



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

Present: Shri.V.Vijaya Kumar, B.Sc., LL.M., Presiding Officer.
(Thursday the 2nd day of December, 2021)

Appeal Nos. 149 /2019(Old No. ATA-80(7) 2015)
& 150/2019 (Old No. ATA-79(7) 2015)

Appellant : M/s. Olam Agro India Ltd
IX/102, Varikoly P.O
Puthencruz,
Ernakulam – 682 308.

By M/s. Menon & Pai

Respondent : The Assistant PF Commissioner
EPFO, Sub -Regional Office
Kaloor, Kochi – 682 017.

By Adv. Sajeev Kumar K.Gopal

This appeal came up for hearing on 10/08/2021 and this Industrial Tribunal cum Labour Court issued the following order on 02/12/2021.

ORDER

Appeal No. 149 / 2019 is issued from order No. KR / KC / 27696 / Enf- III (3) / 2014 / 10365 dt. 12/12/2014 assessing dues U/s 7A of EPF & MP Act 1952 (hereinafter

referred to as 'the Act') on evaded wages for the period from 10/2011 to 07/2013. Total dues assessed is Rs. 31,96,101/-.

2. **Appeal No. 150/2019** is filed from KR/ KCH/ 27696 / Enf-III(3)/ 2014/ 10366 dt. 12/12/2014 assessing dues U/s 7A of the Act on evaded wages for the period from 08/2013 to 05/2014. Total dues Rs.7,05,794/-.

3. Since common issues are raised in both the appeals, the matters are heard together and disposed by a common order.

4. Appellant is a limited company registered under the Company's Act. The company is engaged in processing of spices. The appellant company is covered under the provisions of the Act. An Enforcement Officer of the respondent conducted an inspection and submitted a report. The respondent initiated an enquiry U/s 7A of the Act to examine whether contributions are payable on allowances such as special allowance, other allowance, washing allowance, conveyance allowance and HRA. A representative of the appellant attended the hearing and pleaded that in view of the decision of the Hon'ble High Court of Madras in **Ramanathan Chettiar Jewellers Vs RPFC, 1999** (81) FLR 559, the special allowance is excluded from the

definition of basic wages. The appellant also explained that the E-score payment is given to the employees depending upon performance and varies from employees to employees. Conveyance allowance is paid to make good the actual expenses incurred on transportation of the employee for reporting to duty. Ignoring all the contentions, the respondent authority assessed dues on all allowances except HRA. The finding of the respondent authority that compensatory allowance such as special allowance, conveyance allowance, other allowance and washing allowance will form part of basic wages is not correct. The statutory provisions U/s 2 (b) and Sec 6 of the Act and Para 29 of EPF Scheme would clearly establish that the appellant is not liable to remit contribution on allowances.

5. The respondent filed counter denying the above allegations. An Enforcement Officer attached to the office of the respondent conducted an inspection of the appellant establishment and reported that the compliance of the appellant establishment is not satisfactory, as the salary of the employees are split into various allowances such as HRA, conveyance allowance, special allowance, other allowance, washing allowance and E-score to evade payment of dues. On the basis of the report of the Enforcement Officer an enquiry U/s 7A of

the Act was initiated. A representative of the appellant attended the hearing. The representative produced the audited annual report for the relevant period. After perusing the report of the Enforcement Officer, the representative of the appellant agreed that the company was not remitting provident fund contribution on allowances. However he argued that these allowances are not part of basic wages and hence need not be subjected to EPF. The respondent authority examined the wage structure and found that no dearness allowance is paid to the employees. The respondent authority came to the conclusion that the various allowance paid by the appellant establishment to its employees will form part of basic wages and therefore the appellant is liable to pay contribution on the same. The Hon'ble High Court of Gujarat in **Cypromet Ltd Vs Assistant PF Commissioner, 2004** (103) FLR 908 held that the term basic wages as defined U/s 2(b) of the Act includes all emoluments/benefits received by the employees under the headings of medical allowance, conveyance allowance and lunch allowance and those allowance are to be considered for the purpose of calculating provident fund contribution. The Hon'ble High Court also pointed out that HRA will not attract provident fund deductions. The term “emoluments” envisaged under Sec 2(b) of the Act

