EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL
NEW DELHI
ATA No. 197(13)2011

M/s. Anjan Drugs Pvt. Ltd. .... Appellant

Vs

RPFC, Chennai .... Respondent

ORDER

DATED: 09th February, 2012

Present: Shri M Suresh, Advocate, for the appellant.
Sh. E. Nandkumar, Enforcement Officer for the respondent.

The present appeal is filed to challenge the order dated 22.02.2011 passed by the APFC, Chennai under Section 7-A of the EPF & MP Act 1952.

2. The case of the appellant is that it is paying EPF Contribution to all the eligible persons only on basic wages and dearness allowance as provided under Sections 2(b) and 6 of the EPF & MP Act. It is admitted that the employees of the establishment are paid basic wages, H.R.A., Conveyance Allowance, Medical Allowance and Washing Allowance. The respondent has however disputed the PF remittance on grass wages by the appellant and submitted that according to the salary statement furnished by the establishment, the salary of the employee have been split up into different heads namely basic wages, HRA, Conveyance Allowance, Medical Allowance and Washing Allowance. Out of the above, the contribution to EPF is made only on the basic portion of the total earnings of each employee which is contrary to the provisions of the Act. The case of the appellant is that the EPF contribution is payable only on the basic pay and not on the other.

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3. The only issued before me is whether the appellant has splitted the wages to avoid PF contribution.

4. Heard the Ld Counsel for the appellant and the Ld. APFC for the respondent. The Ld. Counsel for the appellant submitted at the bar that the appellant is at liberty to evolve a wage structure for its employees and under the said wage structure the employees had agreed for no PF contribution on such components/allowances and it is not open to the Commissioner to modify the pay structure fixed in the settlement arrived at between the management and the labour. The Ld. APFC appeared for respondent has however, submitted that the pay fixed by the management to its employees can be enquired into by the Commissioner in exercise of the power conferred on him under Section 7A of the Act to decide whether the wages fixed is a subterfuge to avoid its contribution to the provident fund or not? This issued was considered by the Hon'ble High Court of Karnataka in the case of Group4Secritas Guarding Ltd. Vs. RPFC [2004 (102) FLR 374] and it was held that,

> "In our considered view, as rightly pointed out by the learned Counsel for the Commissioner, the Commissioner in exercise of the power conferred on him under Section 7A is entitled to go into the question whether the splitting of the pay by the employer to its employees is a subterfuge intended to avoid payment of its contribution to the provident fund. Clause (b) of Sub-section 7A of the Act confers power on the Commissioner to determine the amount due from any employer under any provision of the Act, and for the said purpose he is also conferred with the power of conducting such enquiry as he may deem necessary. Sub-section (2) of Section 7A of the Act further confers on the Commissioner who conducts the enquiry under Sub-section (1), the same powers as are vested in a Court under the Code of Civil Procedure for trying a suit in respect of (a) enforcing the attendance of any person or examining him on oath; (b) requiring the discovery and production of documents; (c) receiving evidence on affidavit; (d) issuing commissions for the

examination of witnesses. In our view, the power conferred on the Commissioner to determine the amount due from an employer under the provisions of the Act must be understood as conferring power on him to go into the question as to whether the wages have been split under various heads as a subterfuge to avoid the contribution by the employer to the provident fund. Depriving such a power to the Commissioner, in our view, would negate the very object of the Act, and the Court cannot be oblivious to the fact situation that the labour on account of its incapacity to bargain with the management on account of its immediate need to secure employment to sustain itself and other social and historical problems may not have serious objections for any attempt made by the management to avoid the provisions of any labour legislation. Therefore, in a matter like this, while we are clear in our mind that the power conferred on the Commissioner to determine the amount due by an employer under the provisions of the Act to the employees, also confers the power is to decide, whether the wages have been split under several heads as a subterfuge to avoid the contribution to the provident fund under the Act. In a matter like this, if there could be two views with regard to the power of the Commissioner, the Court should take a view keeping in mind that the Act in question being a beneficial legislation and intended to protect the interest of the labour, the Commissioner, is entitled to go into the question whether the splitting up of the basic wages payable to the employees under several heads like wages and allowance is really a subterfuge to avoid provident fund contribution under the Act."

5. Therefore, any agreement entered into between the appellant and its employees for splitting of the amount payable by the employer to its employees for the serve rendered by them, cannot take away the power of the Commissioner under Section 7A of the Act to look into the nature of the contract entered into between the appellant and its employees and to decide that splitting up of the pay payable to the employees under several heads is only a subterfuge to avoid payment of contribution by the employer to the

provident fund. Further, the decision of the Hon'ble Supreme court in the case of Rajasthan Prem Krishan Goods Transport Co. Vs.. RPFC, supports this view that it is open to the Commissioner to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of the pay has been made only as a subterfuge to avoid its contribution to the provident fund. In the said case, the question that came up for consideration before the Commissioner was whether two entities of the appellant could be considered as one entity to make the provisions of the Act applicable. In that context, the Hon'ble Supreme Court approved the finding of the Commissioner that two entities of the appellant in the appeal before the Supreme Court could be treated as one entity for the purpose of the Act.

6. In this view of the matter, the respondent is empowered under the Act to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of the pay has been made only as a subterfuge to avoid its contribution to the provident fund.

7. As regards the admissibility of the allowances viz. T.A., H.R.A., Uniform Allowance and attendance incentive under the term basic wages is concerned, reliance can be placed on the definition of the term basic wages under Section 2(b) of the Act. It states as under:-

> "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,

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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;

8. 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, allowances like production incentives and attendance incentives to all its employees do not relatable 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 basis wage, i.e., 'all emoluments which are earned by an employee

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while on duty or on leaves with wages in accordance with the terms of the contract of employment'."

9. In the case of Gujrat Cypromet Ltd. vs. Assistant Provident Fund Commissioner [2005 I 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."

10. In view of the above legal position, 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, EPFAT

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