



ALL GUJARAT FEDERATION OF TAX CONSULTANTS

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INCOME TAX BAR ASSOCIATION

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Dt. 3rd January 2024

To
Hon'ble Smt. Nirmala Sitharaman
Honourable Finance Minister
Ministry of Finance
134, North Block, Parliament Street
New Delhi – 110001
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Respected Sir/ Madam,

Sub: Representation for the Rationalization of Disallowance for Delayed Payments to MSME under the Income Tax Act, 1961

We, All Gujarat Federation of Tax Consultants (AGFTC) and Income Tax Bar Association (ITBA), Ahmedabad are writing to bring to your attention a matter of significant concern related to the recent amendment in the Income Tax Act, 1961, and seek your esteemed consideration for a reevaluation.

Micro, Small, and Medium Enterprises (MSMEs) are the backbone of our nation's developing economy, and we appreciate the proactive measures taken by Hon'ble Finance Minister Madam to support their growth. Hon'ble Finance Minister Madam has rightly stated that MSME are growth engines of our economy while presenting the Budget and has announced various measures to promote MSME. In order to promote the same several changes such as the extension of the credit guarantee scheme, Vivad Se Vishwas, Entity level Digi locker, introduction of clause (h) to section 43B of the Income Tax Act etc. are brought in and indicated many more are in pipeline.

However, the recent amendment, particularly the insertion of clause (h) to Section 43B of the Income Tax Act, raises pressing concerns that warrant reconsideration.

The main thrust in amendment is to promote timely payments to micro and small enterprises, the clause (h) to Section 43B of Income Tax Act has been Inserted by the Finance Bill, 2023 dated 01.02.2023 w.e.f 01.04.2024 to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specifics in section 15 of the Micro, Small and Medium Enterprises Development (MSMED) Act 2006 shall be allowed as deduction only on actual payment. Section 15 of the MSMED Act mandates payments to micro and small enterprises within the time as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the section mandates that the payment shall be made within 15 days. Thus, the amendment to section 43B of the Act will allow the payment as a deduction only on a payment basis. It can be allowed on an accrual basis only if the payment is within the time mandated under section 15 of the MSMED Act.

Further the benefit of provision to section 43B of Income Tax Act 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. is not be applicable in respect of such payments to Micro and Small Enterprises.

The implication of this amendment are as such that in case any entity carrying on business or profession has made purchase of any goods/services from a Micro or Small enterprise and the payment for such purchases or services has not been made during the year and it is outstanding as on 31st march, the same will not be allowed as a deduction while computing business income with the result that the income will go up by the amount of such outstanding as on 31st march except where such outstanding payment as on 31st March are falling within the period of 15 days or 45 days (where there is an agreement) from the date of 31st March and payment of the same is made in the subsequent period within the period of 15 days or 45 days, as the case may be, from the date of delivery of goods or availing of services.

This amendment has far-reaching and serious implications for various business or professional entities. This can lead to a situation where these businesses or professions, by reason beyond their control, having not been able to make payment to such Micro or Small enterprises in time will be saddled with huge income tax liability and which consequently may lead to further default in payment to such Micro or Small enterprises.

The delay in payment to the suppliers in the normal course of business can be for many reasons beyond the control of the enterprise such as lull in the business, sales not picking up and consequently, there is no fund flow, non-receipt of payment from the customers in business, etc. The amendment, though stated to be in the interests of Micro and Small enterprises, but ultimately it is going to be beneficial to the Revenue and may lead to many business enterprises becoming sick or unviable in view of the huge additional tax such business entities getting exposed to.

The following issues required reconsideration.

1. It is not a simple disallowance of small expenditure. The profit element is around 2 to 10% depending upon industry but this amendment talks about disallowance of whole purchase remaining outstanding. It includes disallowance of purchases which constitutes a substantial part of the cost of sales.
2. The amendment defeats the computation of tax liability on real income. As income tax is to be collected on real income and on the basis of ability to pay.
3. The idea of achieving social objectives through tax laws though laudable but only to that extent which is workable and practical and does not create unbearable hardship.
4. the payment of wages and salaries will now have a back seat as compared to purchases, as the non-payment of wages will still continue to be allowed on an accrual basis but payment for purchases will be allowed on cash basis i.e the year of payment.
5. As, the very objective aimed to be achieved may itself get defeated and in fact be counterproductive as collection of additional tax on account of disallowance of delayed payment to Micro and Small enterprises, will take priority over the payment to such Micro and Small enterprises.
6. 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.
7. There is another implication that many business enterprises considering the nature of their business and possibility of delay in making payment may be discouraged to make purchases or avail services from those entities which are registered as Micro or Small enterprises under the MSMED Act.
8. The Memorandum explaining the provisions of the Finance Bill of 2023, reflects Government intends to improve liquidity and cash inflows of MSME however the amendment creates unintended tax burden as if MSME also fails to make payment to other MSME supplier it is resulting into disallowance of purchase.

To Avoid this unintended situation, we request

1. Reconsider the amendment and implement it after taking inputs from all stake holders as currently even non-MSME and MSME are procuring goods/services from Non MSME at the cost of higher price considering the impact of income tax.
2. The provisions should not be made applicable to an MSME making payments to other MSMEs.
3. The claim of expenses on an actual basis if the payment is made after the time prescribed under the MSMED Act but during the financial year.

Thank you for your attention to this matter, and we look forward to a favourable response. We appreciate your commitment to the nation's economic well-being and believe that, with your guidance, we can achieve a balanced and effective tax policy.

Yours sincerely,

For All Gujarat Federation of Tax Consultants



**CA Ravi Shah
President**



**ADV. Dhires T. Shah,
Chairman
Representation
committee**



**ADV. Dhinal Shah
Chairman,
Direct Tax Committee**

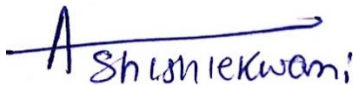


**CA (Dr.) Vishves Shah
Sr. Vice President**

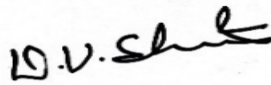


**CA Shridhar Shah
Hon. Secretary**

For Income Tax Bar Association



**CA Ashish Tekwani
President**



**Adv. (Dr.) Dhruven V. Shah
Chairman – Representation
Committee**



**CA Jaykishan Pamnani
Hon. Secretary**

C.C.

To

Hon'ble Chairman, Central Board of Direct Taxes,
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