

What is 'Basic Wages' for the purpose of PF contributions?

The definition of 'Basic Wages' has been defined under Section 2(b) of the EPF & MP Act, 1952 as below:

Section 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 with the 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;*
- 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;*

From the above definition it is clear that all the emoluments which are earned by an employee other than those specifically excluded components given under clause i, ii & iii, would be the basic wages for the purposes of contribution under the Act. All the components viz basic wages, dearness allowance and retaining allowance specified in Sec 6 have been explained at Sec 2(b) and Sec 6 categorically without leaving any room for ambiguity. The above definition has also been time and again called for by various judicial forums while deciding the cases filed against 7A orders some of which are given below for ready reference:

The Hon'ble Division Bench of the High Court of Calcutta in the Regional Provident Fund Commissioner (II), West Bengal & Anr. v Vivekananda Vidya Mandir & Ors, 2005 had held that *in order to exclude any allowance from the purview of Section 6 which provides for liability to pay contribution based on basic wages, such allowance should fall under Clauses (i), (ii) and (iii) of Section 2(b) which enumerate allowances which are not included in the definition of basic wages*

While the Hon'ble Supreme Court in Jay Engineering Works Ltd v Union of India, ruled that *the expression 'any other similar allowance' should be of the same type as the allowances mentioned in the clause such as 'dearness allowance', 'house rent allowance', 'overtime allowance', 'bonus' and 'commission' as specifically excluded under Section 2(b) of the Act.*

The Hon'ble Gujarat High Court in the case of Gujarat Cypromet Ltd V Assistant Provident Fund Commissioner; and the Hon'ble High Court of Karnataka in the case of Group 4 Securities Guarding Ltd. v Regional Provident

Fund Commissioner, had specifically stated that “Any agreement entered into between the employer and its employees for splitting of the amount payable by the employer to its employees for the service rendered by them, cannot take away the power of the Commissioner under Section 7A of the Act to look into the nature of the contract entered into between the employer and its employees and decide that splitting up of the pay payable to the employees under several heads is only subterfuge to avoid payment of contribution by the employer to the provident fund. It was open to the Commissioner to lift the veil and read between the lines to find out the pay structure fixed by the employer to its employees and to decide the question whether the splitting up of the pay has been made only as a subterfuge to avoid its contribution to the provident fund.”

Similarly in Ponni Sugars and Chemicals Ltd., v. Cauvery Sugar and Chemicals Ltd., and others- 2001(91) FLR.486:2001(2) LLJ.1201:2002 LLR.25 it was held that *the expression ‘basic wages’ has to receive an interpretation which would achieve the object of the enactment. The Act has to be considered in its proper perspective and contextual so as to fructify the legislative intentions underlying the enactment. Even if two views are possible, the view which furthers the legislative intention should be preferred to the one which would frustrate it.*

Relevance is also made on the following land mark judgments which had always ruled that the beneficial intent of the Act is of paramount importance when there is an issue of deciding the due benefits, which are as below:

The Division Bench of the Hon’ble High Court of Andhra Pradesh has clearly stated in the Nazeena Traders (Private) Limited v The Regional Provident Fund Commissioner, that the EPF & MP Act, 1952 is a beneficial legislation enacted as a measure of social justice and should be construed liberally so as to confer benefit on the employees to the maximum extent and finally as per the guidelines laid down by the Hon’ble Supreme Court in The Regional Provident Fund Commissioner, Punjab v Shibu Metal Works 1964-65 (27) FJR 491, in construing the material provisions of the Act, if two views are reasonable possible, the Courts should prefer the view which helps the achievement and furtherance of the object, which is also clearly defined in Balbir Kaur and another v Steel Authority of India Ltd. and other; T.K. Meenakshi (Smt.) and another v Steel Authority of India Ltd. and Others as “to ensure better future of the employee concerned on his retirement and for the benefit of the dependants in case of his earlier death”. Moreover, in the matter of State Vs. Girdhari Lal Bajaj, 1962 II LLJ 46 (Bom.DB), the Hon’ble Court observed that when there is doubt about their meaning, it is to be understood in the sense in which it best harmonizes with the subject of the enactment and the object which the legislature has in view.

Being so it is observed that some of the employers are in the habit of splitting the wages into various allowances with the predominant view of

avoiding the PF contributions thereby jeopardizing the intent of Social security to their employees. In fact there were instances where the employer is showing only 10% as basic wages while major portion would be shown as Special Allowance, or Other Allowance or Conveyance or Over Time Allowance or HRA etc.

In case an employee earns a Gross Wage of say `6,000/- , then as per the salary structure followed by a particular establishment, around `2,700/- is shown as Basic, `2,400/- is shown as House Rent Allowance, `800/- is shown as Conveyance while the balance is paid as Special Allowance. The contributions were being paid by this establishment only on this `2,700/- being shown as basic. In case the above employee expires the pension to the family would be paid based on the last drawn pay. In this case, the pension would only be calculated based on `2,700/- being the last drawn salary for which the contributions have been calculated. As per Table 'C' of the Employees' Pension Scheme, 1995 the equivalent widow pension for the last drawn salary of `2,700/- is `1,163/-. However, as per Section 2(b) the Basic wages in respect of this employee need to be construed as `3,600/-, duly excluding the House Rent Allowance as the same has been specifically excluded in the above definition. The equivalent widow pension for the basic of `3,600/- would be `1,521/-. This difference in pension would have a cascading effect in the Children Pension (being paid for 2 children at a time upto their age of 25 years in turn) and subsequently during the interim reliefs declared by the Government of India based on the actuarial valuation carried out. Therefore, the practice of this establishment contributing on their own basic (other than the one stipulated under Section 2(b)) would actually lower the employees' due benefits as explained above, and is not in the spirit of the EPF & MP Act, 1952 and the Schemes framed there under.

Accordingly, the basic wages shown in the pay structure of the establishment need to be in tune with the definition provided under Sec 2(b). EPF & MP Act, 1952 being a self-application Act the above provisions apply to the covered establishments on its own.