



PUNJAB & HARYANA HIGH COURT
Hon'ble Ms. Ritu Bahri, J.
C.W.P. No. 13652/1994, D/-28-5-2013

Gurdaspur Co-operative Sugar Mills Ltd.
vs.
Presiding Officer and Another

PAYMENT OF BONUS ACT, 1965 - Section 16(1), *Explanation II* - New establishment - Petitioner being new establishment - In first five accounting years, was required to make payment of bonus - Only in respect of accounting year - In which the employer derives profit from such establishment - An employer shall not be deemed to have earned derived profit, if the losses incurred by him are fully set up against his profit in any accounting year - Petitioner having a new establishment and on being in losses in first four years is entitled for exemption under section 16 (1) *Explanation* from payment of bonus to its employees. Paras 7 and 10

For Petitioner: Mr. Vikas Singh, Advocate.

For Respondents: Mr. Gurdip Singh, Advocate.

IMPORTANT POINTS

- No bonus will be payable by a new establishment for the first five years when there has been no profit.

JUDGEMENT

RITU BAHRI, J.-

1. Challenge in this petition is to award dated 9.5.1994 (P-5) whereby the reference has been answered in favour of the workman and the respondents have been directed to pay the bonus for the year 1982-83 and 1983-84.

Brief facts of the case are that M/s Punjab Khand Udyog Ltd., a company registered under the Companies Act with its registered office at SCO 125-127, Sector 17-B, Chandigarh pursuant to the scheme of arrangement with the share-holders was ordered to be wound-up assets and liabilities of the petitioner were taken over by the petitioner. A demand was raised by the workman Punjab Khand Udyog Ltd. claiming a bonus @ 20% on the plea that the petitioner company had earned profit for the years 1982-83 and 1983-84.

2. A specific stand was taken in the written statement that the factory at Gurdaspur had commenced production in the year 1981-82. There had been consistent loss in the year 1981-82 of Rs. 2,71,81,499.59 and again in the year 1982-83. The accumulative losses had increased to Rs. 3,30,25,111.99. However, there was some profit in the year 1983-84 but after adjustment, accumulated losses for the year 1983-84 were Rs. 2,79,46,394.58. The balance sheet depicted above loss was annexed with the written statement (P-2). The workman had filed replication dated 26.7.1987 (P-3). An affidavit was filed by the petitioner (P-4) stating that the Punjab Khand Udyog Ltd. had ceased to exist and the mill is now being run by Gurdaspur Cooperative Sugar Mills Ltd., Gurdaspur that the mill was in loss.

3. The Presiding Officer passed an award dated 9.5.1994 (P-5) allowed the reference in favour of the workman. The Management had led no evidence that it was running into loss and bonus could not be paid. No evidence was led by the workers as to how much profits have been earned by the Management. The claim for 20% bonus was declined and a direction was given to the management to pay statutory minimum bonus for the year 1982-83 and 1983-84.

4. Mr. Vikas Singh, learned counsel for the petitioner has argued that after M/s Punjab Khand Udyog Ltd. wound up, a new establishment/company had come into existence i.e., Gurdaspur Cooperative Sugar Mills Ltd. in the year 1981. The Management was eligible for protection for five years as per Section 16(1A) of the Act. In the first five accounting year, the establishment was to make payment of bonus only in respect of the accounting year in which the employer derives profit from such establishment. As per *Explanation II* of Section 16(1A) of the Act, an employer shall not be deemed to have been earned derived profit in any accounting year, if the losses has not been fully set up against his profits. The balance sheet statement attached with the written statement as per Section 23 of the Act, was not required to be proved by the Management if they had been audited by the Comptroller and Auditor-General of India or by auditors duly qualified to act as auditors of Companies under sub-section (1) of Section 226 of the Companies Act, 1956 (for short 'the 1956 Act').

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5. Mr. Gurdip Singh, learned counsel for respondent No. 2, on the other hand has argued that the Management had made huge profits during the year 1983-84. It was admitted that the commercial production commenced during the year 1981. The Management had not produced the balance sheet of profit and loss and statement of accounts for the years 1981-82, 1982-83 and 1983-84 along with written statement. They had placed on record some portion/ information of the balance sheet and a direction was sought from the Tribunal directing the Management to file complete balance sheet. He has supported the award of the Tribunal on the ground that instead of the Tribunal has awarded the minimum statutory bonus instead of 20% as claimed in the reference for the year 1982-83 and 1983-84.

