



35 FAQs

on Section 43B Disallowance
of the Sum Payable to
MSMEs

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The Income-tax Act allows the deduction of expenditure according to the system of accounting followed by the assessee. Where the assessee follows a cash system of accounting, the deduction should be allowed on an actual payment basis. In the case of a mercantile system of accounting, the deduction is allowed on an accrual basis.

However, Section 43B of the Income-tax Act, 1961 (IT Act) provides a list of several expenses which are allowed as a deduction on a payment basis. Thus, even if an assessee follows the mercantile method of accounting, deduction of the specified expenses shall be allowed if the payment is made on or before the due date of furnishing the return of income, except the sum payable to micro and small enterprises.

The Finance Act 2023 added one more item to the list in Section 43B by virtue of clause (h), the deduction of which shall be allowed on a payment basis. It provides that any sum payable to a micro or small enterprise (MSEs) beyond the time limit specified in Section 15 of the Micro, Small and Medium Enterprises Development Act 2006 (MSMED Act) shall be allowed as a deduction in the previous year in which such sum is actually paid.

In this article, we have answered the frequently asked questions on Section 43B(h) and explored the challenges it presents for businesses seeking to maintain smooth and compliant payment practices with MSEs.



FAQ 1.

What does the recently introduced clause (h) offer, and how does it distinguish itself from the other clauses within Section 43B?

Section 43B applies to sums outstanding as of year-end and paid off after the 31st of March of the financial year.

The newly inserted clause (h) provides that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in Section 15 of the MSME Act shall be allowed in the previous year in which such sum is actually paid.

Other clauses of Section 43B allow a deduction of year-end outstanding on an accrual basis if the payment is made on or before the due date of filing the ITR. In contrast, the deduction for the sum payable to MSEs covered by clause (h) shall be deductible only if paid on or before the time allowed by Section 15 of the MSMED Act.

FAQ 2.

Who are classified as micro and small enterprises?

In *Explanation 4* below Section 43B, clauses (e) and (g) have been substituted to define the expression “micro-enterprise” and “small enterprise” respectively as under:

‘(e) “micro-enterprise” shall have the meaning assigned to it in clause (h) of Section 2 of the Micro, Small and Medium Enterprises Development Act, 2006 (‘MSMED Act’);

‘(g) “small enterprise” shall have the meaning assigned to it in clause (m) of Section 2 of the Micro, Small and Medium Enterprises Development Act, 2006.’

As clauses (e) and (g) of *Explanation 4* to Section 43B make applicable the definitions of “micro” and “small” enterprises in the MSMED Act to Section 43B(h), it is necessary to examine the definitions in the MSMED Act.

Section 2(h) of the MSMED Act defines “micro-enterprise” to mean an enterprise classified as such under sub-section (1) of Section 7.

Section 2(m) of the MSMED Act defines “small enterprise” to mean an enterprise classified as such under sub-section (1) of Section 7

Sub-section (1) of Section 7 of the MSMED Act provides that the Central Government may, for the purposes of this Act, **by Notification** (in the Official Gazette), classify any class or classes of manufacturing or service enterprises, whether proprietorship, HUF, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called, into:

- (a) Micro Enterprises
- (b) Small Enterprises
- (c) Medium Enterprises

Sub-section (9) of Section 7 of the MSMED Act provides that the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

The Central Government has issued Notification No. 2119(E), dated 26-6-2020, under Section 7(1) read with Section 7(9) of the MSMED Act. Para 3(1) of the said Notification provides that a **composite criterion of investment and turnover** shall apply for the classification of an enterprise as micro, small or medium. Para 1 provides that an enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria:

<i>Category of Enterprise</i>	<i>Criteria for Classification</i>
Micro Enterprise	<ul style="list-style-type: none"> • Net investment in plant and machinery or equipment does not exceed Rs 1 crore; and • Net turnover does not exceed Rs 5 crores.
Small Enterprise	<ul style="list-style-type: none"> • Net investment in plant and machinery or equipment does not exceed Rs 10 crore; and • Net turnover does not exceed Rs 50 crores.
Medium Enterprise	<ul style="list-style-type: none"> • Net investment in plant and machinery or equipment does not exceed Rs 50 crore; and • Net turnover does not exceed Rs 250 crores.

