



An Interview with CA Sudhir Halakhandi regarding 43B(h)

Description

Section 43B(h) of Income Tax Act, 1961 and its impact on MSME

AN INTERVIEW WITH SUDHIR HALAKHANDI BY SKH TAX TEAM

There are lot of questions arising out of Section 43B(h) of Income tax Act, 1961 . This section is related to delay payment to Micro and Small Industries. Lot of questions are there at internet and social media regarding this section and our Tax team has gathered them and asked these questions to **SUDHIR HALAKHANDI** who is continuing to write on this subject since it was introduced in Last Budget. Let us have a Look.... The interview is taken in simple language and the Answers are also given in the same way so don't waste your time in technicalities to understand the important intricacies of the Subject- **SKH TAX TEAM**

SKH TAX TEAM

Will this provision apply even if the person has purchased goods from a Trader who is not a manufacturer or service provider ?

SUDHIR HALAKHANDI

No, this provision is applicable only to goods or services purchased from **manufacturers and service providers** because the definition of “**enterprise**” given in **Section 2 (g)** of **MSMED ACT 2006** does not include traders i.e. This provision is not applicable if the goods have been purchased from a trader.

SKH TAX TEAM

But Sir traders are also eligible for Udyam Aadahr !!!!!

SUDHIR HALAKHANDI

Yes, but that is not connected with 43B(h) of Income Tax Act. Recently “**Traders**” were also included in **MSMED ACT 2006** but it was only for Priority Sector Lending and that is why there is a controversy or confusion going on in this regard but still the definition of Enterprise under this law has not included Traders in it. Since no change has been made in the definition of the Enterprise to include Traders hence as per the current situation, traders are out of this provision i.e. if any purchase is made from traders, then the provisions of 43B(h) will not apply.

SKH TAX TEAM

It is general presumption that since traders are out of preview of the Provision under section 43B(h) so there will not be any problem to traders with the introduction of this provision If they are Purchasing goods / Services from MSMEs ? Is this a correct presumption ?

SUDHIR HALAKHANDI

No, it is a wrong assumption Traders who are purchasing Goods and/or service then they must see the status of the Seller / service provider. If the supplier is Micro or Small then these traders must follow the provision of Section 43(B)(h) .It should be kept in mind that if traders buy goods from an MSME (Small and/or Micro) then they will have to make the payment on time as per Section 43(B)(h) otherwise the provisions of this section will be applicable.

SKH TAX TEAM

It will cover all purchases of Goods and Service from all the Manufacturers and/or Service Providers ?

SUDHIR HALAKHANDI

No , this provision is applicable only on purchases made from **Micro and Small units** and does not include **Medium units**.

SKH TAX TEAM

If the buyer and the seller make an agreement/arrangement among themselves that they will complete the transaction of payment for the goods within 90 days (as is the practice in some places) then will this period become 90 days?

SUDHIR HALAKHANDI

No, the period of 15 days can be extended up to 45 days only through agreement but it cannot be extended more than 45 days, therefore even if the buyer and the seller make an agreement between themselves for payment within 90 days, even then this provision will be applicable considering the time

limit of 45 days only.

SKH TAX TEAM

Is these 45 days period is automatic ?

SUDHIR HALAKHANDI

No , According to MSMED ACT 2006, if there is no agreement between the buyer and the seller then the payment should be made within 15 days and if there is an agreement then the payment should be made within 45 days. Hence to get the benefit of 45 days , there should be an agreement.

SKH TAX TEAM

Will the payment have to be made in 15 days or 45 days for the entire year balance to avoid this new provision of Section 43B?

SUDHIR HALAKHANDI

Practically under this provision of Income Tax Act, if the payment is delayed throughout the year but the payment is made before March 31, 2024, then nothing will be added under Section 43 B (h) because the delayed payment, whenever made, assessee will get expenditure allowed in that financial year in which it is paid.

Thus, if this payment is made on or before March 31, 2024, then it has no negative effect under section 43B(h).

“If the payment is delayed by more than 15 days or 45 days (as the case may be), then the payment will be allowed to be deducted in the year in which the payment is made.”

SKH TAX TEAM

Will this provision be applicable only to the goods or services purchases from those manufacturers or service providers who are registered under MSMED ACT 2006? Is Registration under MSMED Act is mandatory for this provision ?

