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For provident fund contributions, canteen allowance paid to all permanent employees of a company to be included as part of basic wages

In brief

Recently, in the case of Whirlpool of India Limited[1] (the petitioner), the Delhi High Court (HC) held that "canteen allowance" was a part of "basic wages", as defined under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the Act). The petitioner was therefore liable to compute and pay provident fund (PF) contributions on it.

Facts

- The petitioner was providing subsidised canteen facilities to its employees in its factory at Faridabad in Haryana.
- Following a settlement between the petitioner's management and workers' union, the petitioner agreed to pay a canteen allowance of INR 300/- per month to employees in lieu of prevailing subsidised canteen facilities.

[1] M/s Whirlpool of India Ltd *v.* Regional PF Commissioner [W.P.(C.) 7729/1999] dated 22.07.2013 (Delhi HC)

- The area enforcement officer, after inspection of the petitioner's records, raised the issue with regard to non-payment of PF dues in respect of the canteen allowance, contending that the INR 300/- per month represented cash value of a food concession allowed to employees, because it was paid in lieu of pre-existing subsidised canteen facilities. It was therefore liable to be included as part of the 'dearness allowance' for calculating the PF contribution, by virtue of Explanation (1) of section 6 of the Act[2].

- The petitioner filed an appeal against this order before the Employees' Provident Fund Appellate Tribunal (the Tribunal), which was dismissed. Aggrieved by the Tribunal's decision, the petitioner filed a writ petition before the HC.

Issue

- Whether the canteen allowance, paid in cash by the petitioner to all employees, was liable to be included in the computation of the employees' PF dues under section 6 of the Act?

Petitioner's contention

- The petitioner contended that section 2(b) of the Act[3] used two different expressions i.e. "cash value" and "cash payments". It was only the "cash value" of food concession which was liable to be included by virtue of Explanation (1) to section 6 of the Act in computing the provident fund dues, and not the "cash payment" made to the employees. If the intention of the Parliament was to include "cash payment", then Explanation (1) to section 6 of the Act would have stated so explicitly. Instead, the words used in Explanation (1) are "cash value of any food concession allowed to the employee".

- In support of this submission, the petitioner placed strong reliance on the decisions of the Bombay and Gujarat HC in ***The Tata Hydro Electric Power Supply Co.***[4] and ***Reliance Industries Limited***[5] respectively. Reliance was also placed on the Supreme Court (SC) decision in ***Manganese Ore (India) Ltd***[6] to submit that the monetary value of gains supplied at concessional rate to employees was not liable to be included in wages for the purpose of the Minimum Wages Act, 1948.

- The petitioner also placed reliance on two departmental circulars issued by the PF authorities under different directorates, wherein the view taken was that "Tiffin Allowance" was not liable to be included for the purpose of computation of PF contributions.

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[2] As per Section 6 of the Act, PF contribution is payable on following components of salary:
- Basic wages;
- Dearness allowance; and
- Retaining allowance (if any).

Explanation (1) of section 6 of the Act provides that dearness allowance shall be deemed to include the cash value of any food concession allowed to employees.

[3] The term "basic wages" has been defined in clause (b) of section 2 of the Act as below:
…"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 with the terms 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….*

[4] The Tata Hydro Electric Power Supply Co. *v.* Regional PF Commissioner [2008 LLR 1013]
[5] Reliance Industries Ltd *v.* Regional PF Commissioner [2011(1) GLR 828]
[6] Manganese Ore (India) Ltd. *v.* Chandi Lal Saha & Ors [AIR 1991 SC 520]

PF authorities' contention

- The PF authorities contended that the canteen allowance formed part of basic wages and, therefore, was liable to be included in computing PF contributions.

- In support of this contention, reliance was placed on the judgment of the Gujarat HC in ***Gujarat Gypromet Ltd.***[7]

HC ruling

- The expression *"any other similar allowance...."* as used in the definition of "basic wages" takes its colour from the expression, "commission", because that expression used the words *"similar allowances"*. There was no similarity with the nature of the allowances mentioned in clause (ii), because they were founded on wholly unrelated considerations. Dearness allowance was linked to rise in the cost of living, house rent allowance was provided to meet the housing concerns of employees, overtime allowance was payable for the overtime put in by employees, and bonuses would generally be linked to the turnover generated by the employee on account of his own output. Parliament could not have used the word *"similar"* to club these allowances together because, in fact, there was no similarity between them. The draftsman had consciously used 'commas' after "dearness allowance", "house rent allowance", "overtime allowance", and "bonus" to indicate each item's uniqueness. However, there was no break or 'comma' between "commission" and *"or any other similar allowances..."*. This showed that the expression *"any other similar allowances..."* had to be read in conjunction with "commission" alone. The expression *"any other similar allowances..."* would, therefore, mean an allowance which was similar to "commission".

