

HOW THE 50% ADD BACK RULE UNDER THE WAGE DEFINITION OF THE LABOUR CODES CAN BE INTERPRETED IN MULTIPLE WAYS

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As is conspicuous from a bare reading of the definition of “wages”, which is *pari materia* across the four Codes, the exclusions are not to be regarded as “wages”. However, under certain circumstances, the payments made towards certain exclusions are to be taken into consideration while calculating “wages”. The first proviso to the definition of “wages” under the Code states that, for the purposes of calculating “wages”, in case the payments (exclusions) made to the employee under sub-clauses (a) to (i) (statutory bonus; amenities; employer PF contributions; conveyance/travel allowance; special payments arising out of employment; HRA; remuneration paid in compliance of award/settlement; overtime allowance; and commission) exceed 50% (or the percentage which the Central Government might notify in the future) of all the remuneration calculated under the clause, then the amount which exceeds such 50% will be deemed as “remuneration” and will accordingly be added as “wages”.

The wording of the proviso is a bit ambiguous and leads to two different interpretations which in turn yield two different results. It would be imperative to discuss both the interpretations:

- (i) First interpretation : If the exclusions exceed 50% of all the payments (inclusions + exclusions), the excess part is to be considered as “wages”**

As per this interpretation, if the payments made towards the exclusions [sub-clauses (a)

to (i)] exceed 50% of the total remuneration, then the portion of the exclusions which exceeds such 50% will be added to “wages”. The proponents of this interpretation argue that the term, “*one-half of the all remuneration calculated under this clause*” means that 50% of the total payments (inclusions + exclusions) made to the employees should be arrived at and then the same should be compared with the payments made by way of the exclusions made under sub-clauses (a) to (i). In a nutshell, this interpretation posits that if the specified exclusions are more than 50% of all the payments (inclusions + exclusions), then the excess is to be considered as part of wages. In a Press Information Bureau press release dated 23.11.2025, the following statement was made by the Ministry of Labour & Employment Government of India:

“For the purpose of calculation of benefits and social security contributions, the redefined wage includes basic pay, dearness allowance and retaining allowance. In case allowances and contributions exceed over 50% (as may be notified by the Central Government) of the total payment, excess amount shall be added to the wage. The social security contributions and benefits (like PF, gratuity, maternity benefits and bonus) will be based on a larger and fairer portion of pay, resulting in higher future benefits.”

This statement of the Government supports this interpretation. Further, an illustration was

circulated by the Ministry of Labour and Employment on 10.12.2025 wherein it had included the excluded components under the ambit of “total remuneration”. It, therefore, appears that the Central Government is favouring the first interpretation. Also, the Ministry of Labour & Employment released FAQs on its

website on 30.12.2025, the illustration set out under which supports this interpretation. The said illustrations are reproduced as follows:

Illustration released on the social media handles of the Ministry of Labour and Employment on 10.12.2025:

“Components	Before Codes	After Codes
<i>Wage (used for calculation of statutory deduction)</i>	<i>Rs.20,000</i>	<i>Rs.20,000+Rs.10,000 (As total allowances are more than 50% of the total remuneration hence the component more than 50% is added back to wages for statutory calculations)</i>
<i>Allowances</i>	<i>Rs.40,000</i>	<i>Rs.40,000</i>
<i>PF contribution Employer @12% on wage ceiling i.e. Rs.15,000*</i>	<i>Rs.1,800</i>	<i>Rs.1,800</i>
<i>PF contribution Employee @12% on wage ceiling i.e. Rs.15,000*</i>	<i>Rs.1,800</i>	<i>Rs.1,800</i>
<i>Take Home Salary</i>	<i>Rs.56,400</i>	<i>Rs.56,400</i>

- *Rs.15,000 is the present EPF wage ceiling which implies that only contributions upto a wage ceiling of Rs.15,000 is mandatory.*
- *There is no change in take-home pay if PF deduction is on statutory wage ceiling.*
- *In case the employee and employer agree they can voluntarily contribute on wages more than the statutory limit of Rs.15,000. There is no legal requirement for the same.”*

Illustration provided under the FAQs dated 30.12.2025:

*“Total remuneration: Rs.76,000 per month
Basic Pay + Dearness Allowance: Rs.20,000
Allowances: Rs.40,000
Other components (Gratuity and*

*retrenchment compensation): Rs.16,000
Total allowance paid: Rs.56,000
Max. allowance allowed for calculation of wages (50% of total remuneration): Rs.38,000
Excess allowance over 50% limit: Rs.2000
Rs.2000 shall be added back to wages*

(Basic Pay + DA) for statutory compliances.

Statutory calculations shall be made on revised wages: Rs.22,000"

- (ii) **Second interpretation : If the exclusions exceed 50% of the inclusions (Basic + DA+ retaining allowance + other allowances/components part of the inclusions), the excess part is to be considered as “wages”**

The 1st proviso to the definition of “wages” begins with the expression, “*if payments made by the employer to the employee under sub-clauses (a) to (i) exceeds one-half of the all remuneration calculated under this clause*”. It is imperative to note that the proviso itself does not refer to exclusions under sub-clauses (a) to (i) as “*remuneration*” but as “*payments*”. This gives rise to the assumption that payments made by way of the exclusions are not in the form of “*remuneration*”. Further, the last part of the proviso states that the excess part of the payments made as exclusions will be “*deemed as remuneration*” and will be added to wages. This solidifies the stance that the exclusions were not “*remuneration*” to begin with. Thus, in a nutshell, as per this interpretation, if the specified exclusions exceed 50% of the inclusions (all the remuneration, including Basic + DA + Retaining Allowance + All other components which are a part of remuneration), the excess part is to be considered as “*wages*”.

One may note that the second interpretation is, going at least by literal interpretation, stronger than the first one. Further, the second interpretation will increase the ambit of wages as the inclusions will form a larger chunk of the total payments. It is well settled law that if there are two possible interpretations, the one which is more favorable for the employees will prevail

[See, **State of Rajasthan & Others v. O.P. Gupta**¹]. Going by this, the Courts may be steadfast in adopting the second interpretation.

Further, the definition of “wages” uses the terms “means”, “includes” and “does not include”. When such is the case, the provision is to be interpreted in a restrictive manner. In the case of **Mahalakshmi Oil Mills v. State of A. P.**², the Apex Court has observed as under:

“By using the words ‘means, ‘includes’ and ‘does not include’ in section 2(1)(e) of the Act, the Parliament has exhaustively explained the meaning of the term ‘wages’ in that the words ‘means’ is a term of restriction, while the word ‘includes’ is a term of enlargement and when the words ‘means’ and ‘includes’ are used together to define a thing, the intention of the legislature is to supply restricted meaning to the terms.”

At the same time, it is acknowledged that if the second interpretation were to be followed, it might give rise to precarious and anomalous results for the employers. For e.g., going as per the second interpretation, if there are only two salary components, such as basic pay (inclusion) and HRA (exclusion), if the HRA component exceeds 50% of the basic pay, it will be deemed as “wages”. This will lead the employers to consider almost 75% of the total pay as “wages”. It is settled that law should not be interpreted in a manner which would lead to absurd results (See, **Dr. Jaishri Laxmanrao Patil v. The Chief Minister & Anr.**³). Therefore, there are some chances that the courts might adopt the 1st interpretation as well.

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1. Diary No. 27824/2020 dated 19.09.2022 (SC).
2. AIR 1989 SC 335.
3. CA No. 3123/2020 dated 05.05.2021 (SC).