SUDHIR HALAKHANDI

Yes, according to the definition of supplier given in Section 2(n) of MSMED ACT 2006, “Supplier” is one who files a memorandum under Section 8(1) of this Act, which is also called Registration (Udyam Aadhaar). Section 15 of the same law which determines the time limit for payment also mentions the word “supplier”. This same Section 15 is the basis of this new section 43B(h) of the Income Tax Act and hence this provision is applicable only when registration is there.

SKH TAX TEAM

What is your reaction on the situation that for some of the purchases this provision will be applicable and others are exempt ?

SUDHIR HALAKHANDI

Here, keep in mind that when the provisions of one law are linked to the provisions of another law and then a provision of one law is made, then it is natural for such confusion to remain and if the law makers can avoid such a situation, then it will become easier and easier for Tax payers to comply with tax laws.

SKH TAX TEAM

What are the criteria for ascertaining Micro and Small units?

SUDHIR HALAKHANDI

The composite limit of turnover and investment in plant, machinery and equipment for micro and small units has been fixed as follows: –

Type of Unit	Investment in plant	Machinery and equipment turnover at the unit
Micro Enterprises	Not more than Rs 1 crore	Not more than Rs 5 crore
Small Enterprises	Not more than Rs 10 crore	Not more than Rs 50 crore

SKH TAX TEAM

You have already told us that to attract the provisions of Section 43B(h) of the Income Tax Act, this 15 and 45 day payment period is not to be considered throughout the year, but this period will have a special impact on purchases made around March 31, 2024 and it must be kept in mind that throughout the year even if payment is delayed, payment should be made before the last day of the end of the financial year.

This is very confusing situation and very difficult to digest. Please explain this with the help of a suitable Example.

SUDHIR HALAKHANDI

Let us understand this through an example that if a taxpayer has purchased goods from a micro or small enterprise for Rs 10 lakh on April 1, 2023, then according to the MSMED ACT 2006, the payment must be made within 45 days on May 15, 2023. Now if it is not paid by May 15, 2023, then now this expense will be allowed based on payment in the financial year and not on Mercantile basis. Now even if its payment is done by March 31, 2024, this expense will be allowed in the financial year 2023-24 on the basis of payment.

If the 45 days period is expired on 31st. March 2024 and it is paid after March 31, 2024, then its expenses will not be allowed in the Financial year 2023-24 and the taxpayer will get the allowability only in the Financial year in which it is paid.

SKH TAX TEAM

Ok !!! Explain it further ...Sir

SUDHIR HALAKHANDI

Let us look at another situation that if the goods are purchased on 25th February 2024, even if the payment is made by 10th April 2024, then this expenditure will still be allowed in the Financial year 2023-24 because its payment is made within 45 days . The maximum date fixed is 10th April 2024 and if payment is made till this date, then its expenditure will be available in the financial year 2023-24.

In both these situations, it is assumed that there is a agreement of 45 days for payment between the buyer and the seller and if there is no such contract then this period will be only 15 days.

In this way, the situation becomes clear from this example that according to this new provision 43B(h) of the Income Tax Act, even if there is a delay in the payment period during the entire year, it will not make any difference if 31st March 2024 i.e. financial year. Payment is made before the end of the year.

SKH TAX TEAM

Will small/micro industries always benefit from this provision?

SUDHIR HALAKHANDI

Yes, this is very strange question !!!!! As per the Government point of view this provision is made for the benefit of MSME Industries .Although micro and small enterprises should get their payments on time and apart from this, micro and small enterprises should also make timely payments to other micro and small enterprises, but if we think that through this provision, micro and small enterprises will always get the benefit , this is not practically possible. Let us try to understand this through an example: –

If a taxpayer has purchased goods from micro or small enterprises for Rs 10 lakh on April 1, 2023, then the payment should be made within 45 days by May 15, 2023. Now, if the payment is not made by May 15, 2023, then now This expenditure will not be allowed on Mercantile basis but on cash or payment basis so even if its payment is made by March 31, 2024, this expense will be allowed in the Financial year 2023-24 on the basis of payment and in that case it is clear the MSME is not getting any benefit of 45 days restrictions.

Please note that here we are only discussing only Section 45(B)(h) and implications on payment of Interest or other MSMED provisions.

SKH TAX TEAM

Ohh!!!! Then practically the provision is applicable only when the transaction is made near the close of the year ?

SUDHIR HALAKHANDI

Yes, the practical effect of this provision can be seen only when the purchase or expenditure is made in the last months of the Financial year because the time for payment under this provision is till 31st March.

But one thing is certain that the chances of them getting the payment at least till 31st March will increase because otherwise the purchaser will have to pay income tax on that outstanding amount.

