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Dear friends,

Recently the Hon'ble Supreme Court of India delivered judgment wherein it has been held that all type of allowances which are being paid across the board are amenable to the EPF deductions and will fall under the category of basic wage.s

Hon'ble Supreme Court Enlightened the issue, whether allowances paid to its employees viz-a-viz special allowance, HRA, Travelling allowance, canteen allowance, lunch allowance, washing allowance, conveyance allowance, education allowance, food concession, medical allowance, special holiday, night shift allowance, city compensatory allowance etc. amount to basic wages.

In brief Vivekanand Vidya Mandir, Surya Roshni Ltd., U-Flex Ltd., Montage Enterprises Pvt. Ltd., and the Management of Saint Gobain Glass India Ltd. approached Hon'ble Supreme Court of India seeking relief that the above mentioned allowances which they paid to their employees, do not amount to basic wage and are not amenable under the provisions of EPF Act. The EPF department stated that since all the allowances are being paid to all permanent employees across the board without any differentiation and as such these are to be included for the purpose of deduction u/s 6 by treating them as basic wages.

The allowances which are to be excluded, should be allowances not payable to all concerns or may not be earned by all the employees of concerns and only those

allowances would be excluded from the provisions of EPF Act. The allowances which are earned by all the employees across the board are to be treated as basic wages.

The learned counsels appearing on behalf of establishment took stand that certain allowances like Transport allowance and reimbursements does not amount to basic wage as these fall under the exclusion clause as these allowances are given to the employees for their meritorious service. The Hon'ble Supreme Court of India formed its opinion by taking into consideration the judgments of The Hon'ble Supreme Court of India viz-a-viz "**Bridge and Roof Co. (India Ltd.) Vs. Union of India (1963) 3 SCR 978**, "**Muir Mills Co. Ltd. Kanpur Vs. Its workmen, AIR 1960 SC 985**, "**Manipal Academy of Higher Education Vs. Provident Fund Commissioner (2008)5 SCC 428**, "**The Daily Partap Vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh (1998)8 SCC 90**.

In all the above mentioned judgments, common question involves, whether allowances paid under various heads are universally, necessarily and ordinarily paid to all across the board, then such emoluments are basic wages and if the payment is available to certain special employees who avail opportunity and their work is recognized as extra ordinary than that of others, then the emoluments paid to them against the extra efforts put in by them does not amount to basic wages because this amount was not paid all employees across the board.

The Hon'ble Supreme Court of India has clearly mentioned that the establishments totally failed to demonstrate that the allowance in question being paid to its employees were either variable or were linked to any incentive or production resulting in greater output by the employees and allowance in question were not paid across the board to all the employees in particular category. So when the parties failed in putting forth their view in proper manner that allowance being not paid universally but as per certain policy and opportunity, which few persons availed, then the Hon'ble Supreme Court of India came to the conclusion that the EPF is applicable to all the allowances being paid universally.

I have carefully gone through the entire judgment and have come to the conclusion that if we pay allowances to our employees, then first of all, there should be a policy framed category-wise or their should be a criteria to earn allowances by

the employees, then such allowance cannot be termed as basic wages as the allowances are being paid not across the board but according to certain policy and cadre. There should be a system for allocation of allowances. If it is production incentive, then there should be a base that the certain employees touched certain land mark and then he became eligible for the same in that event EPF is not attracted on such allowance. Similarly, if the employees joins as helper, semi skilled, skilled or highly skilled, are entitled to perks like HRA, conveyance etc. according to the cadre and wage structure and there is a HR policy behind it, then such allowances are not amenable to EPF deduction but if there is no base and incentives are paid at equal rate across the board, then definitely it would amount to subterfuge and the EPF department will consider it as basic wage and heavy penalty would be levied on employers by treating it as basic wages and EPF deductions would have to be made on these.

Utmost care should be taken while fixing allowances to the employee. There should be some base or policy behind it and only then allowances should be paid to the employees and in that event, no EPF would be amenable on such allowances.

In case of any difficulty or for further discussions, kindly contact the undersigned either personally between 5.00 p.m. to 8.00 p.m. in the office or at Contact No. 98140-20611 and it is assured that full cooperation will be extended at all levels.

Yours sincerely,

(Sandeep Behal)
Advocate.