

EMPLOYEES PROVIDENT FUND APPELLATE TRIBUNAL

NEW DELHI

ATA No. 233(13)/2011

M/s. TVS Communication Solutions Ltd.

.... Appellant

Vs

APFC, Chennai...

Respondent

ORDER

DATED: 8TH February, 2012

Present: Shri Anand Gopal, Advocate for the appellant.

Shri E Nandkumar, Enforcement Officer for the respondent.

The present appeal is filed to challenge the order dated 10.03.2011 passed by the APFC, Chennai under Section 7-A of the EPF Act, 1952 determining the PF dues after taking into consideration the various allowances namely conveyance allowance, washing allowance, other allowance and project allowance paid to the employees by the appellant.

2. The case of the appellant is that it is paying its employees wage components consisting of basic wages conveyance allowance, washing allowance, other allowance and special allowance. It also stated that the appellant has been paying contribution on basic wages as other allowance would not come within the scope of the basic wages. It is also the case of the appellant that the contract between the appellant and its employees is also on the above line of reasoning and the contribution paid on basic wages has been duly accepted by the employees. The respondent has however by holding an enquiry concluded otherwise and held that the PF contribution is payable on the basic wages and other allowance payable to the employees.

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;

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- (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.

4. 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 basis 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'."

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5. 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."

6. Finally, the counsel for the appellant contented that there is an agreement between the appellant and the employees as to payment of PF contribution on basic wages only. In this regard, the attention is drawn to the case of Gosalia Shipping Pvt. Ltd., Goa v/s. RPFCA, Goa (1997-II-LLJ 38) wherein it was observed by the Bombay High court that "this judgment of Apex Court should conclude the matter. Thereafter any settlement and award between the parties cannot be binding of an authority under the Act, can arrive at a conclusion based on all material available including settlements having produces before him.

7. The Hon'ble High Court of Bombay made the above observation after following the Supreme Court decision in the case of UOI v/s. Ujala Glass Work, (1971) 2 SCC 678. Therefore, any settlement or an agreement between the employee and the employer which runs contrary to the provisions of the Act shall not be binding on the PF authority. In view of the above, the contention of the appellant is that it having an agreement with the employees to pay PF contribution on basic wages only is not sustainable.

8. In view of the discussions made above, the appeal has no merits. The appeal is 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