SKH TAX TEAM

Side effect of this Provision on MSME Sector ?

SUDHIR HALAKHANDI

Sometimes it is also possible that the goods will be purchased in restricted volume from these entrepreneurs so that the provision of 43 B (h) can be avoided and especially at the end of the year the stock will be kept to a minimum or the goods will be purchased from traders instead of manufacturers. Traders) And if this happens, then there is a possibility of getting negative effect for micro and small units from this provision.

SKH TAX TEAM

Please tell us How practically this provision will work in the mostly unorganised Business environment of our country

SUDHIR HALAKHANDI

See, this is all a game of monopoly or upper hand in the Trade. If the seller has a monopoly, then his payment does not stop and he receive payment on his own terms and sometimes even they will get advance payment.

The delay in payments will occur only when the buyer has a monopoly, as is the case in many products. Where goods are available in abundance in the competitive market, the buyer gets his own terms and conditions and even delay the payment.

SKH TAX TEAM

Ok !!! Please tell us more ...

SUHDR HALAKHANDI

And this is where the payment gets delayed and even after this provision, the buyers can create negative situations for the sellers due to this provision, which also includes buying goods from traders instead of MSME manufacturers, hence this provision is not for the benefit of MSMEs every time.

It has been made only for the benefit of MSMEs but the general opinion amongst the Trade and Industry is that this provision will cause more troubles to MSMEs but in my opinion in the long run MSME will get benefits from these types of provisions.

SKH TAX TEAM

Have you seen any side effect practically ... at the initial stage of nationwide discussion of this provision.

SUDHIR HALAKHANDI

Yes The signs have started coming For example, we have also seen such examples where monopoly buyers have suggested their sellers to form a trading firm in someone else's name in the family and then first supply the goods to them before supplying them . I told you that it is all a question of monopoly.

This provision will be beneficial in the end but it will also cause some problems in the initial phase.

SKH TAX TEAM

Will the arrears of the previous years also become taxable under this section 43B(h) i.e. suppose the arrears of the financial year 2022-23 are going on, then what will happen?

SUDHIR HALAKHANDI

This section 43B(h) is applicable to the transactions/transactions taken place in the financial year 2023-24 onwards, hence this provision will not be applicable on the dues related to the years before this year.

SKH TAX TEAM

Are there any exception of this Situation ?

SUDHIR HALAKHANDI

Yes, keep one thing in mind that if you have dues from last years and have purchased goods this year too, then whatever payment you make this year can be considered as against dues from last year and in that case, there will be a problem. Therefore, if you have past dues and have purchased goods this year too, then it will be important to take care of this provision.

SKH TAX TEAM

Any Example Sir

SUDHIR HALAKHANDI

Yes, Balance of a creditor in the books of a company as on 31-03-2023 is Rs 40 lakhs and the purchases during the year 23-24 were Rs. 30 lakhs and the total payment made to that creditor during the year was Rs. 60 lakhs. Now the closing balance is 10 lakhs.

The purchases during the year were Rs 30 lakh and the payment was Rs 60 lakh and if it is considered that the first payment was of the previous year then the remaining Rs 10 lakh can come under this section. So be careful in these type of situations.

SKH TAX TEAM

How to know whether a unit is micro, small, or medium? Will we have to ask for his Turnover/ balance sheet from the buyer or will we have to accept whatever he says as, correct?

SUDHIR HALAKHANDI

There is no need to ask for the balance sheet or turnover from the buyer. For this purpose you will need his Udyam Aadhaar number through which you will be able to know the status of that buyer by visiting the MSME portal. This type of facility has recently been started on the MSME portal.

It is very simple to check MSME registration details through Udyam number of a party. Once you have the Udyam number, you can take the following steps to perform MSME search by Udyam number:-

Enter 19-digit URN of MSME in the search box and enter captcha. You will just get all the details. In this regard, you will also get the status of that unit every year.

SKH TAX TEAM

What is your Last take on this provision ...

SUDHIR HALAKHANDI

Yes , they should be made simple and clear to avoid confusion in following the same.

SKH TAX TEAM

Thank You Sir, Todays session is over we will be in touch for further queries , if any , received by us .

SUDHIR HALAKHANDI

Thanks to all of you and your readers...

Note:- All these questions and answers will give you an opportunity to understand this topic and it is possible for you

may not agree with some of the answers given by SUDHIR HALAKHANDI but whatever has been given here will give you an opportunity to think and understand this important topic.

- **TAX TEAM SKH**

Category

- 1. Uncategorized

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