IPCC

Business Laws

THE PAYMENT OF BONUS ACT, 1965

Revision Summary based on Arihant Spiral and Bare Act

Special features:

- *Full coverage of Companies Act, 1956*
- *Strictly based on Bare Act and Arihant Spiral*
- *With summarize and easy to remember format*
- *Useful sections and Landmark judgments*

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THE PAYMENT OF BONUS ACT, 1965

Application of the Act

→ The Act extends to the whole of India is applicable to every factory as defined in the Factories Act. 1948, every other establishment in which 20 or more persons are employed on any day during an accounting year.

→ However, the appropriate Government may apply the provision of this Act to any establishment employing between 10 and 19 workers.

→ If an establishment consists of different departments or branches at different locations, it shall include such departments/branches also. But if for any accounting year a separate set of accounts (balance sheet and profit & loss account) are prepared for a particular department or branch, then such department or branch shall be taken as a separate establishment for that accounting year.(*Section* 3)

Act not apply to certain establishment [Section 32]

(i) Employees employed by LIC;

(ii) Seamen as defined in Section 3 (42) of the Merchant Shipping Act ,1958;

(iii) Employees registered or listed under any scheme made under the Dock Workers Act,1948 and employed by the registered or listed employers;

(iv) Employees employed by an establishment engaged in any industry carried on by or under the authority of any department Government or a local authority;

(v) Employees employed by the Indian Red Cross Society or any-other institution of a like nature ;

(vi) Universities and other educational institutions;

(vii) Institutions established not for purpose of profit;

(viii) Employees employed through contractors on building operations ;

(ix) Employees employed by the RBI;

(x) Employees employed by certain financial institutions.

(xi) Employees employed by inland water transport establishment. Appropriate Govt. may exempt any establishment.

Definitions

1. Accounting year [Section 2 (1)].

In relation to

(i) A corporation the year ending on the day on which its books and accounts are to be closed and balanced;

(ii) A company, the period in respect of which any profit and loss account of the company laid before it in AGM;

In any other case

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

(b) If the accounts of an establishment 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;
However once an option has been exercised, it can not be again exercised except with previous permission of prescribed authority.

2. Appropriate Government; [Section 2 (5)].

In relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government; in other case state Govt.

3. Award [Section 2 (7)]

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, 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 l0 of that Act or under that Law;

Employee:-
It means any person (other than apprentice) employed on salary or wages not exceeding Rs. 10,000 pm. to do any kind of work**. [Section 2(13)]**

Allocable Surplus Section 2 (4)

→ Where the employer is a foreign company (other than a banking company); the allocable surplus is **67%** of available Surplus.

→ The foreign company refers to a company which has not made the arrangements prescribed under the Income Tax Act for the declaration and payment of dividends in India.

→ In any other **case 60%** of the available surplus.

4. Establishment in Private Sector [Section 2 (15)]

→ Any establishment other than an establishment in public sector;

5. Establishment in Public Sector [Section 2 (16)]

→ An establishment owned, controlled or managed by

(a) A Government company under Companies Act, 1956

(b) A corporation in which not less than 40% of its capital is held (singly or together) by
   * The Govt. or
   * The R B I or
   * A corporation owned by the Govt. or the RBI.

Gross profit [Section 2(18)]: Gross profit means gross profit calculated *u/s* 4.

Employer (Section 2(14)] Includes:

(i) In relation to an establishment which is a factory, the owner or occupier of the factory, including agent of such owner, the legal representative of a deceased owner or occupier, of the factory , and where a person has been named as a manager of the factory under Section 7 of the Factories Act, 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 or managing director, such manager or managing director.

6. Salary or wage [Section 2 (21)]

→ All remuneration 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

→ But does not include -

(1) Overtime wage
(2) Any other allowance other than D.A;
(3) The value of any house accommodation or of supply of light, water, medical attendance or other articles;
(4) Any travelling concession;
(5) Any bonus;
(6) 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
(7) Any retrenchment compensation or any gratuity or other retirement benefit payable to ".' the employee or any ex-gratia payment made to him
(8) Any commission payable to the employee

Applicability to Public Sector (Section 20):
The Act will apply to the establishment in the public sector only if following conditions are satisfied:
(i) The establishment is engaged during an accounting year in the sale of any goods or manufactured by it or in rendering of services in completion with an establishment in Pvt. Sector.
(ii) The income from the aforesaid sale or service or both is it not less than 20% income of the establishment.

Disqualification of Bonus (Section9)
An employee is disqualified from receiving bonus if he has been dismissed from service for fraud, riotous or violent behaviour while on the premises of the establishment or theft misappropriation or sabotage of any property of the establishment.

CALCULATION OF BONUS
Step 1: Calculate the Gross Profit according to:
(i) First schedule in case of a banking company, or
(ii) Second schedule in any other case.
Step 2: Calculation the Available surplus which is the sum total of I & II as below:

I *Take Gross profit as per step 1 and deduct the following:*
(i) Depreciation under section 32 of the Income Tax Act
(ii) Development rebate / investment allowance / development allowance
(iii) Direct taxes payable for the accounting year as per section 7
(iv) Sum specified in the Third Schedule

II Direct taxes as per section 7 in respect of Gross profits for the immediately preceding accounting year minus Direct taxes as per section 7 in respects of gross profit as reduced by the bonus amount for the immediately preceding accounting year.

