



GMS Flash Alert

Global Compensation Edition

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India – Supreme Court and Provident Fund Organization Actions on Contributions

Recently the Supreme Court of India dismissed a review petition to clarify the court’s decision expanding the definition of basic wages for purposes of calculating employer contributions to the Provident Fund, and on the same day the Employees’ Provident Fund Organisation (EPFO) restricted field officer inspections of employer contributions.

WHY THIS MATTERS

These recent actions by the Supreme Court and the EPFO may have significant impact on how employers calculate Provident Fund contributions. Thus, employers should review their policies and documentation in relation to employee compensation to make sure they are complying with the regulations under the Provident Fund law.

Background

Multiple actions before the Supreme Court of India had raised a common question of whether certain allowances (such as travel allowance, canteen allowance, special allowance, management allowance and conveyance allowance) paid by an employer to its employees would fall within the category of “basic wages” for purposes of computing contributions to the Provident Fund (PF) under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. In a recent action, the Supreme Court in a 28 February 2019 order,¹ held that:

- If any amount is to be excluded from basic wages, it must be shown that the employee’s entitlement to receive the extra amount was not related to the normal work the employee was otherwise required to perform.
- No material had been offered by the employers to demonstrate that the allowances in question being paid to employees were either variable or were linked to any incentive for production resulting in greater output by an employee, and that the allowances in question were not paid to all employees in a particular category or were being paid especially to those who avail the opportunity.²

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Review Petition

One of the parties to that action had filed a review petition on 29 March 2019 against the Supreme Court's 28 February 2019 decision.

The Supreme Court has dismissed this review petition on 28 August 2019, holding that it did not find any justifiable reason to entertain it.

Recent PF Circular

EPFO has issued a circular³ directing its field officers not to pursue any notices that have been issued to employers without any prima facie evidence of arbitrary bifurcation of wages by employers with an intention to avoid PF liability.

The circular states that several PF offices had issued a notice to the establishments quoting the Supreme Court ruling to ascertain the wage structure to find out if any allowances that were part of basic wages have been omitted for the purpose of compliance.

The circular states that in all the cases where notices have been issued without any prima facie evidence of arbitrary bifurcation of wages with intention to avoid EPF liability, such notices should not be pursued further.

FOOTNOTES:

- 1 *Regional Provident Fund Commissioner (II) West Bengal vs Vivekananda Vidyamandir and Others*, Civil Appeal No. 6221 of 2011.
- 2 For prior coverage, see [Flash News dated 1 March 2019](http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Vivekananda-Vidyamandir-And-Others-1.pdf). <http://www.in.kpmg.com/TaxFlashNews-INT/KPMG-Flash-News-Vivekananda-Vidyamandir-And-Others-1.pdf>
- 3 EPFO Circular – Notice to establishments for inspection in the wake of Supreme Court judgement on PF-able allowances – Circular No. C-1/1(33)2019/Vivekananda Vidyamandir/717 dated 28 August 2019.

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Contact us

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