



SECTION 43B(h)

“43B. Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

(h) any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006,] shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :

Provided that nothing contained in this section ²[except the provisions of clause (h)] shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.”

This provision has been introduced under socio economic welfare measures in the Memorandum to the Finance Bill, 2023 with the view of promoting timely payments to Micro and Small Enterprises.

The said provision has become effective from 01.04.2024 i.e. AY 2024-25. According to the aforesaid provision deduction of expenses in relation to amount payable to a micro and small enterprise beyond the time limit as specified under section 15 of Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act, 2006) shall be allowed in the previous in which the same has been actually paid.

For example : A ltd purchased goods from M/s B, who is registered under MSMED Act, 2006 as a Small enterprise on 1st March, 2024 amounting to INR 1,00,000. The said payment remained outstanding as at 31.03.2024 and payment was done 30.05.2024. Accordingly, the new provisions the afore mentioned purchases will be disallowed in AY 2024-25 and shall be added back as taxable income. Further, the same shall be allowed on actual payment basis in AY 2025-26.

FAQ's ON SECTION 43B(h) OF INCOME TAX ACT, 1961

Q1. What type of suppliers are covered under purview for the said provision?

- ❖ As per section 2(g) of MSMED Act, 2006 this provision is applicable only on manufacturers and service providers and not to the Traders.

Further, micro and small enterprises are covered, and medium enterprises are not covered under the said provision.

Q2. What are Micro and Small Enterprises?

- ❖ **As per** section 15 of Micro, Small and Medium Enterprises Development Act, 2006, the turnover limit and investment limit in plant and machinery for an enterprises to be considered as micro and small enterprises are as follows:

<i>Enterprise</i>	<i>Investment in Plant and Machinery*</i>	<i>Turnover*</i>
Micro Enterprises	Not more than 1 crore	Not more than 5 crores
Small Enterprises	Not more than 10 crore	Not more than 50 crores

* Figures as per immediately preceding financial year

Q3. Whether registration under MSMED Act, 2006 is mandatory under the said provisions?

- ❖ **Section 15** of Micro, Small and Medium Enterprises Development Act, 2006 sets the time limit for the payments under section 43B (h) and uses the word “supplier”. As per section 2(n) of the MSMED Act, 2006 suppliers are those entities who have submitted memorandum under section 8(1) of the MSMED Act, 2006 which is also called Udyog Aadhar Memorandum (UAM).

Accordingly, registration for Micro and Small suppliers becomes necessary under the MSMED Act, 2006.

Q4. Udyog Aadhar Memorandum (UAM) v/s Udyam Registration (UR)?

- ❖ In September 2015, the GOI introduced the Udyog Aadhaar that assigned MSMEs with a unique 12-digit identification number upon registration. In July 2020 the new and simplified Udyam Registration replaced this process.

The entities registered under Udyog Aadhaar can no longer avail MSME benefits and to do so have to register again under Udyam Registration. Thus, those suppliers registered as UR will only be considered as eligible suppliers.

Q5. What is the time limit for making payments to Micro and Small Enterprises?

- ❖ Section 15 mandates the time limit for making payments within 45 days in case of written agreement and 15 days in case of no-written agreements or period agreed between the supplier and buyer whichever is less.

Q6. How the calculation of time limit for payment is done in case of dispute with supplier?

- ❖ As per section 2(b) where any objection is made in writing by the supplier regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier is considered as the date for calculation of time limit for payment.

Q7. What if the agreed period is more than 45 days in case written agreement?

- ❖ Section 15 mandates the time limit for making payments within 45 days in case of written agreement and 15 days in case of no-written agreements or period agreed between the supplier and buyer whichever is less.

Accordingly, even if the agreed period is more than 45 days than time limit is restricted to 45 days only.

Q8. What constitutes a written agreement?

- ❖ Any written document mentioning the payment terms (in days) such as agreements, quotation, purchase order, etc qualifies for written agreement for the purpose of this provision.

Q9. Whether the payments have to be made within 15 days or 45 days throughout the year to escape the provisions of section 43B(h) ?

- ❖ As per the provision of this section if the payment is delayed throughout the year but if made before 31st March than no such expenses shall get added back because any delayed payments shall become eligible for deduction on payment basis in the same financial year.

“Deduction is made in the financial year in which the payment is made even if delayed beyond 15 or 45 days, as the case maybe.”

Q10. What happens in case of expenses which are incurred between 16th February and 31st March every year?

- ❖ For expenses which have been incurred between 16th February and 31st March every year, time limit for payment as per the provisions of section 15 of MSMED Act, 2006 needs to be identified. Accordingly, those expenses for which time limit of payment is going beyond 31st March and for which payment has been made within the time limit, the same shall be allowed as deduction in the financial year in which the same has been incurred.

For Example A: A ltd purchased goods from M/s B, who is registered under MSMED Act, 2006 as a Small enterprise under written agreement on 1st March, 2024 amounting to INR 1,00,000. The said payment remained outstanding as at 31.03.2024 and payment was done 14.04.2024. Accordingly, the new provisions the afore-mentioned purchases will be allowed in AY 2024-25 itself.