It must be noted that only micro and small enterprises are considered suppliers for the purpose of Section 43B(h). Medium enterprises are not regarded as suppliers and are not entitled to enforce prompt payment and interest for delayed payment.

FAQ 3.

How are turnover and investment reckoned for the classification of enterprises as micro, small and medium?

Turnover is calculated based on a net turnover basis, which means it encompasses the turnover of goods and services minus the exports of goods and services. Similarly, when evaluating investment in plant and machinery or equipment, it is assessed on a net investment basis as per the income-tax return. This entails the depreciated cost of plant and machinery or equipment as per the ITR, subtracting the costs associated with pollution control, research and development, and industrial safety devices.

Computation of investment

Para 4 of Notification No. 2119(E), dated 26-06-2020, deals with the calculation of investment in plant and machinery or equipment. It provides that the calculation of

investment in plant and machinery or equipment will be linked to the ITR of previous years filed under the IT Act.

In the case of a new enterprise, where no prior ITR is available, the investment will be based on the self-declaration of the promoter of the enterprise, and such relaxation shall end after the 31st March of the financial year in which it files its first ITR. The expression “plant and machinery or equipment” of the enterprise shall have the same meaning as assigned to the plant and machinery in the Income-tax Rules, 1962 and shall include all tangible assets (other than land and building, furniture and fittings). The purchase (invoice) value of a plant and machinery or equipment, whether purchased first-hand or second-hand, shall be taken into account, excluding GST.

The cost of certain items specified in *Explanation 1* to sub-section (1) of Section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery.

Computation of turnover

Para 5 of the Notification deals with the calculation of turnover as follows:

- (1) Exports of goods or services or both shall be excluded while calculating the turnover of any enterprise, whether micro, small or medium, for the purposes of classification.
- (2) Information regarding the turnover and export turnover of an enterprise shall be linked to the Income-tax Act or the CGST Act and the GSTIN.
- (3) The turnover-related figures of such enterprises which do not have PAN will be considered on a self-declaration basis for a period up to 31st March 2021, and thereafter, PAN and GSTIN shall be mandatory.
- (4) The exemption from the requirement of having GSTIN shall be as per the provisions of the CGST Act, 2017.

FAQ 4.

What is the time limit prescribed under Section 15 of the MSMED Act for making payment?

Section 43B(h) refers to the limitation period specified under Section 15 of the MSMED Act, which provides that where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing. However, this agreed date cannot exceed 45 days.

If there is no agreement on this behalf, the buyer shall make the payment before the appointed day.

As per Section 2(b) of the MSMED Act, “appointed day” means the day immediately after the expiry of the period of 15 days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

For example, where goods are supplied and accepted on 30-03-2024, the due date for payment under Section 15 of the MSMED Act shall be computed as follows:

<i>Date of Acceptance of Supply</i>	<i>Credit Period</i>	<i>Due Date for Payment</i>	<i>Remarks</i>
30-03-2024	30 days	28-04-2024	Due date as per terms of the agreement
30-03-2024	60 days	13-05-2024	Due date cannot exceed 45 days from the date of acceptance
30-03-2024	No agreement	13-04-2023	In the absence of an agreement, the due date cannot exceed 15 days from the date of acceptance

If the payment is made on or before the due date specified in the third column, no disallowance shall be made under Section 43B(h).

FAQ 5.

Should terms mentioned on the invoice or purchase order be treated as an agreement?

The MSMED Act does not define the term 'agreement'. Thus, it can be said that agreement can be written as well as oral. In common parlance, an agreement means when one person makes an offer and another person agrees to it. It includes terms like due dates, acceptance of goods/services, consequences for late payment, and dispute resolution. So, if an invoice or purchase order has these details, it can be seen as an agreement.

