

**BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT-II, ROUSE AVENUE,
DISTRICT COURT COMPLEX, DELHI.**

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

ATA No. D-2/04/2021

M/s. R R Enterprises

Appellant

VS.

APFC, Gurugram

Respondent

ORDER DATED :-03/11/2022

Present:- Shri P R Yadav, Ld. Counsel for the Appellant.

Shri Chakradhar Panda, Ld. Counsel for the Respondent.

The appeal has been preferred u/s 7-I of the EPF and MP Act 1952(herein after referred to as the Act). Challenging the order dated 08.12.2020, passed by the APFC, Gurugram, directing the appellant to deposit Rs. 9,55,075/- towards the deficit EPF dues of it's employees, paid for the period 09/2014 to 03/2019.

The stand of the appellant according to the narrative in the appeal memo in short is that it is a Company having its office in Gurugram, and has been allotted a code no for compliance of the provisions of EPF & MP Act. The Area Enforcement Officer made a visit to the establishment and inspected the records maintained in the office. He there after raised a demand for Rs 9,55,075/- towards the deficit PF contribution of the employees. The establishment did not comply the direction and raised objection to the report of the AEO. The APFC by summon dated 21.08.2019, called the establishment to participate in the inquiry initiated u/s 7A of the EPF&MP Act, for assessment of the defaulted amount of PF dues of its employees. The inquiry was initiated on the basis of a report submitted by the EO. The appellant has various categories of employees who are paid basic wage and allowances like house rent allowance. The said HRA is paid to the employees to defray the expenditure incurred by them and the employees do not contribute for the said HRA, under the EPF Act, except the basic wage drawn by them. In response to the summon dated 21.08.2019, the authorized representative of the appellant appeared before the respondent with all documents and filed its reply making a detail statement to the effect that no illegality has been committed in the PF contribution of the employees and contribution is not payable on the HRA paid. The enforcement officer also submitted his deposition highlighting the observations made in his inspection report. The appellant/establishment pleaded and clarified before the APFC that the employees are being paid the basic wage and HRA, which can not be brought under the fold for PF contribution and the establishment is not liable for any deposit as pointed out by the EO. But the commissioner, without considering the submissions went on to pass the unreasoned order directing the appellant to deposit Rs 9,55,075/- towards EPF contribution of workers on the HRA paid to them during the period under inquiry. Being aggrieved the present appeal has been filed.

The respondent appeared through its counsel and filed written reply supporting the impugned order. The stand taken by the respondent in reply is that the APFC after considering all the material on record and being fully aware of the different provision of EPF and MP Act and scheme has passed the impugned order. It has further been stated that the appellant has intentionally bifurcated the basic wage paid to the employees in to basic wage and HRA, just to camouflage the DA and to avoid the PF liabilities. It has also been pleaded that the HRA so paid is not the exempted allowance defined u/s 2(b) of the EPF Act and the same cannot be computed as described other than the basic wage to avoid PF liabilities. The respondent thereby submitted that APFC has rightly passed the impugned order directing the establishment to make contribution of PF dues on the HRA as a part of the basic wage paid to the workers.

Ld. Counsel for both the parties advanced detail argument in support of their respective stand.

On behalf of the appellant the Ld. Counsel drew the attention of the tribunal to sec 2(b) of the Act which defines the Basic wage, which do not include

- (i) House rent allowance
- (ii) Over time allowance
- (iii) Bonus
- (iv) Any other similar allowance
- (v) Any present by the employer.

But sec 6 of the Act provides on which payments provident Fund contribution are to be made and the same include basic wage, dearness allowance and retaining allowance, paid to each of the employees. The Ld. Counsel for the appellant during course of argument submitted that the EO in his deposition before the

commissioner submitted that EPF contribution has been avoided by giving the name HRA to the dearness allowance paid to the employees which is un called for and an out come of non application of mind by the commissioner.

