondent initiated an enquiry U/s 7A of the Act to decide the matter finally. A representative of the appellant appeared before the respondent and produced the records called for. From the documents produced by the appellant, it is seen that the various allowances paid to the employees included uniform maintenance allowance, city compensatory allowance, education allowance, medical allowance, graduation allowance, risk allowance and badge allowance. The appellant paid contribution only on basic wages. After detailed evaluation the respondent authority came to the conclusion that the trainees will come within the standing orders of the appellant establishment and therefore need not be enrolled under the provisions of the Act. However the respondent found that some allowances such as special allowance, city compensatory allowance, medical allowance and education allowance are paid uniformly to all employees and therefore will attract provident

fund deduction. '**Basic wages**' means all emoluments which are earned by an employee while on duty in accordance with terms of contract of employment which are paid or payable in cash. The Hon'ble High Court of Madras in **Reynolds Pens Pvt Ltd Vs RPFC**, 2011 LLR 876 held that various allowances paid by the employers to their employees under different heads such as conveyance allowance, education allowance, food concession, medical allowance, night shift incentive, CCA will come within the definition of basic wages as per Sec 2(b) of the Act. In **Gujarat Cypromet Limited Vs APFC**, 2005 LAB IC 422 the Hon'ble High Court of Gujarat held that the plain intention of the Legislature is that the contribution to the fund should be paid on basic wages, DA and retaining allowance. The term basic wages U/s 2(b) of the said Act does not permit any ambiguity and the plain intention of the Legislature appears to include all emoluments other than those which are specifically excluded. There is nothing in the said definition disclosing the intention of the Legislature that the benefits paid to the employees under various headings are to be excluded for the purpose of the term 'basic wages'. Where the Legislature intended certain benefits to be excluded from the meaning of the term 'basic wages', the same has been specifically provided for. In **Hindustan Lever Employees Union Vs RPFC**, 1995 LAB IC 775 the Hon'ble High Court of Bombay held that in the context of the term 'basic wages' as defined U/s 2(b) of the said Act, unless the payment falls

in any one of the specifically mentioned exempted categories, every emoluments which is earned by an employee while on duty in accordance with terms of contract which are paid or payable in cash to him must be included within the definition of basic wages.

4. The respondent authority has taken two issues in the proceedings U/s 7A of the Act. One of the issue is whether the 12 trainees engaged by the appellant can be treated as employees for the purpose of provident fund deduction. After elaborate considerations, the respondent authority came to the conclusion that the trainees are engaged under the standing orders of the appellant and therefore are excluded for the purpose of provident fund deduction. The second issue considered by the authority is whether various allowances paid to its employees by the appellant will attract provident fund deduction. After verifying the records produced by the appellant, the respondent authority noticed that the appellant is paying uniform maintenance allowance, washing allowance, CCA, education allowance, medical allowance, graduation allowance, risk allowance and badge allowance to its employees. The respondent authority noticed that risk allowance and badge allowance are not paid uniformly to all employees and therefore will not attract provident fund deduction. However the authority noticed that all other allowances such as uniform maintenance allowance, washing allowance, CCA, education allowance

and graduation allowance are paid uniformly to all employees and will attract provident fund deduction.

5. The issue regarding the allowances which will attract provident fund deduction is to be examined in the light of the provisions of the Act.

The two sections which are relevant to decide the question whether the above allowances will form part of basic wages and will attract provident fund deduction are Sec 2(b) and Sec 6 of the Act.

**Sec 2(b)** of the Act reads as follows;

“ **basic wages** “ means all emoluments which are earned by an employee while on duty or (on leave or holidays with wages in either case) in accordance with the terms of contract of employment and which are paid or payable in cash to him, but does not include

1. cash value of any food concession
2. any dearness allowance (that is to say, all cash payments by whatever name called paid to an employee on account of a rise in the cost of living) HRA, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his employment or of work done in such employment.
3. Any present made by the employer.

**Section-6 : Contribution and matters which may be provided for in Schemes.**

The contribution which shall be paid by the employer to the fund shall be 10% of the basic wages, dearness allowance and retaining allowance (if any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor) and the employee's contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires, be an amount exceeding 10% of his basic wages, dearness allowance and retaining allowance (if any) subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under the Section.

Provided that in its application to any establishment or class of establishments which the Central Govt, after making such enquiry as it deems fit, may, by notification in the official gazette specify, this Section shall be subject to the modification that for the words "10%", at both the places where they occur, the words "12% " shall be substituted.

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding off such fraction to the nearest rupee, half of a rupee, or quarter of a rupee.

Explanation 1. For the purpose of this Section dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Sec 2(b) of the Act excludes certain allowances such as dearness allowance, house rent allowance, overtime allowance etc., from the definition of basic wages. However U/s 6, certain excluded allowances such as dearness allowance are included while determining the quantum of dues to be paid. This anomalous situation was resolved by the Hon'ble Supreme Court in **Bridge & Roof Company (India) Ltd Vs UOI**, 1963 AIR 1474 (SC) 1474. After a combined reading of Sec 2(b) and Sec 6 of the Act, the Hon'ble Supreme Court held that;

- a. Where the wage is universally, necessarily and ordinarily paid to all across the board, such emoluments are basic wages.
- b. Where the payment is available to be specially paid to those who avail of opportunity is not basic wages.

This dictum was subsequently followed by the Hon'ble Court in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidyamandir & Others**, 2019 KHC 6257 the Hon'ble Supreme Court considered the appeals from various decisions by High Courts that travelling allowance, canteen allowance, lunch incentive, special allowance,



conveyance allowance etc., will form part of basic wages. The Hon'ble Court after examining all its earlier decisions held that;

“ The wage structure and the component of salary have been examined on facts, both by the authority and appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question are essentially a part of the basic wages camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. There is no occasion of us to interfere with the concurrent conclusions of facts. The appeals by the establishments therefore merits no interference”.

The Hon'ble High Court of Kerala also examined the above issue in a recent decision dt.15.10.2020, in the case of **Employees Provident Fund Organisation Vs M.S.Raven Beck Solutions (India) Ltd**, W.P.(C) no.17507/2016. The Hon'ble High Court after examining the decisions of the Hon'ble Supreme Court on the subject held that the special allowances will form integral part of basic wages and as such the amount paid by way of these allowances to the employees by the establishment are liable to be included in basic wages for the purpose of deduction of provident fund. Hence the law is now settled that all special allowances paid to the employees excluding those allowances specifically mentioned in Sec 2(b)(ii) of the Act will form part of basic wages. However this is

an issue to be examined in each case considering the facts and circumstances of the case.

6. Considering the facts, circumstances and pleadings in this appeal, I am not inclined to interfere with the impugned order.

Hence the appeal is dismissed.

Sd/-  
(V. Vijaya Kumar)  
Presiding Officer