**THE COMPLIANCE NEWS**

**Basic Pay for the purpose of PF**

The much awaited pronouncement by the apex court, in the bunch of appeals against the judgements holding certain allowances to be ‘basic wages’ attracting PF contributions, is finally out. For all the hype it had created in the industry circles and for the time it had consumed, it is not worth the wait. Honestly, for me, at the least, it is not an earth-breaking ruling, for, (a) it has not changed the existing legal position and (b) it has not laid down any new principles.

EPF & MP Act, 1952 is the only Act which defines the term ‘basic wages’ throughSec 2(b) while all the other legislations in the domain do define the term ‘wages or salary’. It is this definition which comes up for interpretation time and again. In the present case too, the bone of contention is ‘what constitutes basic wages’. But, shockingly, the apex court, in para 12, of the judgement had said that ‘*the term basic* *wage has not been defined in the Act…’* which adds to the woes.

However, though the Hon’ble Supreme Court has not given any further clarity, it has categorically reinforced the already existing legal position on ‘basic wages’ and the nature of other payments which would qualify for exemption. Reliance is placed mainly on the definition for the term ‘basic wages’ under Sec 2(b), Sec 6 and other prominent rulings, more specifically the principles laid down in the **Bridge & Roof** **case**.

The issue was whether the special allowances paid by an establishment to its employees would fall within the expression "basic wages" under Section 2(b)(ii) read with Section 6 of the Act for computation of deduction towards Employees' Provident Fund.

Referring to the provisions of the Act, the bench said that the test adopted to determine 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.

The court, referring to **Muir Mills Co. Ltd., Kanpur Vs. Its Workmen**, also observed that any variable earning which may vary from individual to individual according to their efficiency and diligence will stand excluded from the term "basic wages".

The following principles laid down in **Bridge & Roof** case and subsequently followed in **Manipal Academy** case were too referred by the court :

 Where the wage is universally, necessarily and ordinarily the board such emoluments are wages;

paid to all across

* Where the payment is available to be specially paid to those who avail of the opportunity is not wages. For ex., Overtime payment. The concept is generally available in all concerns. But the payment will only be made to only those who work overtime and not to all universally;
* Conversely, any payment by way of a special incentive or work is not basic wages.

The court has also referred to **Kichha Sugar Company Limited through General** **Manager Vs Tarai Chini Mill Majdoor Union, Uttarakhand, (2014) 4 SCC 37** whichdiscusses about the dictionary meaning of the word ‘basic wage’.

Reference is also made to **Daily Partap Vs The RPFC, Punjab, Haryana, Himachal** **Pradesh and UT of Chandigarh (1998) 8 SCC 90** since the Act is a piece of socialwelfare legislation.

In the end, the court did not allow the appeals by the Managements, for, the Managements concerned failed to produce any material to show that the allowances, in question, being paid to their employees are the ones which qualify for exemption ( from being considered as basic wage ). However, the appeal by the RPFC in the case of Vivekananda Mandir was upheld.

On analysis of the judgement and other relevant provisions of the Act, my inference, as to what is basic and what kind of allowances would be exempted is given below in the form of Q&A :

**What is basic pay?**

All emoluments, earned by an employee, in accordance with the terms of contract, while on duty or on leave or on holidays, which is paid or payable in cash would be basic.

**Does the ruling say that all the allowances are essentially to be considered for PF contributions?**

**No**, not really.

**What kind of allowances are, then, exempted from being termed as ‘basic wage’?**

Mere nomenclature will not make one component ‘an allowance’. It should be so in its true sense. The Act very **specifically excludes HRA,** Overtime allowance, bonus, commission or any other similar allowance and the presents made by the employer. Irrespective of the nomenclature, if the nature of such payments falls under any of the following categories, the same need not be reckoned for PF contributions:

* When the payment is made to one who avails of the opportunity, the same is exempted. Classic example is ‘overtime allowance’. Overtime work is generally permitted. But this may not be adopted in all the concerns. Even in the same establishment, not everyone will become eligible for this payment. But this payment will be made only to those who work extra hours. So, this loses the concept of ‘universality’. This will not be considered as ‘basic wage’. Another example is ‘night shift allowance’. Only those who work in the night shift will be entitled and so it is not ‘basic wage’.
* When the payment is variable. For example, production incentive or bonus. This is an additional emolument. The scheme may be open to all. But all the employees would not necessarily earn it. The quantum would also vary based on one’s efficiency and diligence.
* When the payment is made for the work beyond the standard norms will not attract contributions.
* When the payment is not universally, necessarily or ordinarily paid, such a payment need not be reckoned.
* The contingent payments or the payments which are compensatory in nature would not normally come under the sweep of ‘basic wage’. This should be adequately supported by relevant materials.

**Is ‘Dearness Allowance’ basic pay?**

No. But this component is to be reckoned for PF contributions by operation of Sec 6 of the Act.

**Is ‘House Rent Allowance’ basic pay?**

No. HRA is not paid in all the concerns. Even if paid in some concerns, it is not paid to all the employees. So, this component need not be reckoned for PF contributions. (what is learnt is, this is the one component which is clearly excluded and the even the enforcement wing does not probe much )

**Is ‘overtime allowance’ basic pay?**

Again, the answer is ‘no’. Though it is generally in force in all the establishments, it may not be earned by all. So, this will not be considered to be basic pay attracting PF contributions.

**Is ‘commission or any other similar allowance’ basic wage?**

No. Commission or other allowances of similar nature are not found in all concerns and even, if it is there, not all the employees of the establishment earn it.

Clarifications started pouring in, in the light of the current judgement to the practical situations of certain companies which are consolidated and provided hereunder through illustrations:

Sample salary structure 1:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Components** | **Quantum** | **Current** | **Suggested PF** | **Remarks, if** |
|  |  | **practice – PF** | **Wages post** | **any** |
|  |  | **Wages** | **the** |  |
|  |  |  | **judgement** |  |
| Basic | 6000 | 6000 | 6000 | The pay is getting increased to |
| HRA | 2000 | - | - | 8500 from 6000 assuming |
| Conveyance | 1500 | - | 1500 | ‘basic pay’ is camouflaged |
| Allowance |  |  |  | As conveyance and special |
| Special | 1000 | - | 1000 | allowances |
| Allowance |  |  |  |  |
| Total | 10500 | 6000 | 8500 |  |

Sample salary structure 2:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Components** | **Quantum** | **Current** | **Suggested PF** | **Remarks, if** |  |  |
|  |  | **practice – PF** | **Wages post** | **any** |  |  |  |
|  |  | **Wages** | **the** |  |  |  |  |
|  |  |  | **judgement** |  |  |  |  |
| Basic | 14000 | 14000 | 14000 | The pay is getting |  |  |
| HRA | 4000 | - | - | increased to 22000 |  |  |
| Conveyance | 4000 | - | 4000 | from 14000 assuming |  |  |
| Allowance |  |  |  | HRA 4000 - - Conveyance |  |
| Medical | 2000 | - | 2000 | Allowance 4000 - 4000 |  |  |
| Allowance |  |  |  | Medical Allowance |  |  |
|  |  |  |  | 2000 - 2000 conveyance, |  |
| Special | 2000 | - | 2000 |  |
| Allowance |  |  |  | medical | and | special |  |
|  |  |  |  | allowances |  |  |  |
| Total | 26000 | 14000 | 22000 |  |  |  |
|  |  |  |  | are not truly so but are only |  |
|  |  |  |  | namesake. Of, course there is |  |
|  |  |  |  | a choice of restricting the |  |
|  |  |  |  | contributions | to the | current |  |
|  |  |  |  | statutory ceiling of Rs 15000. |  |

Sample salary structure 3:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Components** | **Quantum** | **Current** | **Suggested PF** | **Remarks, if** |  |
|  |  | **practice – PF** | **Wages post** | **any** |  |
|  |  | **Wages** | **the** |  |  |
|  |  |  | **judgement** |  |  |
| Basic | 25000 | 25000 | 25000 | The pay is getting |  |
| HRA | 5000 | - | - | increased to 42000 |  |
| Conveyance | 5000 | - | 4000 | from 25000 assuming |  |
| Allowance |  |  |  | conveyance, medical and |  |
| Medical | 2000 | - | 2000 | special allowances are truly |  |
| Allowance |  |  |  | not so but are only namesake. |  |
|  |  |  |  | Of, course there is a choice of |  |
| Special | 2000 | - | 2000 |  |
| Allowance |  |  |  | restricting the contributions to |  |
|  |  |  |  | the current statutory ceiling of |  |
| Total | 26000 | 14000 | 22000 |  |
|  |  |  |  | Rs 15000. |  |
|  |  |  |  | Even in the renewed situation, |  |
|  |  |  |  | some employers may tend to |  |
|  |  |  |  | contribute only on |  |
|  |  |  |  | the basic, ie., 25000 since it is |  |
|  |  |  |  | much above the ceiling |  |
|  |  |  |  | of 15000. The |  |
|  |  |  |  | enforcement wing |  |
|  |  |  |  | HRA 5000 - - Conveyance |  |
|  |  |  |  | Allowance 5000 - 5000 |  |
|  |  |  |  | Medical Allowance |  |
|  |  |  |  | 2000 – 2000 Special |  |
|  |  |  |  | Allowance 10000 - 10000 |  |
|  |  |  |  | Total 47000 25000 42000 |  |
|  |  |  |  | also may not question since it |  |
|  |  |  |  | is much beyond the |  |
|  |  |  |  | statutory ceiling, |  |
|  |  |  |  | but, what would be |  |
|  |  |  |  | appropriate is to |  |
|  |  |  |  | contribute on entire |  |
|  |  |  |  | 42000 or restrict to 15000. |  |

This note is prepared more from compliance perspective in the light of the recent judgement by the Hon’ble Supreme Court.

by

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