subsumes in its ambit all emoluments which are earned by an employee in accordance with the terms of the employment other than those specifically excluded at 1 to 3 of Sec 2(b). Allowance which are universally, regularly and ordinarily being paid are required to be considered part of basic wages as defined U/s 2(b) of the Act. The above position was further confirmed by the decision of the Hon'ble High Court of Madhya Pradesh in **Montage Enterprises Ltd Vs EPF**, W.P. No.1857/2011. The Hon'ble Supreme Court of India in **Rajasthan Prem Kishan Goods Transport Company Vs RPFC**, 1996 (9) SCC 454 held that it is upto the Commissioner to exercise his powers U/s 7A to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of pay has been made only as a subterfuge to avoid its contribution to provident fund. The Hon'ble High Court of Kerala in **RPFC Vs Administrator Cosmopolitan Hospital Pvt. Ltd**, O.P No. 21636/2001 held that the special allowance answers the definition of basic wages in which case contribution are required to be paid by the employer. The Hon'ble High Court Kerala clarified that simply because of the employer and employees, by agreement, decide that contribution is not payable in respect of a payment, liability

under the Act cannot be avoided, if such payments answers the definition of basic wages as defined under the Act.

6. The main issue involved in this appeal is whether the special allowances paid by the appellant establishment to its employees will form part of basic wages and therefore will attract provident fund deduction. According to the learned Counsel for the respondent the pay structure of the appellant establishment does not include DA. As rightly pointed out by the learned Counsel for the appellant, it is upto the management of the appellant to decide the pay structure of the appellant establishment. However it is settled legal position that the respondent authority U/s 7A is competent to examine whether various allowances paid by such establishments will form part of basic wages, particularly when there is no DA component in the pay structure. The relevant statutory provisions to be examined in this context are Sec 2(b) and Sec.6 of the Act.

Section 2(b) : “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 allowances 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: Contributions and matters which may be provided for in Schemes. The contribution which shall be paid by the employer to the funds shall be 10% of the basic wages, Dearness Allowance and retaining allowances if any, for the time being payable to each of the employee whether employed by him directly or by or through a contractor and the employees 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 establishment which the Central Government, after making such enquiry as it deems fit, may, by notification in the official gazette specified, this Section shall be subject to the modification that for the words 10%, at both the places where they occur, the word 12% shall be substituted.

Provided further that there where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for rounding of 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.

7. It can be seen that some of the allowances such as DA, excluded U/s 2b (ii) of the Act are included in Sec 6 of the Act. The confusion created by the above two Sections was a subject matter of litigation before various High Courts in the country. The Hon'ble Supreme Court of India in **Bridge & Roof Company Ltd Vs Union of India** , 1963 (3) SCR 978 considered

the conflicting provisions in detail and finally evolved the tests to decide which are the components of wages which will form part of basic wages. According to the Hon'ble Supreme Court of India,

- (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 the opportunity is not basic wages.

The Hon'ble Supreme Court of India ratified the above position in **Manipal Academy of Higher Education Vs PF Commission, 2008(5)SCC 428**. The above tests was against reiterated by the Hon'ble Supreme Court in **Kichha Sugar Company Limited Vs. Tarai Chini Mill Majzoor Union 2014 (4) SCC 37**. The Hon'ble Supreme Court of India examined all the above cases in **RPFC Vs Vivekananda Vidya Mandir and Others, 2019 KHC 6257**. In this case the Hon'ble Supreme Court considered whether travel allowance, canteen allowance, lunch incentive, special allowance, washing allowance, management allowance etc will form part of basic wages attracting PF deduction. After examining all the earlier decisions and also the facts of these

cases the Hon'ble Supreme Court held that " the wage structure and the components of salary have been examined on facts, both by the authority and the Appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wages camouflage 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 for us to interfere with the concurrent conclusion of the facts. The appeals by the establishments therefore merit no interference." The Hon'ble High Court of Kerala in a recent decision rendered on 15/10/2020 in the case of **EPF Organization Vs MS Raven Beck Solutions (India) Ltd**, WPC No. 1750/2016, examined Sec 2(b) and 6 of the Act and also the decisions of the Hon'ble Supreme Court to conclude that