3: Calculate Allocable Surplus
Allocable Surplus = 60 % of Available Surplus
67 % in case foreign company (other than Banking Companies)

Calculation of bonus with respect to certain employees [Section 12]

The bonus pay-able to employee under Section 10 or, as the case may be under Section 11, drawing "salary or wage" exceeding Rs. 3,500 per month shall be calculated as if his salary or wages were Rs. 3,500-per month.
Proportionate reduction in bonus [Section 13] - Where an employee has not worked of all the working days in a accounting year the minimum bonus of Rs.100-or-as the Case-may be of Rs. 60 is such bonus in higher than 8.33% of his salary or wage of the days he has worked in that accounting year, shall be proportionately reduced.

Working days
Includes the days on the day on which-
(a) He has been laid off
(b) He has been on leave with salary or wage;
(c) He has been absent due to temporary disablement,
(d) The employed has been on maternity leave with salary or wage during.

Calculation of Gross Profit: [Section 4]
It is calculated as per first Schedule in case of a banking company or as per Second Schedule in any other Case;
[Section 2(6)] Means available surplus computed u/s 5.

Calculation of direct-tax payable by the Employers [*Section* 7]
Be calculated at the rates applicable to the income the employer of that year.

1. In calculating no account shall be taken of the following matters,
   (a) Any loss incurred by the employer in respects of any previous accounting year, and carried forward.
   (b) Any arrears of depreciation under Section 32 (2) of the Income tax Act; and
   (c) Any exemption conferred on the employer under Section 84 of the income Tax Act.
2. Where the employer is a religious or charitable institution and the whole or part of its income is exempt from tax then, with respect to the income so exempted, such institutions shall be treated as if it were a company in which the public are substantially interested within the meaning of the Act.
3. Where the employer is an individual or a H.U.F. then the tax payable by such employer shall be calculated on the basis that the income derived by him from the establishment is his only income.
4. Where the income of the employer includes any profits and gain derived from the export and any rebate on such income is allowed then no account shall be taken of such rebate.
5. No account shall be taken of any rebate (other than the development rebate or investment allowance or development allowance) or credit or relief or deduction in the payment of direct tax.

Eligibility for bonus:
He has worked in the establishment for not less than 30 working days in that year.

Set On and Set Off:-
For calculating the amount of bonus in respect of an accounting year allocable surplus is to be adjusted for amount of set on and set off from the previous years as per provisions of Section15 of the Act

RULES
1. If in an accounting year, the allocable surplus exceeds the amount of maximum bonus payable, then such excess shall subject to a limit 20% of total salary or wage of the employees in that account year be carried forward for being set on in the succeeding accounting years, this can be utilized upto fourth accounting year for the payment of bonus in the manner illustrated in **Fourth Schedule** to the act.
2. If in any accounting year, there is no allocable surplus or the allocable surplus falls short of the minimum bonus payable and there is no amount or sufficient amount carried forward and set on which could be utilized for paying minimum bonus. In such a situation, minimum amount or the deficiency, as the case may be shall be carried forward for being set off in the succeeding accounting year and so on upto on and inclusive of the 4th accounting year in the manner illustrated in fourth schedule.

In calculating bonus for the succeeding accounting year, the amount of set on or set off carried forward from the earliest accounting year shall first be taken into account.

Minimum Bonus Section 10
8.33% of the salary or wages earned by the employee during the accounting year, or Rs. 100 (Rs. 60 in case of workers below 15 years of age), whichever is higher.

Maximum Bonus Section 11
If in any accounting year the allocable surplus exceeds the amount of minimum bonus, the employer is bound to pay to every employee in respect of that accounting year- bonus which shall be subject to a maximum of 20% of such salary or wage.

Bonus in Case of New Establishments
Special provisions with respect to newly set-up establishments [Section 16]

I. First five accounting years: In the first five accounting years following the accounting year in which the employer sells goods produced or manufactured by him or renders services, bonus .shall be payable only in respect of the accounting year in which the employer derives profit from such establishment. Set on and set off of allocable surplus shall not be made.
II. for the sixth accounting year set on or set off be made in the manner illustrated in the fourth schedule, taking into account the set off in respect of the 5tb , and 6th accounting years;
III. for the 7th accounting year, the same principle is to be followed but the excess or deficiency of the allocable surplus set off in respect of the 5th, 6th and 7th accounting years has to be taken into account
IV. 8th accounting year : The provisions of section 15 shall apply in relation to such establishment as the apply in relation to any other establishment [Sub section -IC]

Special provisions with respect to bonus linked with production or productivity (Section 31A)

→ It has been provided that such agreement or settlements whereby the employees relinquish their right to receive the minimum bonus under section 10 shall be null and void in so far as it purports to deprive them of such right. It has been further provided that such employees shall not be entitled to be paid such bonus in excess of 20% of the salary or wages earned by them during the relevant accounting year.
→ If in any accounting year an employee is found guilty of misconduct causing financial loss to the employer then the employer can lawfully deduct the amount of loss from the amount of bonus payable by him to the employee in respect of that accounting year only.

