

Fringe benefits.

115WB. (1) For the purposes of this Chapter, “fringe benefits” means any consideration for employment provided by way of—

- (a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employee or employees);
- (b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members; [***]
- (c) any contribution by the employer to an approved superannuation fund for employees; and
- (d) any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees).

Explanation.—For the purposes of this clause,—

- (i) “specified security” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and, where employees’ stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme;
- (ii) “sweat equity shares” means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

(2) The fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has, in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains) incurred any expense on, or made any payment for, the following purposes, namely:—

- (A) entertainment;
- (B) provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade but does not include—
 - (i) any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory;
 - (ii) any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets;
 - (iii) any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed;
- (C) conference (other than fee for participation by the employees in any conference).

Explanation.—For the purposes of this clause, any expenditure on conveyance, tour and travel (including foreign travel), on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference;

(D) sales promotion including publicity:

Provided that any expenditure on advertisement,—

- (i) being the expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system;
- (ii) being the expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition;
- (iii) being the expenditure on sponsorship of any sports event or any other event organised by any Government agency or trade association or body;
- (iv) being the expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court or tribunal;
- (v) being the expenditure on advertisement by way of signs, art work, painting, banners, awnings, direct mail, electric spectacles, kiosks, hoardings, bill boards, display of products or by way of such other medium of advertisement; [***]
- (vi) being the expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above;
- (vii) being the expenditure on distribution of samples either free of cost or at concessional rate; and
- (viii) being the expenditure by way of payment to any person of repute for promoting the sale of goods or services of the business of the employer,
shall not be considered as expenditure on sales promotion including publicity;

(E) employees' welfare.

Explanation.—For the purposes of this clause, any expenditure incurred or payment made to—

- (i) fulfil any statutory obligation; or
- (ii) mitigate occupational hazards; or
- (iii) provide first aid facilities in the hospital or dispensary run by the employer; or
- (iv) provide creche facility for the children of the employee; or
- (v) sponsor a sportsman, being an employee; or
- (vi) organise sports events for employees,
shall not be considered as expenditure for employees' welfare;

(F) conveyance [***];

(G) use of hotel, boarding and lodging facilities;

(H) repair, running (including fuel), maintenance of motor cars and the amount of depreciation thereon;

(I) repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon;

(J) use of telephone (including mobile phone) other than expenditure on leased telephone lines;

(K) [***]

(L) festival celebrations;

(M) use of health club and similar facilities;

(N) use of any other club facilities;

(O) gifts; and

(P) scholarships;

(Q) tour and travel (including foreign travel).

(3) For the purposes of sub-section (1), the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee or any benefit or amenity in the nature of free or subsidised transport or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence.