

The Payment Of Bonus Act 1965



THE PAYMENT OF BONUS ACT, 1965

ACT NO. 21 OF 1965

[25th September, 1965.]

1*[An Act to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith.]

BE it enacted by Parliament in the Sixteenth Year of the Republic of India as follows:--

1.

Short title extent and application.

1. Short title extent and application.- (1) This Act may be called the Payment of Bonus Act, 1965.

(2) It extends to the whole of India 2***.

(3) Save as otherwise provided in this Act, it shall apply to--

(a) every factory; and

(b) every other establishment in which twenty or more persons are employed on any day during an accounting year:

3*[Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act with effect from such accounting year as may be specified in the notification, to any establishment or class of establishments [including an establishment being a factory within the meaning of sub-clause (ii) of clause (m) of section 2 of the Factories Act, 1948 (63 of 1948)] employing such number of persons less than twenty as may be specified in the notification; so, however, that the number of persons so specified shall in no case be less than ten.]

(4) Save as otherwise provided in this Act, the provisions of this Act shall, in relation to a factory or other establishment to which this Act applies, have effect in respect of the accounting year commencing on any day in the year 1964 and in respect of every subsequent accounting year:

4*[Provided that in relation to the State of Jammu and Kashmir, the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year shall be construed as reference to the accounting year commencing on any day in the year 1968 and every subsequent accounting year:]

-
1. Subs. by Act 23 of 1976, s. 2, for the long title (w.e.f. 25-9-1975).
 2. The words "except the State of Jammu and Kashmir" omitted by Act 51 of 1970, s. 2 and Sch.
 3. Ins. by Act 23 of 1976, s. 3 (w.e.f. 25-9-1975).
 4. Added by Act 51 of 1970, s. 2 and Sch. (w.e.f. 1-9-1971).

426

1*[Provided further that when the provisions of this Act have been made applicable to any establishment or class of establishments by the issue of a notification under the proviso to sub-section (3), the reference to the accounting year commencing on any day in the year 1964 and every subsequent accounting year or, as the case may be, the reference to the accounting year commencing on any day in the year

1968 and every subsequent accounting year, shall, in relation to such establishment or class of establishments, be construed as a reference to the accounting year specified in such notification and every subsequent accounting year.]

(5) An establishment to which this Act applies 2*** shall continue to be governed by this Act notwithstanding that the number of persons employed therein falls below twenty 1*[or, as the case may be, the number specified in the notification issued under the proviso to sub-section (3)].

2.

Definitions.

2. Definitions.- In this Act, unless the context otherwise requires,--

(1) "accounting year" means--

(i) in relation to a corporation, the year ending on the day on which the books and accounts of the corporation are to be closed and balanced;

(ii) in relation to a company, the period in respect of which any profit and loss account of the company laid before it in annual general meeting is made up, whether that period is a year or not;

(iii) in any other case--

(a) the year commencing on the 1st day of April; or

(b) if the accounts of an establishment maintained by the employer thereof are closed and balanced on any day other than the 31st day of March, then, at the option of the employer, the year ending on the day on which its accounts are so closed and balanced:

Provided that an option once exercised by the employer under paragraph (b) of this sub-clause shall not again be exercised except with the previous permission in writing of the prescribed authority and upon such conditions as that authority may think fit;

(2) "agricultural income" shall have the same meaning as in the Income-tax Act;

-
1. Ins. by Act 23 of 1976, s. 3 (w.e.f. 25-9-1975).
 2. The words, brackets, letter and figure "under clause (b) of sub-section (3)" omitted by s. 3, ibid. (w.e.f. 25-9-1975).

427

(3) "agricultural income-tax" means any law for the time being in force relating to the levy of tax on agricultural income;

(4) "allocable surplus" means--

(a) in relation to an employer, being a company 1*[other than a banking company] which has not made the arrangements prescribed under the Income-tax Act for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of section 194 of that Act, sixty-seven per cent. of the available surplus in an accounting year;

(b) in any other case, sixty per cent. of such available surplus;

2* * * * *

(5) "appropriate Government" means--

(i) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (14 of 1947), is the Central Government, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which that other establishment is situate;

(6) "available surplus" means the available surplus computed under section 5;

(7) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947), or by any other authority constituted under any corresponding law relating to investigation and settlement of industrial disputes in force in a State and includes an arbitration award made under section 10A of that Act or under that law;

(8) "banking company" means a banking company as defined in section 5 of the Banking Companies Act, 1949 (10 of 1949), and includes the State Bank of India, any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), 3*[any corresponding new bank specified in the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970). 1*[any corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and

-
1. Ins. by Act 66 of 1980, s. 2 (w.e.f. 21-8-1980).
 2. Certain words omitted by Act 23 of 1976, s. 4 (w.e.f. 25-9-1975).
 3. Ins. by s. 4, ibid. (w.e.f. 25-9-1975).

428

Transfer of Undertakings) Act, 1980 (66 of 1980),] any co-operative bank as defined in clause (bii) of section 2 of the Reserve Bank of India Act, 1934 (2 of 1934),] and any other banking institution which may be notified in this behalf by the Central Government;

(9) "company" means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), and includes a foreign company within the meaning of section 591 of that Act;

(10) "co-operative society" means a society registered or deemed to be registered under the Co-operative Societies Act, 1912 (2 of 1912), or any other law for the time being in force in any State relating to co-operative societies;

(11) "corporation" means any body corporate established by or under any Central, Provincial or State Act but does not include a company or a co-operative society;

(12) "direct tax" means--

(a) any tax chargeable under--

(i) the Income-tax Act;

(ii) the Super Profits Tax Act, 1963 (14 of 1963);

(iii) the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(iv) the agricultural income-tax law; and

(b) any other tax which, having regard to its nature or incidence, may be declared by the Central Government, by notification in the Official Gazette, to be a direct tax for the purposes of this Act;

(13) "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding 1*[three thousand and five hundred rupees] per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward whether the terms of employment be express or implied;

(14) "employer" includes--

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased

1. Subs. by Act 34 of 1995, s. 2 (w.e.f. 1-4-1993).

429

owner or occupier and where a person has been named as a manager of the factory under clause (f) of sub-section (I) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

(15) "establishment in private sector" means any establishment other than an establishment in public sector;

(16) "establishment in public sector" means an establishment owned, controlled or managed by--

(a) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(b) a corporation in which not less than forty per cent. of its capital is held (whether singly or taken together) by--

(i) the Government; or

(ii) the Reserve Bank of India; or

(iii) a corporation owned by the Government or the Reserve Bank of India;

(17) "factory" shall have the same meaning as in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

(18) "gross profits" means the gross profits calculated under section 4;

- (19) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);
- (20) "prescribed" means prescribed by rules made under this Act;
- (21) "salary or wage" means all remuneration (other than remuneration in respect of overtime work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes 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), but does not include--

(i) any other allowance which the employee is for the time being entitled to;

430

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex gratia payment made to him;

(vii) any commission payable to the employee.

Explanation.--Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall, for the purpose of this clause, be deemed to form part of the salary or wage of such employee;

- (22) words and expressions used but not defined in this Act and defined in the Industrial Disputes Act, 1947 (14 of 1947), shall have the meanings respectively assigned to them in that Act.

3.

Establishments to include departments, undertakings and branches.

3. Establishments to include departments, undertakings and branches.- Where an establishment consists of different departments or undertakings or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches shall be treated as parts of the same establishment for the purpose of computation of bonus under this Act:

Provided that where for any accounting year a separate balance-sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act

for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

4.

Computation of gross profits.

1*[4. Computation of gross profits.- The gross profits derived by an employer from an establishment in respect of any accounting year shall--

(a) in the case of a banking company, be calculated in the manner specified in the First Schedule;

1. Subs. by Act 66 of 1980, s. 3, for s. 4 (w.e.f. 21-8-1980).

431

(b) in any other case, be calculated in the manner specified in the Second Schedule.]

5.

Computation of available surplus.

5. Computation of available surplus.- The available surplus in respect of any accounting year shall be the gross profits for that year after deducting therefrom the sums referred to in section 6:

1*[Provided that the available surplus in respect of the accounting year commencing on any day in the year 1968 and in respect of every subsequent accounting year shall be the aggregate of--

(a) the gross profits for that accounting year after deducting therefrom the sums referred to in section 6; and

(b) an amount equal to the difference between--

(i) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for the immediately preceding accounting year; and

(ii) the direct tax, calculated in accordance with the provisions of section 7, in respect of an amount equal to the gross profits of the employer for such preceding accounting year after deducting therefrom the amount of bonus which the employer has paid or is liable to pay to his employees in accordance with the provisions of this Act for that year.]

6.

Sums deductible from gross profits.