Recovery of the bonus due from an employer [Section 21]

→ The employee himself or any other person authorised by him. Or heirs may make an application to the appropriate Government for the recovery of the money due to him. If the appropriate Government or such authority, as the appropriate Government may specify in this behalf, is satisfied that any money is so due it shall issue a certificate for the amount to the collector who shall proceed to recover the same in the same manner as an arrears of land revenue.

Inspectors
To be appointed by the appropriate Government [Section 27 (1)]. An inspector may

(i) At any reasonable time and with such assistance if any as he thinks fit enter any establishment or any premises connected therewith and require anyone found in charge any accounts, books, registers and other documents.
(ii) Examine with respect to any matter relevant to any of the purposes aforesaid the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith of any person whom the inspector has reasonable cause to believe to be to have been employee in the establishment;
(iii) Examine with respect to any matter relevant to any of the purposes aforesaid, the employer, his agent or servant or any other person found in charge of the establishment.
(iv) Make copies of or take extracts from any book.
(v) Exercise such other powers as may be prescribed [Section 27 (2)].

An inspector is deemed to be a public servant within the meaning of the Indian Penal Code, 1860 [Section 27 (3)].

Deductions Permissible Form Bonus

→ Sections 17 and 18 provide for following deductions which can be made from the amount of bonus payable;

(i) Any puja bonus or other customary bonus [Section 17 (a)] ;

(ii) Any part of the bonus payable under the Act which has been paid before its due date or interim bonus [sec 17 (b)]

(iii) Any financial loss caused by the misconduct of the employee (Section 18).

Time Limit for Payment of Bonus (Section19)

→ The bonus shall be paid in cash within a period of eight months from the close of the accounting year, or within one month from the date on which the award given by a Tribunal under the Industrial Disputes Act becomes enforceable However, the Government can extend the period of payment from eight months upto two years on receiving application from an employer, if it thinks fit.

Disputes under the Act Sec 22

Section 22 provides that if any dispute arises at any stage between any employer and employees in respect of bonus payable or with respect to application of the Act to the public sector, such a dispute will be considered as an industrial-dispute referable for conciliation, arbitration and adjudication under the industrial Disputes Act, 1947 or any other corresponding law for investigation and settlement of disputes in force in any state.

Presumptions about Accuracy of Accounts (Section23)

Where during the course of proceedings before any arbitrator or Tribunal under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of disputes in force in a State if

1. A corporation or a company produces a balance sheet or statement of accounts duly audited by the C&AG of India or a qualified auditor, the same may be presumed to be accurate. However, if the said authority is satisfied that the statements and particulars contained in the balance sheet or profit and loss statement are not accurate, it may take steps to find out the accuracy of the same.
2. A trade union being a party to the dispute or employees who are a party to the dispute require any clarification relating to any item in the balance sheet or profit and loss account the said authority may if it is satisfied, direct the company or corporation to furnish such clarification.

Banking Company Accounts not to be questioned [Section24]

→ If any dispute regarding payment of bonus in respect of a banking company is referred for adjudication to a arbitrator or Tribunal and during the course of the proceedings the accounts of the **banking-company** duly audited are produced before it the said authority shall not permit any trade union or employees to question the correctness of such accounts.

→ However, the trade union or employer may be permitted to obtain such information as is necessary for verifying the amount of bonus. Further they cannot be permitted to obtain any information which the banking company is not compelled to furnish under Section 34 A of the Banking Regulation Act 1949.

Maintenance of Resisters, Records etc. [Section26]

The employer has to prepare and maintain following three kinds of registers

1. Register showing the computation of allocable surplus in Form A;
2. Register showing set on and set off of the allocable surplus in Form B; and
3. Register showing the details of the amount of bonus due to each employee, deductions therefrom and the amount disbursed in Form C.

Power of exemption (Section 36)

→ The appropriate Government may, having regards to the financial position and other relevant circumstances of any establishment or class of establishment, exempt, by notification in the Official *Gaxette*, such establishment or class of establishment from all or any of the provisions of the Payment of Bonus Act. It may do so if it is of opinion that it will not be in public interest or to apply all or any of the provisions of the Act to such establishment or class of establishment. It may exempt such establishment or class of establishment from the application or such provisions of the Act for such period as may be specified in the notification and impose such conditions as it may think fit to impose.

Power of make rules (Section 38)

→ The Central Government may make rules for the purpose of carrying into effect the provisions of the Act.

→ Every rule made under Section 38 shall be laid, as soon as may be after it is made, before each House of Parliament while it is session for a total period of 30 days. This period of 30 days may be comprised in 1 session or in 2 or more successive sessions. If both Houses agree in making any modification in the rules, the rule shall thereafter have effect only in such modified form. If both Houses agree that the rule should not be made, the rule shall be of no effect. But any such modification or annulment shall be without prejudice to the validity of anything done under that rule.