



सत्यमेव जयते

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

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

(Monday the 3rd day of May, 2021)

**APPEAL No.45/2019
(Old no.859(7)2014)**

Appellant : M/s.Riches Jewel Arcade Ltd
No.34/850, 851, Lulu Shopping Mall
NH 47, Edappally
Kochi - 682024

By M/s.Menon & Pai

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

By Adv.Sajeev Kumar K. Gopal

This case coming up for final hearing on 23.02.2021 and this Tribunal-cum-Labour Court on 03.05.2021 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/29312/ENF-3(4)/2014/4542 dt.17.07.2014 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on evaded wages for the period from 03/2013 to 12/2013. The total dues assessed is Rs.54,827/-.

2. Appellant is a private limited company registered under Companies Act, 1956. The company is engaged among other things in the sale of jewellery and allied products. The establishment started compliance from the due date. The Enforcement Officer of the respondent conducted an inspection and submitted a report. The respondent issued notice U/s 7A for quantifying the dues on allowances such as city compensatory allowance, educational allowance, food and charges on food and accommodation etc. A representative of the appellant attended the hearing and explained that the allowances are compensatory in nature and hence do not form part of basic wages. It was also clarified that this issue has already been settled by the judgment of Hon'ble High Court of Madras in the case of **Ramanathan Chettiar Jewellers Vs RPFC**, 1999 (81) FLR 559. A true copy of the written statement filed by the appellant before the respondent is produced and marked as Annexure A2. The respondent went wrong in going into the concept of all emoluments for considering the payment of EPF contribution.

3. The respondent filed counter denying the above allegations. On verification of the wage registers of the appellant establishment, the respondent noticed that the employer is paying provident fund only on basic and not on allowances like special allowances, CCA, education allowances, food and accommodation charges. The appellant is not paying any DA or VDA to the

employees. The allowances are being paid universally, regularly and ordinarily to all enrolled employees. Hence it will come under the definition of basic wages. To cite an example, one of the employees Sri.Sabarinath S. A. is drawing a basic salary of Rs.4650/-, uniform allowance of Rs.500/-, CCA of 750/, education allowance of Rs.850/- and medical allowance of Rs.1250/-. It is clear from the above pattern of splitting wages that the appellant is deliberately splitting the wages to avoid its liability under provident fund. The appellant was provided adequate opportunity during the course of hearing to adduce evidence if any, to substantiate their claims.

4. The main issue involved in the appeal is whether certain allowances paid by the appellant to its employees will satisfy the definition of basic wages and whether will attract provident fund deduction. According to the learned Counsel for the appellant they are paying CCA, education allowance, food allowance and food and accommodation charges to the employees. However these allowances are not being paid universally to all the employees. CCA is paid only to the employees working in the cities and education allowance is being paid only to employees having children. According to the learned Counsel for the respondent, all these allowances are universally being paid to all employees and he has also cited few examples to reiterate his stand. The appellant was given adequate opportunity by the respondent to proof his case

that these allowances are not universally paid to all the employees. Even in the written statement filed by the appellant dt.15.04.2014 before the respondent authority, the appellant had no case that these allowances are not paid universally to all the employees.

5. **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 “ .

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 allowance 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. 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. The Hon'ble High Court held that

“ This makes it clear that uniform allowance, washing allowance, food allowance and travelling allowance forms the integral part of basic wages and as such, the amount paid by way of these allowances 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 “.

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, depending on facts and circumstances of each case.

7. In view of the law laid down by the Hon'ble Supreme Court as well as various High Courts, it is very clear that CCA, education allowance and food

allowance being paid to the employees by the appellant will form part of basic wages and therefore will attract provident fund deduction.

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

Hence the appeal is dismissed.

Sd/-

(V. Vijaya Kumar)
Presiding Officer