6. Sums deductible from gross profits.- The following sums shall be deducted from the gross profits as prior charges, namely:--

(a) any amount by way of depreciation admissible in accordance with the provisions of sub-section (1) of section 32 of the Income-tax Act, or in accordance with the provisions of the agricultural income-tax law, as the case may be:

Provided that where an employer has been paying bonus to his

employees under a settlement or an award or agreement made before the 29th May, 1965, and subsisting on that date after deducting from the gross profits notional normal depreciation, then, the amount of depreciation to be deducted under this clause shall, at the option of such employer (such option to be exercised once and within one year from that date) continue to be such notional normal depreciation;

1. Added by Act 8 of 1969, s. 2.

432

- (b) any amount by way of 1*[development rebate or investment allowance or development allowance] which the employer is entitled to deduct from his income under the Income-tax Act;
- (c) subject to the provisions of section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
- (d) such further sums as are specified in respect of the employer in the 2*[Third Schedule].

7.

Calculation of direct tax payable by the employer.

7. Calculation of direct tax payable by the employer.- 3*[Any direct tax payable by the employer] for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for that year, namely:--

- (a) in calculating such tax no account shall be taken of--
 - (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct taxes;
 - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under sub-section (2) of section 32 of the Income-tax Act;
 - (iii) any exemption conferred on the employer under section 84 of the Income-tax Act or of any deduction to which he is entitled under sub-section (1) of section 101 of that Act, as in force immediately before the commencement of the Finance Act, 1965 (10 of 1965);
- (b) where the employer is a religious or a charitable institution to which the provisions of section 32 do not apply and the whole or any part of its income is exempt from tax under the Income-tax Act, then, with respect to the income so exempted, such institution shall be treated as if it were a company in which the public are substantially interested within the meaning of that Act;
- (c) where the employer is an individual or a Hindu undivided family, the tax payable by such employer under the Income-tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income;
- (d) where the income of any employer includes any profits

and gains derived from the export of any goods or merchandise out of India and any rebate on such income is allowed under any law

-
1. Subs. by Act 66 of 1980, s. 4, for "development rebate or development allowance" (w.e.f. 21-8-1980).
 2. Subs. by s. 4, *ibid.*, for "Second Schedule" (w.e.f. 21-8-1980).
 3. Subs. by Act 8 of 1969, s. 3, for "For the purpose of clause (c) of section 6, any direct tax payable by the employer".

433

for the time being in force relating to direct taxes, then, no account shall be taken of such rebate;

- (e) no account shall be taken of any rebate 1*[(other than development rebate or investment allowance or development allowance)] or credit or relief or deduction (not here in before mentioned in this section) in the payment of any direct tax allowed under any law for the time being in force relating to direct taxes or under the relevant annual Finance Act, for the development of any industry.

8.

Eligibility for bonus.

8. Eligibility for bonus.- Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

9.

Disqualification for bonus.

9. Disqualification for bonus.- Notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for--

- (a) fraud; or
- (b) riotous or violent behaviour while on the premises of the establishment; or
- (c) theft, misappropriation or sabotage of any property of the establishment.

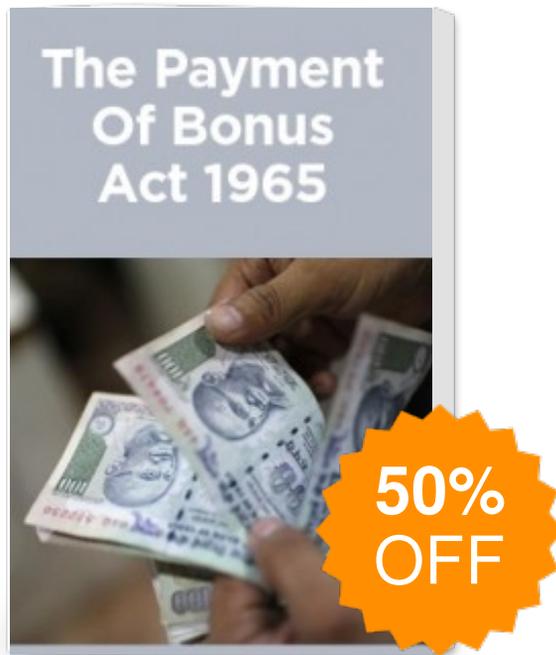
10.

Payment of minimum bonus.

2*[10. Payment of minimum bonus.- Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employee as if for the words "one hundred rupees", the words "sixty rupees" were substituted.

The Payment Of Bonus Act 1965



Publisher : Faculty Notes

Author : Panel Of Experts

Type the URL : <http://www.kopykitab.com/product/9518>



Get this eBook