

Employees' Provident Fund Appellate Tribunal
New Delhi
A.T.A. No. 234(13)2011

M/s. Absolute Logistics Pvt. Ltd.

..... Appellant

Vs.

RPFC, Chennai

..... Respondent

Order

Dated the 14th February, 2012

Present: **Sri. Anand Gopal, Advocate, for the Appellant**
 Sri. E. Nandkumar, Enforcement Officer for the Respondent.

Present appeal has been filed to challenge the Order dated 14-03-2011 passed by APFC, Chennai under Section 7A of the EPF & MP Act, 1952.

2. The admitted facts of the case are that the appellant was paying certain allowances like conveyance, attendance incentives, special allowance and meals allowance to all its employees in addition to the basic wages. The respondent by holding an enquiry under Section 7A of the Act determined liability of the appellant to pay PF contribution on these allowances. In the appeal, the appellant questioned the validity of inclusion of these allowances as part of basic wages for the purposes of the Act.

3. Section 2(b) of the Act defines the expression basic wages as follows:-

2(b) "basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- (i) The cash value of any food concession;
- (ii) 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), house rent allowance, 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;
- (iii) Any presents made by the employer;

Section 6 of the Act, inter alia, provides for contribution by the employer and the employee to the provident fund wherein and this contribution is 10% of the basic wages, dearness allowances and retaining allowance, if any.

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7. In order to exclude any allowance from the purview of Sec.6 which provides for liability to pay contribution based on basic wages, such allowance should fall under Clauses (1), (2) and (3) of Sec. 2(b) of the Act which enumerate allowances which are not included in definition of 'basic wages'. All allowances other than those covered by Clauses (1), (2) and (3) of Sec. 2(b) of the Act shall constitute part of basic wages. In the instant case all the do not relate to (i) the cash value of any food concession; (ii) 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), house rent allowance, 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; or (iii) any presents made by the employer; it did not satisfy any of the ingredients of Clauses (1), (2) and (3) of Section 2(b) of the Act. therefore, these allowances shall form part of basic wages. In the case of Jay Engineering Works LTD. V. Union of India [AIR 1963 SC 1480] the Hon'ble Supreme Court has held that:-

"We are of opinion that this payment for work done between the quota and the norm cannot be treated as any 'other similar allowance'. The allowances mentioned in the relevant clause are dearness allowance, houses-rent allowance, overtime allowance, bonus and commission. Any 'other similar allowance' must be of the same kind. The payment in this case for production between the quota and the norm has nothing of the nature of an allowance; it is a straight payment for the daily work and must be included in the words defining basic wage, i.e., 'all emoluments which are earned by an employee while on duty or on leaves with wages in accordance with the terms of the contract of employment'."

8. In the case of Gujrat Cypromet Ltd. vs. Assistant Provident Fund Commissioner [2005 1 LLJ 484] the Hon'ble High Court of Gujarat held:-

"The plain intention of the Legislature is that the contribution to the Fund should be made on basic wages, dearness allowance and retaining allowance. The term basic wages under section 2(b) of the said Act does not permit any ambiguity and the plain intention of the Legislature appears to be to include all emoluments other than those which are specifically excluded. I do not find any warrant to interpret section 2(b) of the said Act to exclude the allowances such as medical allowances, lunch allowance and conveyance allowance from the definition of term "basic wages". There is nothing in the said definition that the Legislature intended that the benefits paid to the employees under the said headings are to be excluded for the purpose of term "basic wages". In cases where the Legislature intended certain benefits to be excluded from the meaning of term "basic wages" the same have been specifically provided for."

9. The Incentives paid to the workers on the basis of conditions of appointment, was for work done by the employees during the prescribed time of work and not over and above it and hence it formed part of basic wages under Section 2(b) and the establishment is liable for Provident Fund contribution under Section 6 of the Act.

10. In view of the above legal position, the contribution to PF made on basic wages includes all emoluments earned by the employee and allowances like conveyance allowance, attendance incentives, special allowance and meals allowance are integral part of basic wages. The

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attendance incentive given to only those employees who are punctual, however, would not form part of basic wages since it is not given to all the employees. In this view of the matter, there are no merits in the appeal. The appeal is accordingly dismissed. Copy of the order be sent to both the parties. File be consigned to the record room.

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R L KOLI
Presiding Officer