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COMMENTARY

Supreme Court Judgment on PF Wages

Delivered on 28th Feb 2019

The Supreme Court, in its landmark judgment delivered on 28th Feb 2019, made some observations on PF Wages which have become quite contentious even though the writing is clear on the wall.

Post this landmark judgment, one of the most common mistake employers are committing is the non-inclusion of HRA. This mistake is akin to the earlier one where employers were only taking Basic + DA (& in case of no separate DA is paid then only Basic) for deducting PF contribution. The Bridge & Roof judgment was very clear on this issue since the year 1963. However, due to the fondness for keeping things ambiguous & a copy –paste culture of employers, advisors & consultants, the practice of Basic + DA gained more mileage. Now we are staring at the sequel to this analogy which might gain traction if not understood clearly.

Advisors, Consultants & Employers have conveniently deduced (out of thin air) that Supreme Court did not consider HRA to be included in Basic. A summary look at the order itself will clear that air:

- The court has only allowed appeal of RPFC, West Bengal Vs Vivekanand Vidyamandir & Others where HRA was not a point of contention.
- The court has not interfered with the findings of all other four appellants namely Surya Roshni, U-Flex, Montage Enterprise & Saint Gobain & dismissed their appeals all together. HRA was one component in question for 03 of these 04 appellants.
- Supreme Court maintained status quo for all the above 04 appellants wherein respective High Courts had held that HRA has to be part of the PF wages since it was universally paid to all concerned.
- The definition of Basic [(Sec2b(ii))] as reproduced in the order & also in earlier many such instances has excluded HRA since HRA is one such component which may or may be paid universally in all concerns & to all employees.
- This exclusion does not mean that any organization which pays HRA across employee spectrum can conveniently exclude it from PF wages. It is still a dearness allowance within the ambit of Section 6 wherein Basic + Dearness Allowance + Retaining Allowance + Value of food concession have been identified as PF wage component.
- Supreme Court has reiterated that any allowance universally paid to employees will form basis for PF wages.
- It can also be derived from this order that any other allowance, incentive or bonus, if paid without a valid policy in place to achieve targets or exceed production will be deemed to be part of PF wages.

Hence it would be prudent on employer's part to also consider HRA in the PF wage structure especially in cases of Gross below Rs 15000. For gross salaries above Rs 15000, the employer has to pay minimum on Rs 15000 as PF wage contributions.

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Below example can help in understanding the stand of Supreme Court in its entirety:

Example 1 Salary below Rs 15000	
Basic	Rs 8000
DA	Rs 4000
HRA	Rs 2000
Gross Salary	Rs 14000
Earlier practice (PF Wages)	Rs 12000
New erroneous practice (PF Wages)	Rs 12000
New Correct practice (PF Wages)	Rs 14000
<i>Note that full HRA (Rs 2000) has been included along with Basic +DA</i>	

Example 2 Salary above Rs 15000	
Basic	Rs 8000
DA	Rs 4000
HRA	Rs 5000
Gross Salary	Rs 17000
Earlier practice (PF Wages)	Rs 12000
New erroneous practice (PF Wages)	Rs 12000
New Correct practice (PF Wages)	Rs 15000
<i>Note that part of HRA (Rs 3000) has been included along with Basic+DA</i>	

Example 3 (with different salary structure) Salary above Rs 15000	
Basic	Rs 10000
HRA	Rs 4000
Conveyance Allowance	Rs 2000
Gross Salary	Rs 16000
Earlier practice (PF Wages)	Rs 10000
New erroneous practice (PF Wages)	Rs 10000
New Correct practice (PF Wages)	Rs 15000
<i>Note that full HRA (Rs 4000) and part of Conveyance Allowance (Rs 1000) has been used along with Basic</i>	

Example 4 (with different salary structure) Salary above Rs 15000	
Basic	Rs 15000
HRA	Rs 4000
Special Allowance	Rs 5000
Gross Salary	Rs 24000
Earlier practice (PF Wages)	Rs 15000
New erroneous practice (PF Wages)	Rs 15000
New Correct practice (PF Wages)	Rs 15000
<i>Note that Basic salary itself is Rs 15000 therefore no need to add any further allowances from HRA or Special Allowance</i>	

Please note that in examples 2, 3 & 4

- Employer can also pay contribution on higher PF wages (i.e. more Rs 15000) if both employee & employer agree & intimation in required format is sent to PF authorities. Such higher amount can be any figure above Rs 15000.
- However while doing so, uniformity should be ensured for all such cases where PF wages are above Rs 15000. This is to avoid any discrimination towards an employee or set of employees.
- If employer decided to contribute on higher PF wages, he should do so for all employees uniformly. It will ensure that no cases of discrimination come up against the employer.
- While arriving at PF wages, it has been assumed that allowances like HRA, Conveyance & Special Allowance are paid universally across the board

Please note that example 1 can be a typical case for casual/temporary/contractor employees & this is the segment which is going to be largely impacted. Principal Employers should ensure strict compliance from Contractors or for their own casual workforce deployed below Rs 15000 gross salaries.