

Section 43B(h) & Audit Trail



**ICAI – Netaji Subhash Place
CPE Study Circle (NIRC)
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MSME
MICRO, SMALL & MEDIUM ENTERPRISES
सूक्ष्म, लघु एवं मध्यम उद्यम

S. 43B

- **Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act....**
- **Clause (h) inserted w.e.f. 1.4.2024 i.e. AY 2024-25 i.e. FY 2023-24**
 - **Any sum payable by assessee to**
 - **a Micro or Small enterprise**
 - **beyond**
 - **Time Limit specified in s. 15 of MSMED Act, 2006**

S. 43B

- **Shall be allowed (irrespective of the PY in which liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing income referred to in section 28 of that PY in which such sum is actually paid by him**
- **Before 139(1) – not allowed (Excluded from the Proviso)**
- **Form 3CD amended to include reporting on 43B(h)**

IMPORTANT DATES

2.10.2006

- **MSMED Act 2006**

16.11.2007

- **Schedule VI of Companies Act 1956 amended**

13.4.2009

- **Clause 22 inserted in Form 3CD**

4.9.2015

- **Schedule III of Companies Act 2013 amended**

22.1.2019

- **MSME Form I**

26.6.2020

- **Change in classification w.e.f. 1.7.2020**

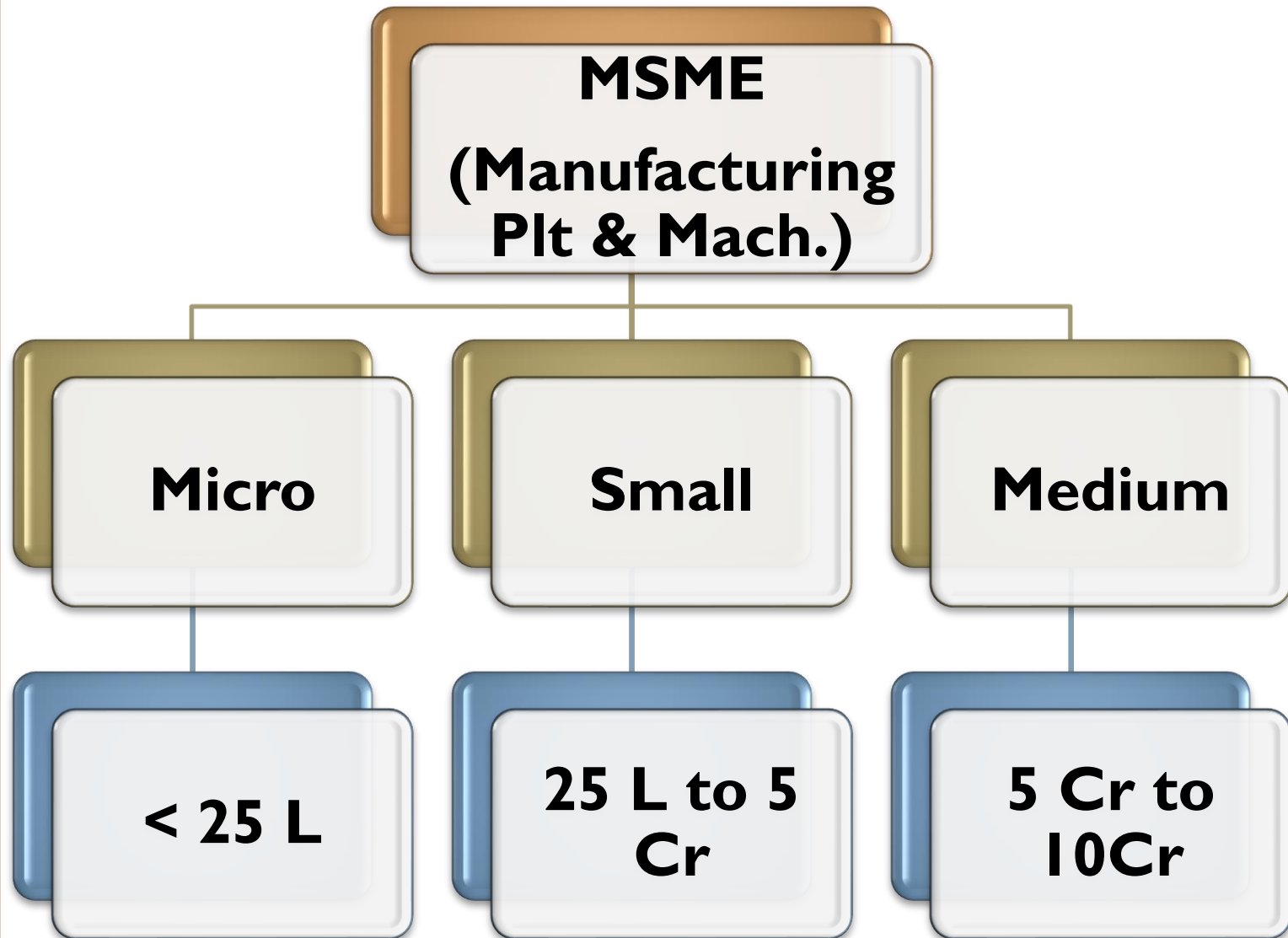
2.7.2021

- **MSME Ministry Office Memorandum**

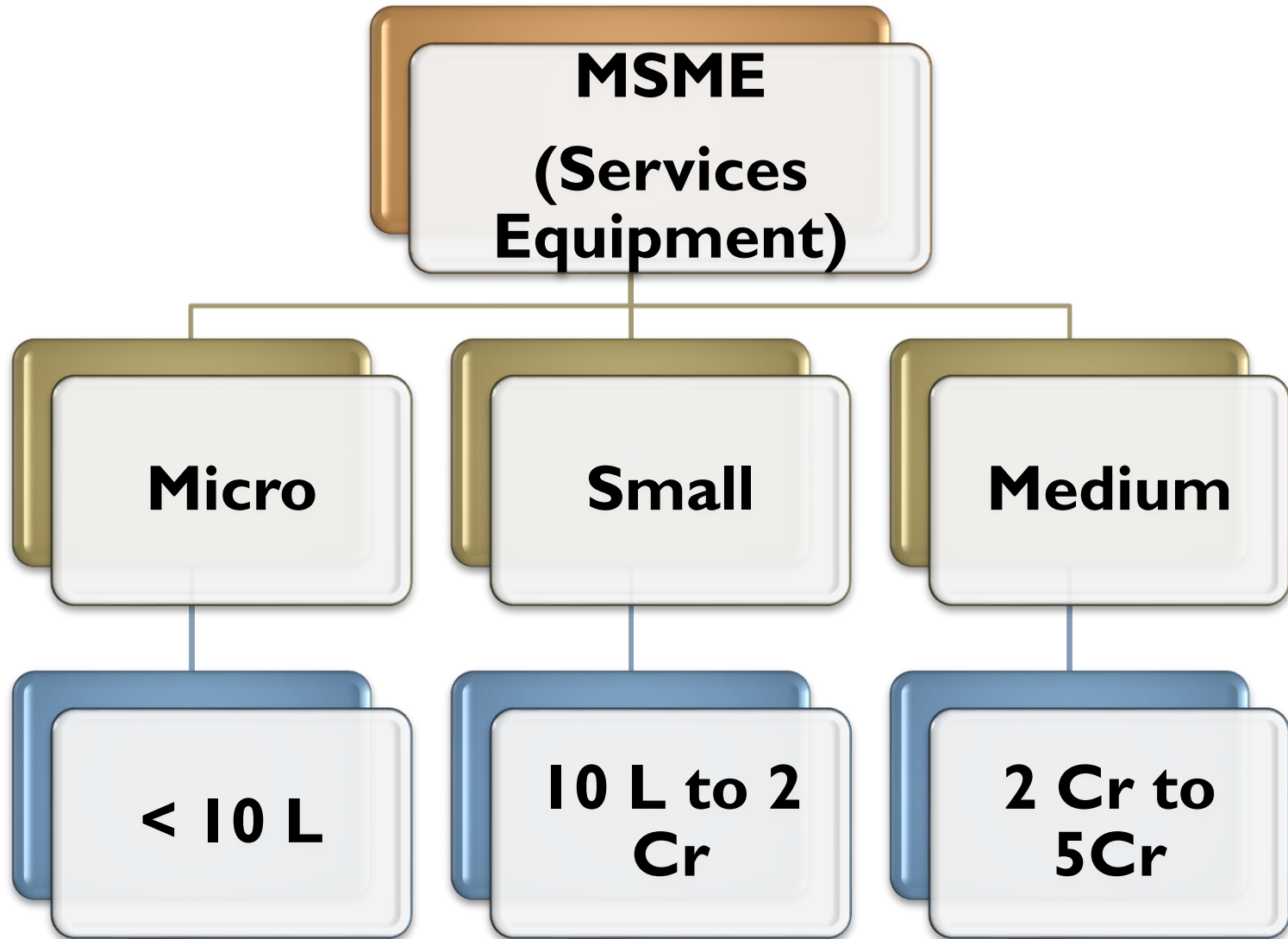
1.4.2024

- **S. 43B(h) Income Tax Act**

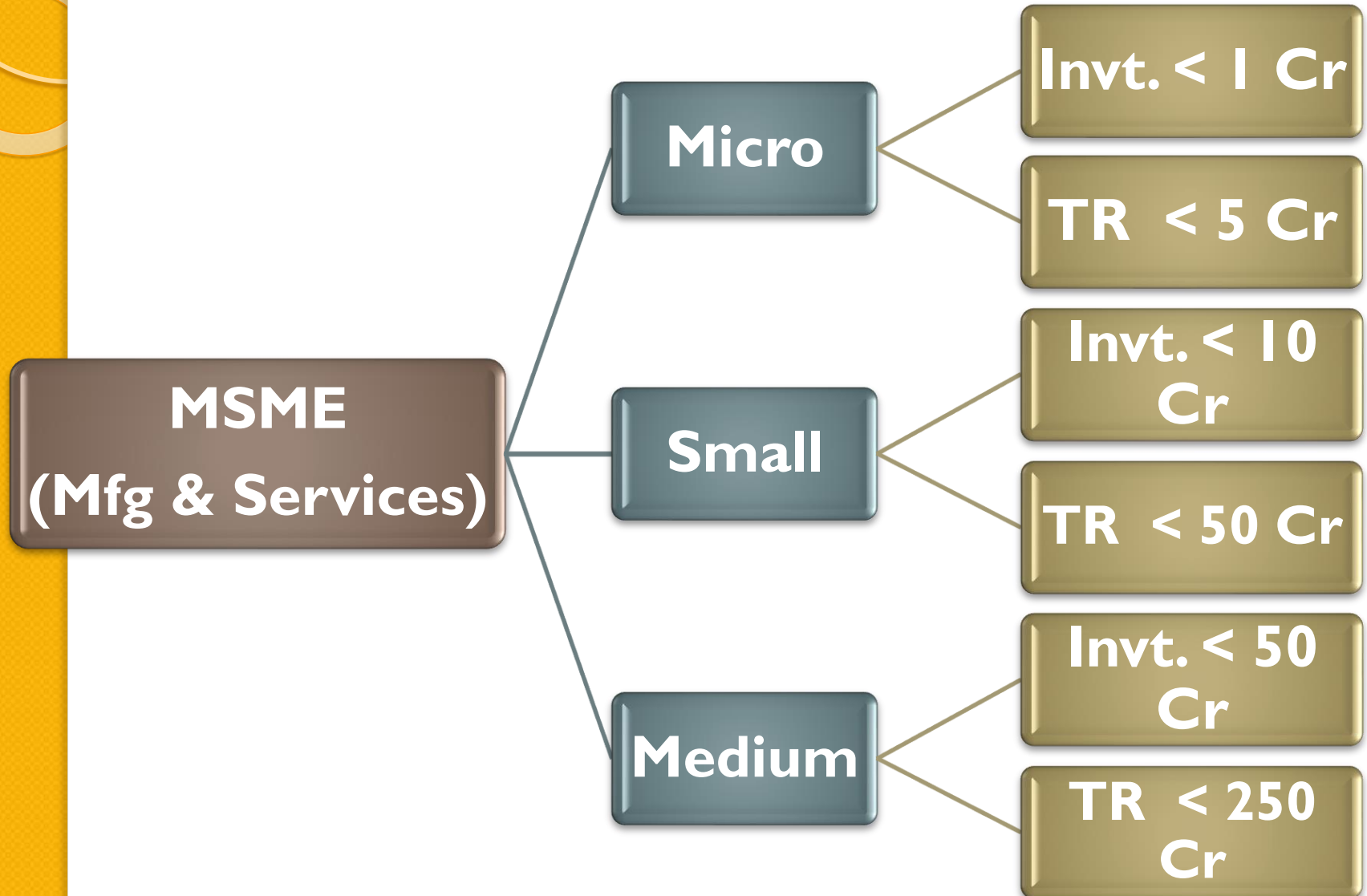
Prior to 1.7.2020



Prior to 1.7.2020



w.e.f. 1st JULY 2020



INVESTMENTS

- **Calculation of investment in plant & machinery or equipment will be linked to ITR of PY**
- **New enterprise, invest. on self-declaration - relaxation shall end after 31st March of FY in which it files its first ITR.**
- **Plt & Mach. Same as IT Act - shall include all tangible assets (other than land & building, furniture & fittings).**
- **Purchase (invoice) value of Plt & Mach. or equip., whether purchased 1st hand or 2nd hand, excluding GST, if enterprise is a new.**
- **Cost to exclude .. Pollution control, R&D, Industrial safety devices, + not. dt. 5.10.2006**