For Example B: C ltd purchased goods from M/s D, who is registered under MSMED Act, 2006 as a Small enterprise without written agreement on 31st March, 2024 amounting to INR 5,00,000. The said payment remained outstanding as at 31.03.2024 and payment was done 15.04.2024. Accordingly, the new provisions the afore-mentioned purchases will be allowed in AY 2024-25 itself.

Q11. What happens to creditors remaining outstanding in the financial year 2022-23?

- ❖ This provision takes effect from 01-04-2024 i.e. AY 2024-25. Hence, no disallowance will be made for such remaining outstanding's.

Q12. What happens to cheques issued to creditors and appearing in bank reconciliation statement as on 31st March?

- ❖ In the case of CIT vs Hidustan Wire Products Ltd (2002) 102 Taxman 744, Hon'ble High Court of Punjab & Haryana, disallowance u/s 43B should not be attracted, when the assessee has issued a cheque to Micro or Small Enterprise. However, the cheques so issued needs to get cleared within three months of the date of issue for it being allowed as expenses in the said financial year. Otherwise, the same will be disallowed and allowed in the financial year in which actual payment is made.

Q13. Whether the provision of section 43B(h) is applicable to assesses covered under Section 44AD (Presumptive Tax)?

- ❖ Section 44AD states that:

“Notwithstanding anything to the contrary contained in sections 28 to 43C”

Accordingly, the section 44AD will be override section 43B and hence no disallowance will be made.

Further, according to section 43B:

“Notwithstanding anything contained in any other provision of this Act,”

Accordingly, the section 43B will be override section 44AD and hence disallowance will be made.

Both these section if read together becomes paradoxical leaving ambiguities, thus calling for discretion and interpretation.

Taking into consideration all the facts of the case and the precedents laid down, the Supreme Court has held that when two enactments have competing non-obstante provision and nothing repugnant, then the non-obstante clause of the subsequent statute would prevail over the earlier enactment. If we apply the same principle on conflict between two obstante clauses in the same statute, we find that Section 43B was enacted (in 1983) with the object to curb the practice of not discharging statutory liabilities for a longer period and afterwards Sections 44AD/44ADA/44AE were introduced (in 1994) to help / relax small businessmen to comply taxation liabilities and to reduce compliance costs. Accordingly, section 44AD/44ADA/44AE shall prevail over section 43B.

Further, considering the Memorandum explaining the provisions of the finance bill when these sections were introduced and practical problems arising on application of 43B(h) on assesses covered section 44AD, we are of the opinion that provisions of section 44AD of the Income Tax, 1961 might prevail over section 43B of Income Tax Act.

Q14. What precautions should be taken by micro and small sellers to avail the benefits of this provision?

- ❖ The micro and small sellers should first get registered as UR and quote their registration number in all written communications such as quotations, agreements, invoices, PO's, etc with the customers to avoid any ambiguity and avail the benefit under the said provision.

Q15. Whether provisions of this section are applicable for purchase of fixed assets?

- ❖ All payments, whether for inventory, purchases, expenses or even for capital goods will be covered, because sub-section (h) starts with “any sum payable....”. Accordingly, if no payment has been made in specified time in respect of capital goods purchased in FY 2023-24 [for which no payment has been made in FY 2023-24] and are outstanding as on 31-03-2024 in respect of purchase of capital goods, the disallowance to the extent of depreciation claimed on that particular asset should be made in FY 2023-24.

Q16. Whether Set off debit / credit of same supplier will be considered as payment in accordance with provisions of this section?

The phrase ‘actual payment’ used in section 43B of the Income Tax Act came up before hon’ble Jharkhand high court in **CIT Vs. Shakti Spring Industries (p.) Ltd. [2013] 39 Taxmann.Com 19/219 taxman 124 (mag.) (Jharkhand)** and it explained:

“For making ‘actual payment’ it is always not necessary that one should, if having a credit entry, also have a debit entry, then he should receive the ‘actual payment’ in cash or through cheque or demand draft in his bank account so as to take physical delivery of the currency and then deliver it again to the same creditor who is also debtor of the receiving person. So, ‘actual payment’ means ‘actual payment’ and not actual receipt and delivery of the currency by the two parties transacting when they are creditor and debtor both.”

Accordingly, the same shall be considered as payment as per the provision of section 43B (h) of the Act.

Legal Disclaimer

The content of this article contains general information and may not reflect current legal developments. Such content is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion. Since the law is constantly changing and since the law will vary based on different facts and circumstances, statements on this website regarding the status of a given law or legal issue may not be current or applicable to your particular situation. You should not take any action based on the information in this article.

The materials in this article are intended for informational purposes only. The materials in this article are not intended to be, nor should they be interpreted as, legal advice or legal opinion. The reader should not consider this information to be an invitation to a client relationship, should not rely on information presented here for any purpose, and should always seek the legal advice of counsel in the appropriate jurisdiction. Transmission and receipt of the information in this site and/or communication with the firm via e-mail is not intended to solicit or create, and does not create, a client relationship between the firm and any person or entity. A written legal representation agreement, specific to the individual client, is required before any relationship is formed with the Firm.

C.H. Padliya & Co.