



NATIONAL CHAMBER OF INDUSTRIES & COMMERCE, U.P.

RAJESH GOYAL
PRESIDENT
9319106205

ANIL AGARWAL
VICE PRESIDENT
9319108920

MANOJ BANSAL
VICE PRESIDENT
9997905959

YOGESH JINDAL
TREASURER
9837042001

NCIC/24/2023-24/

17 Jan., 2024

To,
Smt. Nirmala Sitharaman ji,
Hon'ble Union Minister for Finance
Govt of India
15, Safdarjung Road
New Delhi

Subject : Representation Against Section 43B Of The Income Tax Act, 1961, Which Is Detrimental To MSME Sector

Hon'ble Madam,

This is to bring to your kind notice that National Chamber of Industries and Commerce, UP, Agra is an apex federal and registered body in Western Uttar Pradesh since 1949(i.e. 73 years old), which works in the interest of industry and trade. More than approx. 1600 reputed industrial and commercial establishments are associated with this institution as members, which are located in Agra and adjoining districts/cities. About 25 associations are also attached to this Chamber as affiliated organizations. The members of this Chamber who are experts in their field with deep experience are nominated by the State and Central Government in various advisory committees and the suggestions made by them are considered by the Government in policy formulation.

We are drawing your kind attention towards amendment in Section 43B of The Income Tax Act, 1961, made in the last year's budget which is detrimental to MSME Sector. Our submission in this regard is as follows:-

The Present Government has always focused and worked for the interest and betterment of MSME Sector. One such step was also taken by the Government with a good intention to promote timely payments to micro and small enterprises by including payments made to such enterprises within the ambit of section 43B of the Income Tax Act, 1961 as announced by the Hon'ble Finance Minister in her last year budget. The amendment means that while computing income of any business or professional entity, deduction for purchase of any goods/services availed from Micro and Small Enterprises shall be allowed only when payment is actually made. The payment for such purchases or services will be allowed on accrual basis only if the payment is within the time mandated under the Micro, Small and Medium Enterprises Development Act ('**MSMED**'). As per section 15 of the MSMED Act, payments to Micro and Small enterprises is to be made before the Appointed Day. The Appointed Day is 15 days (which can be up to 45 days in case there is an agreement in writing) from the day of actual delivery of goods or the rendering of services.



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Further, as per the amendment, the benefit of proviso to section 43B which allows deduction in respect of the sum which is actually paid by the assessee on or before the due date of furnishing of return of income under section 139(1) in respect of various other deductions such as tax, duty, cess, interest to banks, financial institutions etc. shall not be applicable in respect of such payments to Micro and Small Enterprises.

Thus, the outstanding against any supplier of goods or services, as on the last date of any financial year, remaining due for more than the period as provided under the MSMED Act would be added back to the income for that financial year and would be allowed as and when paid subsequently.

The objective of this provision apparently appears to be laudable as the intention of the Government is to help MSME sector by ensuring timely payment in respect of the goods supplied or services rendered by them. But, this amendment is creating various practical and genuine problems in its actual application which are as follows :—

1. It would be very difficult for an assessee, who is purchasing goods or availing services too, to identify the status of the supplier as in the first place such disclosure is not readily available and secondly the status is prone change each year based on the parameters prescribed under the MSMED Act. This is practically not very convenient and may lead to unnecessary litigation.
2. There may be various reasons i.e quality issue, quantity issue, any dispute, liquidity crunch etc. for non-payment within the prescribed time which is 15 days or to the maximum 45 days from the date of bill.
3. The income of the buyer assessee, in case of delayed payment, heavily increase in a particular year and substantially fall in the year of actual payment. Thus, in the year of delayed payment he will be taxed on unreal income and added with heavy tax burden.
4. Since the event of delayed payment, attracting the proposed provision, will crystalize at the year end only his estimation of income and consequently payment of advance tax will be adversely effected and he would be further saddle with interest burden for shortfall of advance tax payment. This burden would always remain unrecoverable to him even upon the subsequent actual payment.
5. Income Tax liability will crop up on un real income on defaulter entity resulting in huge tax liability which will affect the whole payment chain, working capital crunch and eventually will lead to more delay in payment of Micro and small entities as first the income tax liability would be settled by defaulter.
6. There is already hefty interest specified under MSMED Act, for late payment of dues and, clubbed with this amendment, additional burden of interest on shortfall of advance tax as well as payment of additional tax, his cash flow may be badly affected. It may even lead to his bankruptcy.



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Thus, due to the aforesaid reasons and practical difficulty many business enterprises considering the nature of their business and possibility of delay in making payment are being discouraged to make purchases or avail services from those entities which are registered as Micro or Small enterprises under the MSMED Act. There is also a possibility that many such enterprises may not be able to pay tax, with the result huge tax arrears further going up and unnecessary litigation.

In real terms, this amendment, in the present form, would not adversely affect the business sector as a whole but will be proved detrimental to “micro and small” suppliers.

In view of the above, there is a need to seriously revisit the enacted amendment.

We, therefore, in the first place request Your Goodself to kindly completely delete the aforesaid ammendment made in last budget in section 43B of the Income Tax Act, 1961. If for any reason that is not possible, we request You to kindly consider the following amendments :—

1. The provision instead of making applicable to all assesses, should be made applicable only to those assesses who are covered under Tax Audit.
2. The benefit of proviso to section 43B which allows deduction in respect of the sum which is actually paid by the assessee on or before the due date of furnishing of return of income under section 139(1) in respect of various other deductions such as tax, duty, cess, interest to banks, financial institutions etc. should also be made applicable in respect of such payments to Micro and Small Enterprises. Even under the GST Act a period of 180 days is allowed for payment to the suppliers. As such genuine cases of delayed payment would be saved from unintended financial sufferings.
3. Inter se transactions between the two “Micro and Small Enterprise” being supplier and buyer respectively should not be covered within the ambit.

We are sure, the aforesaid modifications, while giving much relief to a vast community of the assessee, would not make much loss to the intended beneficiaries as already “micro and small enterprises” as per definition under the MSMED Act do not cover traders, which constitute a substantial portion of such class. As such, it is requested that in the ensuing budget 2024-25, suitable amendment may be made.

Hope our representation would find a sympathetic consideration at your end.

With regards,

Yours sincerely,

(RAJESH GOYAL)
PRESIDENT

(ANIL VERMA)
CHAIRMAN – INCOME TAX CELL