FAQ 6.

What is meant by the terms “the Appointed Day”, “the day of acceptance”, and “the day of deemed acceptance”?

The “appointed day” is relevant only if the buyer and the seller have not agreed to any due date for payment in writing. As per Section 2(b) of the MSMED Act, “appointed day” means the day immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

The following points are noteworthy:

- ▶ “The day of acceptance” means the day of the actual delivery of goods or the rendering of services;
- ▶ Where any objection is made in writing by the buyer regarding the acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, “the day of acceptance” means the day on which the supplier removes such objection;
- ▶ “The day of deemed acceptance” means where no objection is made in writing by the buyer regarding the acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services.

FAQ 7.

What does the term “Supplier” mean in Section 15 of the MSMED Act?

The term “Supplier” is defined in Section 2(n) of the MSMED Act. Only a “supplier”, as defined in Section 2(n) of the MSMED Act, can avail of the rights under Chapter V of the MSMED Act, such as the right to timely payment under Section 15, right to interest on delayed payment under Section 16, Right to file plaint with MSEFC for recovery of dues from buyer etc.

Section 2(n) defines “supplier” to mean a micro or small enterprise that has filed a memorandum with authority referred to in Section 8(1) (i.e., Udyam Registration). The term “supplier” also includes:

- (a) National Small Industries Corporation;
- (b) Small Industries Development Corporation of a State or a Union territory; and
- (c) Any company, co-operative society, trust or body registered or constituted under any law and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises.

It must be noted that only micro and small enterprises that are Udyam-registered are considered suppliers for the purpose of Section 15 of the MSMED Act. Further, they shall be regarded as suppliers with respect to goods supplied by them or services rendered by them on or after the date of Udyam Registration. Udyam Registration is not retrospective¹.

FAQ 8.

Will the disallowance apply to the sum payable to retail traders or wholesalers?

Para 2 of Office Memorandum: No. 5/2(2)/2020/E/P&G/POLICY dated 2-7-2021 issued by the Central Government has clarified that “The Government has received various representations and it has been decided to include Retail and wholesale trades as MSMEs and they are allowed to be registered on Udyam Registration Portal. However, benefits to Retail and Wholesale trade MSMEs are to be restricted to Priority Sector Lending only.” Central Government’s office memorandum 1/4(1)/2021- P&G Policy, dated 01.09.2021, further clarifies that “the benefit to Retail and wholesale trade MSMEs are restricted up to priority sector landing **only** and other benefit, including provisions of delayed payment as per MSMED Act, 2006, are **excluded**.”

In view of the above Office Memorandum, dated 01.09.2021, a Supplier who is a micro or small enterprise cannot be treated as a “Supplier” for section 15 and section 43B(h) purposes if his Udyam Certificate shows his activity as only a trader.

¹ Silpi Industries v. Kerala State Road Transport Corporation [2021] 129 taxmann.com 228 (SC)

Although there does not appear to be any legal basis in the MSMED Act for the Office Memorandum and Wholesale & Retail Trade to be treated as distribution services under GATT/WTO, the above position will prevail till any Trader/Traders body challenges the OM in Court and gets it quashed.

FAQ 9.

Will the GST component be disallowed if the sum payable to MSE attracts Section 43B(h) disallowance?

If the sum payable to the Micro or Small Enterprise includes GST, the disallowance is restricted to the amount excluding GST if the GST is claimed as Input Tax Credit (ITC) in the books of accounts. However, if the buyer opts not to claim the input tax credit under GST and treats it as an expense in its Profit and Loss account, deduction against GST will only be allowed based on actual payment.

FAQ 10.

Are the provisions of Section 43B(h) applicable to non-registered suppliers?

Para 2 of the Notification provides that any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online on the Udyam Registration portal based on self-declaration with no requirement to upload documents, papers, certificates or proof. The word 'may', used in the Notification, indicates that it is not mandatory for an enterprise to get registered to establish itself as an MSME. However, Section 43B(h) mentions Section 15 of the MSMED Act, which talks about the delay in payment to a 'supplier'. Section 2(n) defines "supplier" to mean a micro or small enterprise that has filed a memorandum with authority referred to in Section 8(1) (i.e., Udyam Registration). So, without registration on the Udyam Portal, Section 15 of the MSMED Act may not be invoked for disallowance under Section 43B of the IT Act.

Further, it is well-nigh impossible for any buyer to scrutinize the financials, ITRs and GSTRs of all his suppliers to determine their classification into micro, small or medium enterprises and to call for financials, ITR and GST data from suppliers every now and then to check whether there is any change in classification. The only feasible and accurate method to validate the classification of the supplier is to refer to his Udyam Registration.

FAQ 11.

Is the disallowance under Section 43B applicable if supplies are made before obtaining Udyam registration?

Section 43B(h) will not apply with respect to payments for supplies made before the date of Udyam Registration. He would be regarded as a micro-enterprise only from the date of obtaining such registration, as Udyam Registration does not operate retrospectively².

FAQ 12.

How can an assessee identify that his supplier is a micro or small enterprise?

It is the duty of the supplier to mention his MSE status on supply orders, invoices, letterheads and other relevant documents. In the absence of suppliers mentioning their MSE status on their supply orders, invoices, letterheads and other relevant documents, it would be very difficult for the assessee to identify MSE suppliers and their dues, disclose them in annual accounts, comply with Section 15 and for auditors of buyer entities to verify required disclosures in annual accounts.

The Government of India had also issued OM No. 2(28)/2007-MSME(Pol), dated 26-08-2008, which clarifies that 'it is advisable that the Micro or Small Enterprises should mention/get printed on their letterheads, supply order sheets, invoices, bills and relevant documents, the Entrepreneurs Memorandum (EM) number...., so that there always remains an identification of being an MSE supplier.'

The above circular seems to absolve the assessee and his auditors of any blame if their non-detection or omission of disclosures of dues to MSEs is due to suppliers not mentioning their Udyam Registration Numbers on their letterheads, invoices, bills and other relevant documents. Possibly, the buyer entity would also be absolved of obligations under Sections 15 and 16 of the MSMED Act in such a situation.

It is also possible to take a contrary view that mere non-mention of Udyam Registration Number on Bills/Invoices/correspondence by MSEs will no longer absolve the buyers from obligations under Chapter V of MSMED Act or under clause (h) of Section 43B. It is advisable that the buyer entities should request all suppliers to confirm whether they are registered MSEs and, if so, to furnish the Registration Number and a copy of the Udyam certificate. They should also request the supplier for information on the MSE status and a copy of the Udyam certificate when placing a purchase order or receiving the sales order to ensure registered MSE suppliers are paid within the time limit stipulated in Section 15 of the MSMED Act.

² Silpi Industries v. Kerala State Road Transport Corporation [2021] 129 taxmann.com 228 (SC)

FAQ 13.

How can the assessee ensure their supplier does not transition from a micro/small to a medium enterprise or vice-versa during the financial year?

The Udyam Registration Certificate provides the classification of registered enterprises as micro, small and medium financial year-wise since its incorporation. Thus, Udyam Registration is the only acceptable evidence of the supplier entity's micro-enterprise or small enterprise status. The buyer entities should ask for such a certificate every year to determine the supplier's status in that year.

FAQ 14.

Is it mandatory for the supplier to update the details of turnover and investment on the Udyam Registration Portal?

Para 8 of the Notification No. 2119(E) provides that an enterprise having Udyam Registration shall update its information online in the Udyam Registration portal, including the details of the ITR and the GST Return for the previous financial year and such other additional information as may be required, on self-declaration basis.

These details are automatically pulled by the Udyam Portal from the ITR and GST returns filed on the respective portals. So, there is no requirement to manually upload the details of turnover and investment on the Udyam Portal. However, if there is any change in the business activity, the entity should update the details of such new business activities. Failure to update the relevant information in the online Udyam Registration portal will render the enterprise liable for suspension of its status.

FAQ 15.

A supplier, who is a Udyam-registered small enterprise, has purchased a plot of land worth Rs. 10 crores. Will this investment impact his status as a small enterprise?

Investment in land and buildings does not count for the investment ceilings under Para 1 of Notification No. 2119(E).

FAQ 16.

Asupplier, who is a Udyam-registered small enterprise, has purchased plant and machinery worth Rs. 10 crores. Will this investment impact his status as a small enterprise?

Yes, this investment will impact its status and will turn it into a medium enterprise. However, even after this upward re-classification, the entity shall continue to avail of all non-tax benefits of the category for a period of three years from the date of such upward change.

There is no definition of “non-tax benefit” in the MSMED Act or the Notification. Investopedia defines “tax benefit” as “any tax law that helps you reduce your tax liability.” Section 43B(h) provides no tax benefit in the above sense to the supplier who is a micro or small enterprise. It provides him with a non-tax benefit of protection against delayed payments by the buyer by providing a tax disincentive to the buyer who delays the payment. Section 43B(h) is clearly a non-tax benefit to the Supplier, within the meaning of para 8(5) of the Notification.

FAQ 17.

Will Micro or Small Enterprises having Udyog Aadhaar Memorandum or EM-II be regarded as micro or small enterprises for Section 43B(h) purposes?

UAM or EM-II Registration was valid only up to 30-06-2022. These registrations are not valid with effect from 01-07-2022. There is no process of automatically migrating the enterprises from UAM/EM-II to Udyam Registration unless the enterprise files Udyam. Therefore, enterprises with UAM/EM will not be regarded as micro or small enterprises for Section 43B(h) purposes.

FAQ 18.

What if the amount outstanding at year-end (i.e., 31-03-2024) is paid in the next financial year 2024-25 but beyond the time allowed by Section 15 of the MSMED Act?

Where the amount outstanding at year-end is paid next year beyond the time allowed in Section 15 of the MSMED Act, such amount shall be disallowed while computing the business income for the current financial year 2023-24. However, this disallowance is not permanent or irreversible. Where the amount outstanding at year-end is paid next year but beyond the limitation period of Section 15 of the MSMED Act, such amount shall be allowed while computing the business income in the next FY 2024-25 on an actual payment basis.

FAQ 19.

If goods were purchased from MSEs on 01-04-2023 and payment was made on 31-03-2024, will it be disallowed under Section 43B(h) for the assessment year 2024-25?

There will be no disallowance. Even though payment is made beyond the time specified in Section 15 of the MSMED Act, it is made during the same year and is not outstanding as of the year-end. Therefore, the amount will be allowed on an actual basis and not disallowed. However, such a delay is not a smart strategy as interest under Section 16 of the MSMED Act, 2006 will be payable by the assessee to the supplier at three times the bank rate compounded at monthly rests.

FAQ 20.

Is interest payable to Micro/Small enterprises for delayed payments allowable as a deduction under the Income-tax Act?

Section 23 of the MSMED Act states that interest paid by a buyer for delayed payments is not deductible under the IT Act.

FAQ 21.

Is disallowance applicable if the assessee follows a cash system of accounting?

Section 43B of the IT Act mandates the allowability of various expenses only on a payment basis, irrespective of the fact that the assessee follows a mercantile system of accounting.

In the cash method, the revenues and expenses are recognized only when cash is received or paid out respectively. In other words, income is recorded when the cash is received, and expenses are recorded when the cash is paid. Therefore, it will not impact any situation if the assessee follows a cash basis of accounting as the assessee is already recording the expenses on a payment basis.

FAQ 22.

Does Section 43B(h) apply with respect to the amounts due towards the purchase of Capital Goods?

Unlike Section 37(1), the deductibility under Section 43B is not linked to the distinction between capital expenditure and revenue expenditure. Section 43B applies to sums payable in respect of which a deduction is otherwise allowable under this Act.

Therefore, Section 43B(h) would apply to amounts payable to micro or small enterprises with respect to the purchase of capital goods for which a 100% deduction is admissible under Sections 30 to 36. For example, the deduction of 100% of capital expenditure under Section 35AD and the deduction of 100% of capital expenditure on scientific research under Section.

If a 100% deduction of capital expenditure is not allowable, there would be no disallowance with respect to depreciation on capital goods purchased if the MSE supplier of capital goods is not paid in time. This is because depreciation is not a “**sum payable** in respect of which deduction is otherwise allowable”. What can be disallowed under Section 43B(h) must have the character of a sum payable in respect of which deduction is otherwise allowable.

The Courts had taken the view that depreciation cannot be disallowed on the cost of the asset, which was capitalized in books of account, but tax thereon was not deducted under Section 40(a)(i)/(ia) of the Act³.

FAQ 23.

Can depreciation be disallowed if payment for the purchase of a fixed asset is made beyond a prescribed limit?

Depreciation cannot be disallowed under Section 43B. See FAQ No. 22 above.

FAQ 24.

Whether disallowance attracts if the assessee opts for a presumptive taxation scheme under Section 44AD, Section 44ADA, Section 44AE, etc.?

Section 43B(h) begins with a *non-obstante* clause “notwithstanding anything contained in any other provision of this Act”. Therefore, apparently, Section 43B overrides all provisions of the Act including provisions of presumptive taxation under Section 44AD, Section 44ADA, Section 44AE, Section 44BBB and Section 115VA (Tonnage Tax)

³ Lemnisk (P.) Ltd. v. Dy. CIT [2022] 141taxmann.com195 (Bangalore - Trib.)

However, Sections 44AD, 44ADA, 44AE, 44BBB and 115VA also begin with *non-obstante* clauses as '*Notwithstanding anything to the contrary contained in [Sections 28 to 43C](#),.....*'

Therefore, Section 43B(h) overrides all other provisions of the Act except Sections 44AD, 44AE, 44ADA, 44BBB and 115VA. Therefore, Section 43B(h) will not apply to eligible assessee-buyers who opt for presumptive taxation under Sections 44AD, 44AE, 44ADA, 44BBB or 115VA.

FAQ 25.

What if the advance is paid to the supplier, who is a micro or small enterprise?

The advance payment made to the MSEs shall be allowed as a deduction in the year of payment itself, even if it does not fall due for payment in that year. The Supreme Court has upheld the deduction under Section 43B for the advance payments⁴.

FAQ 26.

What if a 50% advance is given in the current year, and the balance of 50% is paid to the MSE supplier at a later date?

If the taxpayer settles 50% of the remaining balance during the fiscal year, even after the due date under Section 15 of the MSMED Act has passed, no disallowance will occur. However, if this 50% remains outstanding at year-end and is paid after the due date, disallowance would apply to this portion payable to MSEs.

FAQ 27.

What if the cheque is handed over to the MSEs on or before the due date, but it is encashed by them after the due date?

As per accepted commercial usages, payment is regarded as made on the date the cheque is handed over to the payee, provided the cheque does not bounce subsequently. Therefore, in such cases, payment will have to be treated as made within the due date.

⁴ CIT v. United Glass Mfg. Co. Ltd. [2012] 28 taxmann.com 429 (SC)

FAQ 28.

Does disallowance attract if provisions are made instead of crediting individual accounts of the trade creditors/suppliers?

Provisions represent sums payable in respect of which deduction is otherwise allowable under Section 37(1). Therefore, they would fall within the ambit of Section 43B(h).

FAQ 29.

Can disallowance under Section 43B(h) be made while computing book profit for MAT purposes?

Section 43B(h) is applicable for calculating a company's taxable business profits in regular assessment under the Act. It is not applicable for the calculation of Minimum Alternate Tax under Section 115JB.

FAQ 30.

What if any charitable trust is making payment to an MSME? Will Section 43B(h) apply?

Section 43B(h) applies to an assessee carrying on a business or profession whose income is computed under the head "business and profession." Charitable trusts are subject to Sections 11 to 13, which are special provisions governing the taxation of charitable or religious institutions.

Section 11 of the IT Act deals with the computation of income from property held for charitable and religious purposes. Section 11(1) provides that the income shall not be included in the total income of a person to the extent the income is applied towards charitable or religious purposes in India. It is well-settled law that the 'income' as referred to in section 11(1) must be computed following commercial principles and not under the ordinary provisions of the Act. In other words, Section 14 and five heads of income do not apply to organizations registered under Section 12AB.

It may be noted that under Sections 11 to 13, there are specific references to the provisions of 'Profits & Gains of Business or Profession' which have been made applicable to the computation of income under Section 11, such as the disallowances for cash payments above Rs. 10,000 or disallowances for non-deduction of tax on payments made to residents. However, there is no reference to disallowance under Section 43B(h) while computing income under Section 11. In other words, unless specifically provided, the provisions of the head 'Profits & Gains of Business or Profession' shall not apply to charitable institutions.

Hence, the question of disallowance under Section 43B(h) will not arise while computing the application of income under Section 11 of the Act. However, under Section 16 of the MSMED Act, interest is payable if the trust delays payments to micro or small enterprises.

FAQ 31.

Will Section 43B(h) apply to an assessee who is also a Udyam-Registered Micro or Small Enterprise?

Yes. There is no exemption for buyers who are Micro or Small enterprises. It cannot be said that Section 43B(h) applies only to medium or large enterprise buyers.

FAQ 32.

Will Section 43B(h) apply to fees payable to a CA firm?

Nothing in the MSMED Act or Chartered Accountants Act, 1949 disqualifies a CA firm from filing Udyam Registration as a micro or small enterprise. The MSMED Act does not exclude professional services from the ambit of the expression “service”. Therefore, a CA firm may be registered as a micro or small enterprise in terms of specified turnover and investment by applying for a Udyam Registration.

FAQ 33.

How to verify if the Udyam Number furnished by the supplier by printing on the invoice or otherwise is genuine?

Search his Udyam Registration Number on the Udyam Portal under the newly enabled “Verify Udyam Registration Number” at the following link: https://udyamregistration.gov.in/udyam_verify.aspx

FAQ 34.

Can it be inferred from the Udyam Number printed on the supplier’s invoice that he is a micro or small enterprise?

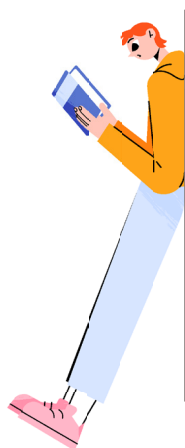
No. By looking at Udyam Number, one cannot say whether the supplier is a micro, small or medium enterprise. The buyer entity will have to search for the Udyam Certificate in the Udyam portal by entering the Udyam Number.

The Udyam Number is in UDYAM-XX-00-0000000 format. The XX denotes the State. 00 denotes the first two letters of the PIN Code of the State. And the Seven digits 0000000 represent the number.

FAQ 35.

Is it possible to get the Udyam Registration details of a Supplier by searching for his name or PAN in the Udyam portal?

No. One can obtain his Udyam Certificate details only if one knows his Udyam Registration Number.



Read More

These FAQs have been taken from the book “**FAQs on Timely Payments to MSME**”. This book answers all your FAQs on the entire gamut of issues arising from Section 43B(h) of the IT Act and its interplay with provisions of the MSMED Act. The book includes flowcharts to clarify legal provisions. The book also contains handy checklists for buyers and micro/small enterprises, and an Alphabetical Ready Reckoner to various issues covered in the book.

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Naveen Wadhwa
Project Lead-Research
and Advisory (Corporate
and Personal Tax)

Naveen holds expertise in Advisory and litigation related to Income-tax and International Tax matters. Naveen has extensive experience working with diversified industries like real estate, technology, publication, education, hospitality, manufacturing, etc. He writes and regularly speaks on Income-tax issues for renowned media houses.

