



सत्यमेव जयते

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

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

(Tuesday the 9th day of March, 2021)

APPEAL No.104/2019
(Old No.1139(7)2014)

Appellant : M/s.Taal Innovations
N.H. Bypass Junction
Palace Road, Aluva
Ernakulam - 683101

By M/s.Menon & Pai

Respondent : The Regional PF Commissioner
EPFO, Regional Office, Kaloor
Kochi – 682017

By Adv.Thomas Mathew Nellimoottil

This case coming up for final hearing on 04.02.2021 and this Tribunal-cum-Labour Court on 09.03.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/24812/ENF-1(2)/2014/7681 dt.13.10.2014 assessing dues U/s 7A of the Act (hereinafter referred to as 'the Act') on allowances for the period from 03/2010 to 07/2011. The total dues assessed is Rs.63,382/-.

2. The appellant is a partnership firm running bakery and restaurant. The appellant establishment is covered under the provisions of the Act. An Enforcement Officer of the respondent conducted an inspection of the appellant establishment and submitted a report. On the basis of the said report, an enquiry U/s 7A of the Act is initiated. A representative of the appellant attended the hearing and produced documents to substantiate their case that HRA and washing allowance paid to the employees are compensatory in nature and hence do not form part of basic wages. It was also pointed out that the allowances are paid on actual wages and allowances vary from employee to employee. Without considering the above representation, the respondent issued Annexure A1 order. The appellant filed an appeal before the EPF Appellate Tribunal. The Hon'ble Tribunal set aside the order passed by the respondent with a clear observation that the determination of dues by the respondent was not in consonance with the provisions of the Act. A copy of the order is produced and marked as Annexure A2. The respondent initiated fresh enquiry and the appellant appeared before the authority and filed a written statement dt.29.04.2014 stating that basic wages shall not include HRA and washing allowance and therefore no contribution is payable on such allowances. A copy of the written statement is produced and marked as

Annexure A3. The respondent ignored the above contentions stating that the appellant has split the DA into HRA and washing allowance and therefore the documents produced by the appellant cannot be relied on for the purpose of the assessment of dues. The wage register maintained by the appellant is meant for shops and commercial establishments as prescribed U/s Rule 29(1) of the Kerala Minimum Wages Rules. The register contains only 2 columns and since the employer is paying salary as basic pay, HRA and washing allowance, the HRA and washing allowance components are written in the second column. In view of the decision of the Hon'ble Supreme Court in **Airfreight** case, 1999 2 LLJ 705 the appellant can decide the wage structure of its employees and the total package has to be equalent or more than the minimum wages. The respondent ought to have considered that if the allowances are considered as part of basic wages, the employees who joined with a salary of more than Rs.6500/- will become excluded employees. A combined reading of Sec 2(b), Sec 6 and Para 29 of EPF Scheme will clearly indicate that allowances such as HRA and washing allowance will not attract provident fund deduction.

3. The respondent filed counter denying the above allegations. The appellant establishment was covered under the provisions of the Act w.e.f. 01.07.2009. The Enforcement Officer who conducted a routine inspection

of the appellant establishment reported that the compliance position of the appellant establishment was not satisfactory and there was underreporting of basic wages and evasion of statutory contribution. The appellant was paying contribution only on basic and no contribution was being paid on HRA and washing allowance. Hence an enquiry U/s 7A for the Act was initiated and the respondent authority found that the DA component of wages is split into HRA and washing allowance which cannot be accepted and therefore assessed the dues in respect of those allowances. The appellant challenged the order of the respondent before the EPF Appellate Tribunal in ATA no. 236(7)2012. The EPF Appellate Tribunal vide its order dt.04.04.2013 found that the respondent has relied on the assessment of the Enforcement Officer and was not done an independent determination of the dues. The Tribunal also found that the respondent has not given any reasons as to why the allowance paid by the appellant constitute part of basic wages. The respondent initiated fresh enquiry on the basis of the remand order. A representative of the appellant attended the hearing and filed a written statement dt.29.04.2014 stating that HRA and washing allowance will not form part of basic wages. The respondent authority after examining the register of wages and Form 11 produced by the appellant found that the HRA and washing allowance entry in the DA column is a mere

interpolation and fudging made in the wages register. The respondent arrived at the above conclusion since no DA is being paid by the appellant to its employees. The Division Bench of the Hon'ble High Court of Karnataka in **Group 4 Security Guarding Vs RPFC and others**, held that the Commissioner in exercise of powers conferred on him U/s 7A is entitled to go into the question whether splitting of pay by the employer to its employees is a subterfuge intended to avoid payments of its contribution to the provident fund. The decision of the Hon'ble Supreme Court in **Rajasthan Prem Kishan Goods Transport Company Vs RPFC, New Delhi**, 1996 (9) SCC 454 also supports the view that the Commissioner is competent 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.