“ this makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance, form an integral part of basic wages and as such the amount paid by way of these allowance to the employees by the respondent establishment were liable to be included in basic wages for the purpose of assessment and deduction towards contribution to

the provident fund. Splitting of the pay of its employees by the respondent establishment by classifying it as payable for uniform allowance, washing allowance, food allowance and travelling allowance certainly amounts to subterfuge intended to avoid payment of provident fund contribution by the respondent establishment”.

8. From the above discussion, it is clear that the appellant is liable to pay contribution on special allowances, except those allowances which are specifically excluded. In **Montage Enterprises Pvt Ltd Vs EPFO**, 2011 LLR 867 (MP.DB) the Division Bench of the Hon’ble High Court of Madhya Pradesh held that conveyance and special allowance will form part of basic wages. In **RPFC West Bengal Vs. Vivekananda Vidya Mandir**, 2005 LLR 399(Calcutta DB) the Division Bench of the Hon’ble High Court of Calcutta held that special allowance paid to the employees will form part of basic wages . This decision of the Hon’ble High Court of Calcutta was later approved by the Hon’ble Supreme Court in **RPFC Vs Vivekananda Vidya Mandir** (supra). In **Mangalore Ganesh Beedi Workers Vs APFC**, 2002 LIC 1578 (Kart.HC) the Hon’ble High Court of Karnataka held that special allowance paid to the

employees will form part of basic wages as it has no nexus with the extra work produced by the workers. In **Damodar Valley Corporation Bokaro Vs. Union of India**, 2015 LIC 3524 (Jharkhand HC) the Hon'ble High Court of Jharkhand held that special allowance paid to the employees

The Hon'ble High Court of Madras in **Universal Aviation Service Private Limited Vs Presiding Officer EPF Appellate Tribunal**, 2022 LLR 221 again examined this issue in a recent decision. The Hon'ble High Court of Madras observed that it is imperative to demonstrate that the allowances paid to the employees are either variable or linked to any incentive for production resulting in greater output by the employee. It was also found that when the amount is paid beyond the basic wages, it requires to be established that the workmen concerned has become eligible to get extra amount beyond the normal work which he is otherwise required to put in. The Hon'ble High Court held that “Para 9. The predominant ground raised by the petitioner before this Court is that other allowances and washing allowance will not attract contributions. In view of the aforesaid discussions and law laid down by the Hon'ble Supreme Court in **Vivekananda Vidya Mandir case (supra)**, the petitioners claim cannot be justified or sustained since “other

allowances” and washing allowance have been brought under the purview of Sec 2 (b), Sec 6 of the Act”. As already pointed out that the respondent authority after considering the nature of the allowances paid included all allowances for determining provident fund dues except HRA which is specifically excluded from the definition of basic wages.

9. From the above discussion it is clear that the allowances such as conveyance allowance, special allowance other allowance, washing allowance etc. will form part of basic wages. The respondent authority has rightly excluded HRA, being a specifically excluded allowance from the assessment of provident fund dues. The learned Counsel for the appellant during the course of argument pointed out that E-score payment is effected depending on performance and this varies from employee to employee. The learned Counsel however could not confirm whether these are payments made for extra work done beyond the norms of the appellant establishment. Anyhow it was upto the appellant to substantiate the same through documentary evidence before the respondent authority. Having failed to do so, the appellant cannot come up in appeal and argue that such allowance is paid depending on

performance and therefore will not attract provident fund deduction.

9. Considering the facts, circumstances, pleadings and evidence in these appeals, I am not inclined to interfere with the impugned order.

Hence the appeals are dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer