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Provident Fund Contribution On Allowances

Impact Of Supreme Court Judgment

Billions of rupees are deducted and deposited towards provident fund contributions by over 11,83,905 establishments for 22 crore employees as covered under the Employees' Provident Funds & MP Act. Despite paying matching share of the provident fund contributions equivalent to 12% of the wages of the employees, the employers have overlooked the implications and interpretations of the wages for contributions.

In a recent judgment, the Supreme Court has held that the employers cannot split allowances from basic wages and must include the same other than house rent or overtime for provident fund contributions. The impact of the judgment would call for restructuring of current wages structure within the prescribed parameters of law as interpreted by the Hon'ble Supreme Court. Appeals were filed by several establishments challenging the decisions of the provident fund authorities holding that except HR and overtime allowances all other allowances would form part of basic wages to attract provident fund contributions. Some High Courts have also upheld the order of the provident fund authorities.

While issuing the appointment letters to the employees, the employers' recklessness is found to be most shocking. The discrepancy with regard to the splitting of wages into several allowances speaks volumes about the glaring irresponsibility. Some of the common allowances are given below:

- Special Allowance (irrespective of any specialisation), • City Compensation Allowance (even when an employee is posted in a small town), • Tiffin Allowance, • Fitment allowance • Night Shift Allowance, • Hardship Allowance, • Supplementary Allowance, • Punctuality Allowance, • Attendance Allowance, • Children Education Allowance, • Travelling Allowance, • Uniform Allowance, • Washing Allowance, • Tea Allowance,• Canteen Allowance, • Leave Travel Allowance, • Milk Allowance, • Make Up Allowance, • Newspaper Allowance, • Regularity Allowance, • Suspension Allowance, • Medical Allowance, • Production Allowance, • Heat Gas and Dust Allowance, • Meal/Food Allowance, • Overtime Allowance, • Wellness Allowance, • Performance Allowance, • Field Working Allowance, • Re-Location Allowance, • Compensatory Allowance, • Cash Handling Allowance, • Supervisory Allowance, • Steno Typist Allowance, • Computer Allowance, • Conveyance Allowance, • Area Allowance, • Driver Allowance, • Cycle Allowance,• Entertainment Allowance, • Non-practising allowance, • Additional allowance, • Management Allowance • Club Allowance, • Miscellaneous Allowance etc. etc.

As a result thereto, the employers are often caught in the dragnet of the PF authorities, who derive perverted pleasure in harassing them. It is seen that some employers split the wages into allowances without considering as to what for that allowance is given. Now the Supreme Court in its judgment dated 28.2.2019 reported in 2019 LLR 339 has upheld the judgments of the High Courts of Madhya Pradesh and Madras. An appeal by EPFO against

judgment of Calcutta High Court has been accepted by the Supreme Court holding that special allowance will also form the part of wages for EPF contributions.

For instance, special allowance is invariably even by the employers, in addition to basic wages, but when questioned by the concerned authority for determination of EPF dues, as what is the speciality for giving a special allowance, no valid clarification is offered by the employer. While coming across such anomalies it was contemplated that such allowances can create problem for employers who will be liable to pay both the shares of contributions since section 12 of the Employees' Provident Funds & MP Act prohibits deduction of any contribution for more than one month's contributions. The Gujarat, Madhya Pradesh and Madras High Courts have held that all the allowances other than house rent allowance would attract provident fund contributions. Despite that many employers have not cared to rectify their wage structures. This may lead to heavy financial liability in addition to interest, damages, even prosecutions and loss of face for the establishment that no material has been placed by the establishments to demonstrate that the allowances in question being paid to its employees were either variable or were linked to any incentive for production resulting in greater output by an employee and that the allowances in question were not paid across the board to all employees in a particular category or were being paid especially to those who avail the opportunity. In order that the amount goes beyond the basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in. The Hon'ble Court observed that : "There is no data available on record to show what were the norms of work prescribed for those workmen during the relevant period." Hence it is not possible to ascertain whether extra amounts paid to the workmen were in fact paid for the extra work which had exceeded the normal output prescribed for the employees. The wage structure and its components have been examined on facts, both by the authority and the appellate authority under the Act, who have arrived at a factual conclusion that the allowances in question were essentially a part of the basic wage camouflaged as part of an allowance so as to avoid deduction and contribution accordingly to the provident fund account of the employees. It is also observed by the Court that in order to treat such allowances beyond the scope of 'basic wages' under section 2(b) of the Employees' Provident Funds Act, 1952, it has to be shown that the employee concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in.

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 some exceptions which would not fall within the definition of basic wage and includes dearness allowance apart from other allowances mentioned therein. But this inclusion of dearness allowance finds inclusion in section 6 of the Act.

The rationale of judgment for the conclusion is that such allowances are neither variable nor linked to productivity and hence do not merit an exclusion. The Supreme Court has indicated that for an amount to be considered as beyond basic wages, it has to be shown that the workman concerned had become eligible to get this extra amount beyond the normal work which he was otherwise required to put in.

So, now if the employer wants to continue paying special allowances he will have to link it to the productivity of the employee. In the event an employer wants to give any special allowance or emolument as an incentive to its employees, then such employer needs to ensure that it is not paid universally to all employees. It must ensure that the payment is linked to the productivity and is paid as production bonus or incentive.

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