



सत्यमेव जयते

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

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

(Tuesday the 10th day of November, 2020)

APPEAL No.496/2019

(Old No.439(7)2016)

Appellant : M/s.Muthoot Microfin Ltd
5th Floor, Muthoot Towers
M.G.Road, Kochi - 682035

By Adv.P. Ramakrishnan &
C. Anilkumar

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 27.10.2020 and this Tribunal-cum-Labour Court on 10.11.2020 passed the following:

ORDER

Present appeal is filed from order no.KR/KC/29181/ENF-5(2)/2016/17265 dt.19.02.2016 assessing dues U/s 7A of EPF & MP Act, 1952 (hereinafter referred to as 'the Act') on various allowances for the period from 04/2013 to 12/2013. The total dues assessed is Rs.88,832/-.

2. The appellant company is incorporated under the Companies Act, 1956. The respondent issued an order U/s 7A of the Act alleging failure to recon house rent allowance and city compensatory allowance paid to the employees for payment of contribution under the Act. The above said order dt.15.02.2013 for the period from 11/2012 to 03/2013 was challenged and pending before the EPF Appellate Tribunal. The respondent initiated action for assessing the dues in respect of subsequent period from 04/2013 to 12/2013 vide notice dt.05.06.2014. The respondent issued the order holding that house rent allowance and city compensatory allowance will attract provident fund deduction. House rent allowance is specifically excluded U/s 2(b) of the Act and city compensatory allowance will come within similar allowances provided U/s 2(b).

3. The respondent filed counter denying the above allegations. The wage structure of the workers furnished in the wage register are basic, dearness allowance, house rent allowance and other allowances. The amount of wages taken for the purpose of contribution is considerably low and it is prima facie seen that the basic is kept low to evade statutory contribution to the detriment of beneficiary employees. The appellant was therefore summoned to appear before the respondent on 24.07.2014 and was directed to produce the relevant records. The enquiry was adjourned 11 times to facilitate

the appellant to produce the records, to take a final view. The assessment was made on other allowances which were paid universally to all employees working in the establishment. Any other allowances mentioned in Clause 2 of Sec 2(b) Act takes its colour from the expression 'commission' because the said expression uses the words 'similar allowances'. It is to be noted that there is no similarity in other allowances mentioned in Clause 2 and they are founded on wholly un-related considerations. Dearness allowance is linked to the rise in cost of living, house rent allowance is paid to meet the housing concerns of employees, overtime allowance is paid for over time effort put in by the employees, bonus is linked to productivity and profitability. The Parliament would not have used the word 'similar' to club these allowances when, in fact, there is no similarity in them. The Hon'ble High Court of Madhya Pradesh in **Montage Enterprises Pvt Ltd Vs RPFC**, W.P.(C)no. 1857/2011 held that allowances like conveyance, transportation, special allowances etc., will form part of basic wages. The Hon'ble High Court of Madras also considered the issue regarding treatment of allowance in **Reynold Pens Ltd vs RPFC**, W.P.(C)no.15823/2010. The respondent in the impugned order has taken into account the house rent allowance as well as city compensatory allowance for the purpose of assessing the dues. City compensatory allowance will come within the definition of basic wages. House rent allowance was also considered

for assessment in view of the fact that the house rent allowance paid to the employees was exorbitantly high and was found to be 40% of basic wages because of which the respondent bonafidely held that house rent allowance will form part of basic wages.

4. The issue involved in this appeal is whether house rent allowance and other allowances paid to the employees by the appellant will form part of basic wages for the purpose of deduction of provident fund contribution. According to the pleadings, the appellant had already filed ATA no.231(7)2014 against an earlier order issued by the respondent on the same issue. After transfer of the above appeal to this Tribunal, it was re-numbered as 53/2019 and dismissed for default vide order dt.05.12.2019. On a perusal of the impugned order, it is seen that 11 opportunities were given by the respondent to the appellant for production of records and also for arguments. It is seen that no records were produced or the appellant attended the said hearing. Hence it is a fit case that is required to be rejected since the matter was not at all disputed before the 7A authority. It is not clear from the impugned order as to which are the allowances that were taken into account for the purpose of assessment. To that extent it is an absolutely non speaking order. In spite of various directions issued by this Tribunal, High Courts and Supreme Court the

respondent continued to issue these kind of orders which is required to be discouraged at any cost.

5. The two sections which are relevant for deciding the above dispute is Sec 2(b) and the 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.

It can be seen that some of the allowances which are excluded U/s 2(b) are included in Sec 6 on which contribution is required to be paid. This led to a lot of

confusion which was resolved by Hon'ble Supreme Court in **Bridge & Roof Company India Ltd Vs UOI**, 1963 (3) SCR 978. The Hon'ble Court concluded 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 the opportunity is not basic wages.

The above dictum laid down by the Hon'ble Supreme Court was later confirmed by the Court in many decisions. In **Manipal Academy of Higher Education Vs RPFC**, 2008 (5) SCC 428 the Hon'ble Supreme Court applied the same test to decide whether certain allowances will form part of basic wages.

In a recent decision in **Vivekananda Vidyamandir & Others Vs RPFC**, 2019 KHC 6257 the Hon'ble High Court again confirmed its earlier text to decide

whether a particular allowance will form part of basic wages. 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 city compensatory allowance paid to the employees will form part of basic wages. From the impugned order issued by the respondent it is not clear whether house rent allowance is included for the purpose of the assessment. Even in the reply filed by the respondent has taken a contradictory stand. In Para 10 of the reply, it is stated that "in this case the Enforcement Officer has taken all the allowances paid universally to all the employees as basic wages **except house rent allowance**". At Para 15 of the reply, the respondent states that

"The dues were assessed by the respondent taking into account basic + dearness allowance + other allowances. The contention of the appellant is that the entire amount of HRA and CCA is taken for calculation of PF dues. In this connection it is humbly submitted that the rate of house rent allowance being drawn by the employees are universally high and therefore Employees Provident Fund Organisation is of the view that a portion of house rent allowance is not genuine and therefore, should be reckoned for provident fund contribution. The rate of house rent

allowance paid to the employees was found to be 40% of the basic wages, which makes it doubtful whether the HRA given is a true one”.

From this contradictory stand taken by the respondent it is to be presumed that house rent allowance is taken for the purpose of assessment of dues. 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.

6. Considering the facts, circumstances and pleadings in this appeal, the assessment against CCA is upheld and the assessment against HRA is rejected in view of specific exclusion U/s 2(b).

Hence the appeal is partially allowed, the impugned order is set-aside and the matter is remitted back to the respondent to re-assess the dues excluding house rent allowance, within a period of three months after issuing notice to the appellant.

Sd/-

(V. Vijaya Kumar)
Presiding Officer