In his reply argument the learned counsel for the Respondent,while pointing out to the observation of the APFC in the impugned order, submitted that surprisingly, the establishment has paid HRA on the gross wage which comes to 66% of the basic wage and this technic has been adopted by the employer, only to avoid PF liabilities.It was further argued that the said allowances are meant to defray the expenditure, and very well falls under the category of Dearness Allowance on which contribution is payable.While placing reliance in the **Bridge and Roof case,AIR 1963 SC 1474 and the case of Manipal Academy of Higher Education vs. provident Fund Commissioner(2008) 5 SCC428** he submitted that the Hon'ble SC in the cases referred have clearly held that basic wage, on a combined reading of sec 2(b) and sec 6 of the Act means the wage which is universally, necessarily and ordinarily paid to all across the board. In this case the allowances being universally paid is the basic wage and the employees are entitled to PF contribution on the same.

Perusal of the impugned order shows that the inquiry on the basis of the EO report was held, in respect of the HRA excluded from the basic wage on which PF contribution is payable. The APFC, after considering the submission of both the parties came to hold that the establishmenthas intentionallybifurcated the gross wage into basic wage and HRA, to avoid the PF contribution even though the gross wage in some cases is less than the minimum wage. The commissioner thus accepted the report of the EO in toto.

The only and short question left to be answered in this order is ‘if the HRA paid to the employees by the appellant establishment, is required to be computed as basic wage for the purpose of EPF contribution.

Section 6 of the EPF&MP Act prescribes the components of salary/wage on which EPF contribution is required to be made and the proportion of the deposit by the employer and the employee. According to this provision, contribution is required to be made on Basic wage, Dearness allowance and Retention allowance. It has been explained under the said provision that the dearness allowance shall be deemed to include the cash value of the food concession given to the employees. Further Para 29 of the EPF scheme in the exact line of the law laid u/s 6 of the Act provides for contribution to be made proportionately at the rate of 10% on the basic pay, dearness allowance which includes cash value of food subsidy paid and Retention allowance.

The commissioner in his order under challenge has observed that the employer is liable to pay the PF contribution on the basic wage of the employees which includes the HRA since the same is the Dearness allowance given a different name and meant to defray the rise in the expenses.

The learned counsel for the appellant argued that as per minimum wages Act, wage includes HRA and as per EPF&MP Act PF contribution is payable only on basic wage, DA and Retaining Allowance. Hence the finding of the commissioner has no legal basis and liable to be rejected. To support his argument, he placed reliance on the judgment of the **Hon’ble SC** in the case titled as **Hindustan Sanitary Ware and Industries Ltd &Others vs. State of**

Haryana(Civil Appeal No 2539/2010), where in by order dt 29.04.2019, categorically decided that the prohibition of segregation of wage into components in form of allowances in the Notification issued by the Govt. of Haryana is impermissible. He also argued that the **Hon'ble SC in the case of RPFC, West Bengal vs. Vivekanand Vidyamandir**, have re affirmed that the HRA does not qualify to be a part of the Sum on which PF is payable. Thus the appellant argued in support of the bifurcation of gross wage into basic wage and HRA.

This stand taken by the establishment, as seen from the impugned order was considered by the commissioner, who also considered the deposition and report of the AEO in this regard. His finding, is that the bifurcation has been done with the sole intention of keeping the basic wage in a lower side and to avoid employer's share of the PF contribution.

The law laid down by the Hon'ble SC in the case of Hindustan Sanitary Ware , referred supra, does not confer an unfettered right on the establishment to bifurcate the wage in any manner it desires, to the prejudice of the employees. In this case, the HRA granted is @62% of the Gross wage. It would be profitable to look into the definition of Dearness allowance as given in sec 2(b) (ii) of EPF and MP Act, according to which, all cash payments, by whatever name called, paid to an employee on account of rise in cost of living. It is a clear stand of the appellant that the HRA is being paid to defray the expenditure incurred, which leads to the conclusion that the HRA is meant to meet the rise in the cost of living and attracts the character of Dearness Allowance, but the appellant has given it a different name. It is not the stand of the appellant either before the inquiring officer or during the hearing of the appeal that the HRA paid is a variable allowance. This allowances, being paid across the board, was taken by the commissioner for computation of PF liability.