- To construe the words *"any other similar allowances..."* generally and widely to include any or all payments that the employer may refer to as an "allowance", would have the effect of narrowing the scope of the expression "basic wages". If "allowance" was construed widely, the employer could split the basic wages into several allowances, including those specifically contained in the exclusionary clauses (i), (ii) and (iii) of section 2(b) of the Act, so as to reduce its own liability towards PF contribution.

- It was a well-settled rule of interpretation that a proviso or an exclusionary clause could not be given so wide an interpretation as to consume the main provision itself. The proviso/exclusionary clause was liable to be interpreted narrowly so as to give full meaning and effect to the main provision.

- Even if one were to accept the petitioners' submission that "canteen allowance" was not *"cash value of any food concession"* because it was a cash payment, and no subsidised food was provided by the petitioner, the "canteen allowance" could not be construed as "any other similar allowance" payable to the employee in respect of his employment or of work done in such employment. As the "canteen allowance" was a cash payment earned by the employees (i.e., they had a right to demand and receive it under the terms of a binding settlement), and was earned by the employees while on duty, it was nothing but a part of their "basic wages".

- The "canteen allowance", in the present case, was payable to all permanent employees and, therefore, the test evolved by the SC in ***Bridge & Roof Co.***

[7] Gujarat Gypromet Ltd. v. Asst. PF Commissioner [2004 (3) CLR 485] (Special Civil Application No. 5666/2004 decided on 26.07.2004

Ltd.[8] stood satisfied. The SC in that case had held that whatever allowances were payable to all permanent employees would be included in the definition of "basic wages", and those which were not paid or payable to all employees would be excluded. The reason for exclusion of house rent allowance, overtime allowance, bonus and commission, or any other similar allowance (i.e. which were similar to commission payable to the employee in respect of his employment or of work done in such employment) from the definition of "basic wages" appears to be that the aforesaid allowances could be employee-specific and would generally not be payable to all permanent employees.

- So far as the reliance placed on the two departmental circulars were concerned, they were of no avail. They could not override the statutory interpretation required for the provisions of the Act.

- The petitioner was liable to compute and pay the PF contribution by taking into account the "canteen allowance" being paid to the employees. This liability would arise, even if the petitioner's submission that the canteen allowance could not be construed as *"the cash value of any food concession"* was accepted, because the canteen allowance was a part of "basic wages" itself.

PwC comments

The above ruling of Delhi HC has a wide impact on establishments making PF contributions on their employees' basic salaries only. This ruling is binding on all establishments covered under the Act and covered under the jurisdiction of Delhi HC and therefore, they need to review their position where the salary break-up of employees also includes allowances which are not specifically excluded from the definition of "basic wages" under the Act, and are paid or payable to all permanent employees. However, any allowances which were not payable to all permanent employees may be excluded, and reliance may be placed on the tests outlined by the SC in the case of *Bridge & Roof Co. Ltd.*[8]

In case of international workers, if they were paid certain allowances which were not paid to all employees, such allowances may not be included in the calculation of PF contributions, provided they satisfy the tests outlined in the case of *Bridge & Roof Co. Ltd.*[8]

It is important to note that rulings in the cases of ***Surya Roshni Limited***[9] and ***Montage Enterprises Private Limited***[10] by the Madhya Pradesh HC, concerning similar issues, are pending before the Apex Court. Their resolution may bring closure to these issues.

[8] Bridge & Roof Co. (India) Ltd *v.* UOI [AIR 1963 SC 1474]

[9] Surya Roshni Ltd. *v.* Employee Provident Fund [2011 LLR 568 MP]
[10] Montage Enterprises Pvt Ltd *v.* Employees Provident Fund [WP 1857 of 2011]

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