IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.9852 of 2011
and
M.P.No.1 of 2011

Universal Aviation Services Private Ltd,
Rep by its Managing Director.
Old No. 166, New No. 329,
Triplicane High Road,
Chennai – 600 005. ...Petitioner

Vs

1. The Presiding Officer,
   Employees' Provident Fund
   Appellate Tribunal,
   4th Floor, Core 2, Scope Minar
   Lakshmi Nagar,
   New Delhi - 110 092.

2. The Assistant Provident Fund Commissioner,
   Office of the Regional Provident Fund
   Commissioner,
   37, Royapettah High Road,
   Chennai - 600 014. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the 1st respondent in ATA. No 644(13) of 2009 and quash its order dated 29.12.2010.

For Petitioner : Mr. Anand Gopalan for M/s.T.S.Gopalan and Co.

For Respondents : Mr.V.Sundareswaran, SPC

ORDER

By consent of both the parties, this writ petition is taken up final disposal.

2. Under Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act'), the employer is obliged to make contributions at the stipulated percentage of the basic wages, dearness allowance and retaining allowance, if any.

3. Section 2(b) of the Act defines 'basic wages' as follows:-

> 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;

4. As per the aforesaid definition, an extensive meaning is extended to the term 'allowance' to include almost all kinds of cash payments to the employee in connection with his employment.

5. While dealing the definition of 'allowance', the case of Bridge and Roof Co. (India) Ltd. v. Union of India reported in (1963) 3 SCR 978 was relied upon by the Hon'ble Supreme Court in the case of Regional Provident Fund Commissioner (II) West Bengal V. Vivekananda Vidyamandir and others reported in (2019) SCC Online SC 291 and it was held that the test to be adopted to determine the liability of contribution is one of universality, for the purpose of determining the payment made to the employees. The relevant portion of the order reads as follows:-

> "9. 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 certain

> exceptions which would not fall within the definition of basic wage and which includes dearness allowance apart from other allowances mentioned therein. But this exclusion of dearness allowance finds inclusion in Section 6. 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 employer, under the Act, has a statutory obligation to deduct the specified percentage of the contribution from the employee's salary and make matching contribution. The entire amount is then required to be deposited in the fund within 15 days from the date of such collection."

6. The aforesaid extract is self explanatory. By observing thus, it was held that it is impediment to demonstrate that the allowances paid to the employees are either variable or linked to any incentive for production resulting in greater output by the employee. It was also found that when the amount paid is beyond the basic wages, it requires to be established that the workman concerned has become eligible to get extra amount beyond the normal work which he is otherwise required to put.

7. On an overall reading of the provisions under the Act with the decision rendered by the Hon'ble Supreme Court, it can be said that in order to determine the liability of the employer for the purpose of contribution, the crucial test to be adopted is one of 'universality'.

8. The petitioner, in the instant case, disputes his eligibility of contribution on the allowances claimed by the respondent. The Assessing Authority, in his order dated 14.08.2009, had claimed contributions for the period from June 2008 to May 2009 for the various allowances paid under the components, namely, “other allowances” and “washing allowance”. The Assessing Authority, had taken into account of the records produced before him including the pay registers and attendance registers for the relevant period and by taking into consideration of the employees' admission to pay their share for the period upto June 2009, had caused the levy. The order of the Assessing Authority was also confirmed by the Appellate Authority, through the impugned order dated 29.12.2010.

9. The predominant ground raised by the petitioner before this Court is that such other allowances and washing allowances will not attract contributions. In view of the aforesaid

discussions and the law laid down by the Hon'ble Supreme Court in Vivekananda Vidyamandir's case (supra), the petitioner's claim cannot be justified or sustained, since "other allowances" and "washing allowance" have been brought under the purview of Section 2(b) read with Section 6 of the Act. Accordingly, I do not find any infirmity in the claim made in the impugned orders of the Assessing Authority, as confirmed by the Appellate Authority.

10. Accordingly, the Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Presiding Officer,
   Employees' Provident Fund
   Appellate Tribunal,
   4th Floor, Core 2, Scope Minar
   Lakshmi Nagar,
   New Delhi - 110 092.

2. The Assistant Provident Fund Commissioner,
   Office of the Regional Provident Fund
   Commissioner,
   37, Royapettah High Road,
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+1cc to M/s.T.S.Gopalan & Co, Sr No.43762

W.P.No.9852 of 2011
and
M.P.No.1 of 2011

AD (CO)
PR (24/09/2021)