Highlights

- Chartered Accountant (All India 24th Rank)
- 14+ Years of Experience in Income-tax and International Tax
- Previously worked with Grant Thornton
- Experience in Real Estate, Technology, Publication, Hospitality, etc.



Vinod K. Singhania
Expert on Panel -
Research and Advisory
(Direct Taxation)

Dr. Vinod K. Singhania got his PhD from the Delhi School of Economics in 1976. His field of interest includes all facets of corporate legislation and corporate economics, especially tax laws. He is associated in different capacities with several professional institutes and business houses in India and abroad. He has authored many popular books and software on Income-tax.

Highlights

- 35+ Years of Experience in Corporate and Personal Taxation
- Resource person in over 800 seminars
- Author of various books on Direct Tax laws used by large number of professionals and Department officials



V.S. Datey

Expert on Panel -
Research and Advisory
(Indirect Taxation)

V.S. Datey specialises in laws relating to GST, Customs Duty, including Foreign Trade Policy, SEZ, and other erstwhile Indirect Taxes (such as Central Excise, Service Tax, etc.). He has been working in the field of Indirect Taxation since 1993.

Highlights

- Holds 30+ years of experience
- Engaged in consulting and training professionals on Indirect Taxation
- A regular speaker at various industry forums, associations and industry workshops
- Author of various books on Indirect Taxation used by professionals and Department officials



S.S. Gupta

Expert on Panel -
Research and Advisory
(Indirect Taxation)

SS Gupta has expertise in indirect taxation, specifically in the services sector. He is a faculty member in the colleges/institutions to teach indirect tax and is associated with various social organisations. He has also contributed extensively to the field of indirect taxation in various seminars/lectures.

Highlights

- Chartered Accountant and Cost & Works Accountant
- 34+ Years of Experience in Indirect Taxation
- Bestowed with numerous prestigious scholarships and prizes
- Author of the book - GST How to Meet Your Obligations, GST on Services, which is very widely referred to by Trade and Industry



Manoj Fogla

Expert on Panel-
Research and Advisory
(Charitable Trusts
and NGOs)

Adv. (Dr.) Manoj Fogla has served charitable and voluntary organisations in diversified sectors, including educational & religious institutions, civil society organisations, environmental agencies, international donor agencies, and several large corporate foundations. Dr. Fogla has provided a full range of services related to Advisory, contract reviews, organisational restructuring, compliance management and litigation support to Indian and International clients for their work in the charity domain.

Highlights

- Over three decades of practising experience on tax, legal and regulatory aspects of NPOs and Charitable Institutions
- Law practitioner, a fellow member of the Institute of Chartered Accountants of India and also holds a Master's degree in Philosophy
- PhD from Utkal University, Doctoral Research on Social Accountability Standards for NPOs
- Author of several best-selling books for professionals, including the recent one titled 'Trust and NGO's Ready Reckoner' by Taxmann
- Drafted publications for the Institute of Chartered Accountants of India, New Delhi, such as FAQs on GST for NPOs & FAQs on FCRA for NPOs.
- Has been a faculty and resource person at various national and international forums



Sudha G. Bhushan

Expert on Panel-
Research and
Advisory (FEMA)

Ms. Sudha G. Bhushan is a member of ICAI and ICSI. She is also an Insolvency Resolution Professional and a Registered Valuer. She is an advisor to the Bank of Baroda and is empanelled with HDFC Bank. She is an Independent Director with Aurionpro Solutions Limited, Choice International Limited, DIGJAM Limited and Matix Fertilisers and Chemicals Ltd. She is an expert in India's FDI Policy and FEMA and has worked in the area for over two decades. She has authored many books on FDI, FEMA and International Taxation.

Highlights

- 20+ Years of experience
- Advisor to many Banks and MNCs
- Experience in FDI and FEMA Advisory
- Authored more than seven best-selling books
- Provides training on FEMA to professionals
- Experience in many sectors, including banking, fertilisers, and chemical
- Has previously worked with Deloitte.

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