4. The issue involved in this appeal is whether the HRA and washing allowance component of wages will attract provident fund deduction. According to the learned Counsel for the respondent the appellant is not paying DA to its employees and the earlier component of DA in the wages is splitted into HRA and washing allowance for excluding the employer's contribution of provident fund. The respondent in its order has pointed out

that the DA column in the salary register is manually corrected with these two allowances of HRA and washing allowance and the same is done with an ulterior motive of avoiding contribution on the eligible wages paid to its employees. The learned Counsel for the appellant on the other side argued that the wages register used by the appellant is in the statutory format which contains only two columns. The appellant therefore manually corrected the register to incorporate the HRA and washing allowance. The appellant can decide the pay structure of its employees as per the decision of the Hon'ble Supreme Court. The HRA component of the wages is specifically excluded U/s 2(b) of the Act and therefore unless there is a specific reason or reasons, it is not correct on the part of the respondent to decide that an allowance which is excluded under the provisions of the Act can be included for the purpose of assessment of provident fund contribution.

The issue involved in this appeal is whether the HRA and washing allowance component of wages will attract provident fund deduction. Two sections which are relevant to decide the issue are Sec 2(b) of the Act which defines basic wages and Sec 6 which provides for the contribution to be paid under the Act. These sections are reproduced below.

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 Govt, 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 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.

The confusion regarding the exclusion of certain allowances from the definition of basic wages and inclusion of some of those allowances in Sec 6 of the Act was considered by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd Vs UOI**, (1963) 3 SCR 978. After elaborately considering all the issues involved, the Hon'ble Supreme Court held that on a combined reading of Sec 2(b) and Sec 6 where the wage is universally, necessarily and ordinarily paid to all across the board such emoluments are basic wages.

Where the payment is available to be specially paid to those who avail the opportunity is not basic wages. The above dictum laid down by the Hon'ble Supreme Court was followed in **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428. In a recent decision in **RPFC, West Bengal Vs Vivekananda Vidya Mandir & Others**, AIR 2019 SC 1240 the Hon'ble Supreme Court reiterated the dictum laid down by the Hon'ble Supreme Court in **Bridge & Roof Company Ltd** case (Supra). In this case the Hon'ble Supreme Court was considering various appeals challenging the orders whether special allowance, travelling allowance, canteen allowance, lunch incentive and special allowance will form part of basic wages. The Hon'ble Supreme Court dismissed the challenge holding that the "wage structure and 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 basic wages camouflaged as part of an allowances so as to avoid deduction and contribution accordingly to the provident fund accounts of the employees. There is no occasion for us to interfere with the concurrent conclusion of facts. The appeal by the establishments are therefore merit no interference " .

5. Coming to the facts of present case, it is seen that the appellant split up the wages of its employees into basic, house rent allowance and washing allowance. The learned Counsel for the appellant argued that even house rent allowance is included in the assessment inspite of specific exclusion U/s 2(b) of the Act.

6. In **Montage Enterprises Pvt Ltd Vs EPFO, Indoor**, 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 Calcutta High Court held that the special allowances paid to the employees will form part of basic wages particularly because no dearness allowance is paid to its employees. This decision 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 (Karnat.HC) the Hon'ble High Court of Karnataka held that the 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 **Damodarvalley Corporation, Bokaro Vs UOI**, 2015 LIC 3524 (Jharkhand .HC) the Hon'ble High Court of Jharkhand held that special allowances paid to the employees will form part of basic wages.

7. In a recent decision dt.15.10.2020 the Hon'ble High Court of Kerala in **M.S. Raven Beck Solutions (India) Ltd Vs Employees Provident Fund Organisation**, W.P.(C) no.17507/2016 following the decisions of Hon'ble Supreme Court, the Hon'ble High Court of Kerala held that the crucial test in such cases is that of universality. The Hon'ble High Court held that uniform allowance, washing allowance, food allowance and travelling allowance forms integral part of basic wages and as such the amount paid by way of these allowances to the employees by the respondent establishment are liable to be included in basic wages for the purpose of assessment and deduction towards provident fund contribution. Applying the above test it is very clear that the washing allowance paid to the employees will form part of basic wages. Since there is a specific exclusion U/s 2(b), it is not legally correct on the part of the respondent to include house rent allowance in the assessment of dues. The Hon'ble High Court of Kerala in **M.S. Raven Beck Solutions (India) Ltd Vs Employees Provident Fund Organisation** (Supra) has also held that house rent allowance cannot be treated as part of basic wages for assessment of provident fund dues.

8. In view of the above, it is very clear that the washing allowance component of the wages will form part of basic wages and the provident fund contribution is required to be paid on the same.

9. Considering all the facts, circumstances and pleadings in the appeal, it is not possible to accept the findings of the respondent authority in this case.

Hence the appeal is allowed, the impugned order is set-aside and the matter is remanded back to the respondent to re-assess the dues excluding the HRA component and including washing allowance within a period of 3 months after issuing notice to the appellant.

Sd/-

(V. Vijaya Kumar)
Presiding Officer