6. The Act was enacted pursuant to Commission's Report dated 24.1.1964, which was set up to examine a comprehensive manner. The Act is based on sharing of the profit with the employee working in the establishment. As per Section 10 of the Act, it is mandatory for an employer to make the payment of minimum bonus for an accounting year. As per Section 11, the allocable surplus exceeds the amount of minimum bonus payable to the employee, the employer was bound to pay every employee bonus subject to maximum of 20% of salary or wage of the employee. As per Section 16 of the Act, a special provision has been made with respect to certain establishments. Section 16 of the Act reads as under:

"16. *Special provisions with respect to certain establishments.* -(1) Where an establishment is newly set up, whether before or after the commencement of this Act, the employees of such establishment shall be entitled to be paid bonus under this Act in accordance with the provisions of sub-section (1A), (1B) and (1C).

(1A) In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment and such bonus shall be calculated in accordance with the provisions of this Act in relation to that year, but without applying the provisions of section 15.

Explanation I. -For the purpose of sub-section (1), an establishment shall not be deemed to be newly set up merely by reason of a change in its location, management, name or ownership.

Explanation II. -For the purpose of subsection (1A), an employer shall not be deemed to have derived profit in any accounting year unless-

(a) he has made provision for that year's depreciation to which he is entitled under the Income-tax Act or, as the case may be, under the agricultural income-tax law; and

(b) the arrears of such depreciation and losses incurred by him in respect of the establishment for the previous accounting years have been fully set off against his profits.

Explanation III. -For the purposes of subsection (1A), (1B) and (1C), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or an oil-field shall not be taken into consideration and where any question arises with regard to such production or manufacture, the decision of the appropriate Government, made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called in question by any court or other authority.]"

7. As per Section 16(1A) of the Act, the establishment in the first five accounting year was required to make the payment of bonus only in respect of the accounting year in which the employer derives profit from such establishment. The method of calculation of bonus was to be made as per provisions of the Act. As per *Explanation II* of Section 16, an employer shall not be deemed to have been earned derived profit if the loss incurred by him are fully set up against his profit in any accounting year has been fully set up against his profits. As per affidavit dated 18.5.1993 (P-4) filed by Chief Accounts Officer in which he has given the details of the losses incurred in the three infancy year along with the profit earned in the year 1983-84. The company remained in loss of Rs. 2,79,46,394.58 in the year ending 1983-84.

8. The undisputed facts between the parties are that the Company was started commercial production in the year 1981 and as per stand taken before the Labour Court, it had earned only profit for one year i.e., 1983 and after calculating the losses, the company was not in profit in first five years. The claim of bonus for the year 1983-84 in the first five years of commenced production is not made out. This question came up for consideration before Hon'ble the Supreme Court in the case of *Alloy Steel Project v. Workmen*, (1971) 1 SCC 536. After examining the provision of Section 16 of the Act, Hon'ble the Supreme Court has held that Alloy Steel Project was part of Hindustan Steel Ltd., but for the for the purpose of production and Payment of Bonus Act it was a separate establishment. Hon'ble the Supreme Court has observed as under:

"Sub-section (1) of Section 16 grants exemption from payment of bonus to establishments newly set up for a period of six years following



the accounting year in which the goods produced or manufactured are sold for the first time and, in the alternative up to the year when the new establishment results in profit, whichever is earlier. If the Alloy Steel Project is treated as an establishment newly set up for purposes of Section 16(1), the exemption claimed would be fully justified. Section 16(2) of the Act makes it clear that the provisions of sub-section (1) are to apply even to new departments, undertakings or branches set up by existing establishments. Consequently, even if Alloy Steel Project is treated as a new undertaking set up by the existing establishments of Hindustan Steel Ltd., the exemption under Section 16(1) would be available to it."

9. This view of Hon'ble the Supreme Court has been followed in the case of *The Workmen of H.M.T. and another v. The Presiding Officer, National Tribunal Calcutta and others*, 1973 (26) FLR 311 (SC): (1973) 10 SCLJ 251 as well as in the case of *Delhi Cloth and General Mills Co. Ltd. v. Workmen*, (1972) 1 SCR 594.

10. The Management of the unit was taken over by the present petitioner in 1980 from M/s Punjab Khand Udyog Ltd. Hence, it is new undertaking. The Management went into production in the year 1980-81 and the company went into profit in the year 1983-84. However, in the previous two years *i.e.*, 1981-82 and 1982-83, it has been consistently in the losses. The petitioner having a new establishment and on being in losses in first four years is entitled for exemption under Section 16(1) *Exp. II* from payment of bonus to its employees. At this stage, there is no need to go into the question whether the balance sheet was duly proved by calling the employees from the department as the fact that Company was in loss in first five years is not disputed by the counsel appearing for the respondents.

11. Consequently, the writ petition is allowed. Award dated 9.5.1994 (P-5) is set aside. However, there will be no order as to costs.

Petition Allowed.

Ref: LLR

If you have any questions, feel free to reach out to us on WhatsApp at Jay Shah - +91 9167121333