Now it is to be decided if the HRA paid to the employees by the appellant falls outside the purview or falls under the category of basic wage attracting the liability of the employer for making the PF contribution.

Basic wage, under the act, has been defined as all emoluments paid in cash to an employee in accordance with the terms of his contract of employment. But it carves out certain exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned therein. But this exclusion of Dearness Allowance finds inclusion in sec 6 of the Act. Thus the appropriate test to be adopted for determining if any payment was to be excluded from basic wage is that, the payment under the scheme must have a direct access and linkage to the payment of such special allowance as not being common to all. The crucial test is one of universality. Applying the afore said test to the facts of this appeal, no material has been placed on record to demonstrate that that the allowance i.e HRA in question, paid to the employees were either variable or were linked to any incentive and were not paid across the board to all the employees in a category or were being paid especially to those who avail the opportunity.

Thus following the principle decided by the **Hon'ble SC** in the case of **Vivekand Vidyamandir** referred supra, it is concluded that the appellant in order to avoid employer's contribution on basic wage has intentionally bifurcated the gross wage in to basic wage and HRA and the said HRA is 62% of the gross wage and has been given the name HRA in place of dearness Allowance. The finding of the commissioner in this regard is held to be correct and needs no interference. Hence, ordered.

ORDER

The appeal be and the same is dismissed on contest. The impugned order passed by the commissioner is hereby confirmed. Consign the record as per Rules.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/14/2022

M/s.BHP Infrastructure Pvt. Ltd.

Appellant

Through:- Sh. Bhoopesh Sharma, Ld. Counsel for the Appellant.

Vs.

APFC/ RPFC, Faridabad

Respondent

Through:- Sh.Chakradhar Panda, Ld. Counsel for the Respondent.

ORDER DATED :-03.11.2022

The Ld. Counsel for the Appellant has submitted the compliance report of order dated 13.09.2022 passed by this Tribunal. Accordingly, the present appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal. List the matter on 06.12.2022 for filing reply to the appeal by Ld. Counsel for the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/24/2022

M/s.A2Z Infra Engineering Ltd.

Appellant

Through:- Sh. Bhoopesh Sharma, Ld. Counsel for the Appellant.

Vs.

APFC/ RPFC, Faridabad

Respondent

Through:- Sh.S.N. Mahanta, Ld. Counsel for the Respondent.

ORDER DATED :-03.11.2022

The Ld. Counsel for the Appellant has submitted the compliance report of order dated 12.09.2022 passed by this Tribunal. Accordingly, the present appeal stands admitted and there shall be stay on operation of the impugned order till finalization of the appeal. List the matter on 06.12.2022 for filing reply to the appeal by Ld. Counsel for the Respondent.

Presiding Officer

**BEFORE THE HON'BLE PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, DELHI; ROOM No.208
ROUSE AVENUE, DISTRICT COURT COMPLEX, NEW DELHI-110002.**

Appeal No. D-2/25/2022

M/s.Louis Berger Consulting Pvt. Ltd.

Appellant

Through:- Sh.Rochit, Ld. Counsel for the Appellant.

Vs.

APFC/ RPFC, Faridabad

Respondent

Through:- Sh.B.B. Pradhan, Ld. Counsel for the Respondent.

ORDER DATED :-03.11.2022

The Ld. Counsel for the Appellant has submitted the compliance report of order dated 12.09.2022 passed by this Tribunal. Accordingly, the present appeal stands admitted and there shall be stay on operation of the impugned order passed under section 14B of the EPF & MP Act, 1952 till finalization of the appeal. List the matter on 06.12.2022 for filing reply to the appeal by Ld. Counsel for the Respondent.

Presiding Officer