



सत्यमेव जयते

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

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

(Friday the 8th day of January, 2021)

APPEAL No.152/2019
(Old No.154(7)2015)

Appellant : M/s.Swarnakamal Jewels (India) Pvt Ltd
Baker Junction
Kottayam – 686001

By Adv.Menon & Pai

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

By Adv.Joy Thattil Ittoop

This case coming up for final hearing on 11.02.2020 and this Tribunal-cum-Labour Court on 08.01.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KTM/20197A/ENF-1(1)/2014/14383 dt.15.12.2014 assessing dues on various allowances U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') for the period from 10/2011 to 05/2014. The total dues assessed is Rs.5,41,309/-.

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 started compliance under the Act covering all the eligible employees except trainees from the due date of coverage. An Enforcement Officer of the respondent verified the records and submitted the report to the respondent. The respondent initiated action U/s 7A of the Act to verify whether contribution is payable on allowances such as special allowance, CCA, education allowance and medical allowance. A representative of the appellant appeared before the respondent and explained that the above allowances are compensatory in nature and hence do not form part of basic wages. The appellant also explained that special allowance is excluded as per the decision of Hon'ble High Court of Madras in the case of **Ramanathan Chettiar Jewellers Vs RPFC**, 1999 (81FLR) 559. Sec 2(b) of the Act as well as Para 29 of the EPF Scheme supports the case of the appellant that the allowances will not attract PF deduction. The judgment referred to in the impugned order are all on different footing and the appeals from those cases are pending before the Hon'ble Supreme Court.

3. The respondent filed counter denying the above allegations. The Enforcement Officer of the respondent who conducted the inspection of the records of the appellant reported that the appellant is not paying contribution

on complete wages and the wages were split into various allowances and the contribution is denied to the employees. The appellant is splitting the wages into special allowance, CCA, medical allowance and education allowance and is not paying contribution on the above allowances. '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 **Management of Reynolds Pens India Pvt Ltd Vs RPFC**, 2011 (131) FLR 690 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 and CCA will come within the meaning of the term 'basic wages' as per Sec 2(b) of the Act. In **Vivekananda Vidyamandir & Others Vs RPFC**, 2005 (104) FLR 1042 the Hon'ble High Court of Calcutta held that in order to exclude the special allowances from the purview of Sec 6, it has to satisfy any of the ingredients of Clause 1 and 3 of Sec 2(b). This is particularly so, when no DA is paid to its employees. Hon'ble High Court of Gujarat in **Gujarat Cypromet Limited Vs APFC**, 2005 (1) LLJ 484 held that EPF & MP Act being a beneficial legislation, an interpretation which is favourable to the employees shall be adopted.

4. The dispute involved in this appeal is whether the allowances paid by the appellant will attract provident fund deduction. It is seen that from 10/2011 to 12/2011 only special allowance was paid to the employees along with basic wages. From 01/2012 to 08/2012 the employees were paid special allowance, CCA and education allowance. From 09/2012 to 03/2013 the employees were paid special allowance, CCA, education allowance and medical allowance. From 04/2013 to 05/2014 all allowances are clubbed together and paid as special allowance.

5. The two sections which are relevant to decide the question whether the above allowance 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