TURNOVER

- **Exports of goods or services or both, shall be excluded**
- **Information as regards turnover and exports turnover for an enterprise shall be linked to the IT Act or CGST Act and the GSTIN.**
- **Turnover related figures of such enterprise which do not have PAN will be considered on self-declaration basis for a period up to 31st March 2021 and thereafter, PAN and GSTIN shall be mandatory**

WHEN TO PAY

- **SECTION 15** - 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 or, where there is no agreement in this behalf, before the appointed day:
- Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed 45 days from the day of acceptance or the day of deemed acceptance.

IMPORTANT DEFINITIONS

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- **Appointed day** - day following immediately after 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
 - **Day of acceptance**
 - day of the actual delivery of goods or the rendering of services; or
 - where any objection is made in writing by the buyer regarding acceptance of goods or services within 15 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
 - **Day of deemed acceptance** - where no objection is made in writing by the buyer regarding acceptance of goods or services within 15 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

CONSEQUENCES

- **SECTION 16 - Where any buyer fails to make payment of the amount to the supplier, as required u/s 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at 3 times of bank rate notified by RBI.**

CONSEQUENCES

- **SECTION 23 - Notwithstanding anything contained in the Income-tax Act, 1961 the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.**

FS REPORTING

- **SECTION 22 - Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—**
 - **principal amount & interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;**
 - **amount of interest paid by buyer in terms of s.16, along with the amount of payment made to supplier beyond the appointed day during each accounting year;**
 - **amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;**
 - **amount of interest accrued and remaining unpaid at end of each accounting year;**
 - **amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure u/s 23**

OVERRIDING EFFECT

- **SECTION 24**

- **The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.**

S. 43B

- **Any sum payable by assessee to a**
- **Micro or Small enterprise**
- **beyond**
- **Time Limit specified in s. 15 of MSMED Act, 2006**

Important Definitions

- **Enterprise** - means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in 1st Schedule to the Industries (Development and Regulation) Act, 1951 or engaged in providing or rendering of any service or services

Important Definitions

- **Supplier** - means a micro or small enterprise, which has **filed a memorandum** with authority referred to in section 8(I), and includes
 - **NSCI** registered as a company
 - **SIDC** of a state or **UT** registered as company
 - any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in **selling goods produced by** micro or small enterprises and rendering services which are provided by such enterprises

TRADERS

Dated:02.07.2021

OFFICE MEMORANDUM

Subject: Activities (NIC code) under MSMED Act, 2006 for Udyam Registration –Addition of Retail and Wholesale Trade- regarding

This Ministry's O.M. No. UAM/MC/01/2017-SME dated 27.06.2017 on the subject 'Activities (NIC codes) not covered under MSMED Act, 2006 for registration of Udyog Aadhaar Memorandum (UAM)' excluded certain activities from registration on UAM Portal. This O.M. was further validated for Udyam Registration vide O.M. no. 5/2(1)/2020-P&G/Policy dated 17.07.2020. Certain changes were made vide 5/2(1)/2020/E-P&G/Policy dated 01.12.2020; where it was clarified that in Table. 1 of O.M. no. UAM/MC/01/2017-SME dated 27.06.2017, NIC codes 45, 46 and 47 and the activities mentioned against these NIC codes, are not permitted for registration in Udyam Registration Portal (<https://udyamregistration.gov.in>).

2. 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.

3. Accordingly, the list of eligible additional activities under NIC Code 45, 46 and 47 are as under :

45	Wholesale and retail trade and repair of motor vehicle and motorcycles
46	Wholesale trade except of motor vehicles and motor cycles
47	Retail Trade Except of Motor Vehicles and motor cycles

4. The Udyam Registration is allowed for above three NIC Codes and activities mentioned against

CASE STUDY

- **Purchase 10.5.2023, paid – 10.9.2023**
 - **No 43B(h), but interest**
- **Purchase 15.3.2024, paid – 15.4.2024**
 - **No 43B(h), no interest**
- **Purchase 15.3.2024, paid – 15.5.2024**
 - **43B(h) & interest**

ISSUES

- **Registered or Not**
- **Traders !!**
- **Opening Balance**
- **Capital Asset**
- **Purchases not consumed**
- **Only for entities audited or for all**

ISSUES

- **Written agreement !!**
- **Date of delivery or date of invoice**
- **Advance received – allowed on payment basis!!**
- **Purchase and sale with same party**
- **Is TDS deducted... money paid!!**
- **GST amount due !!**

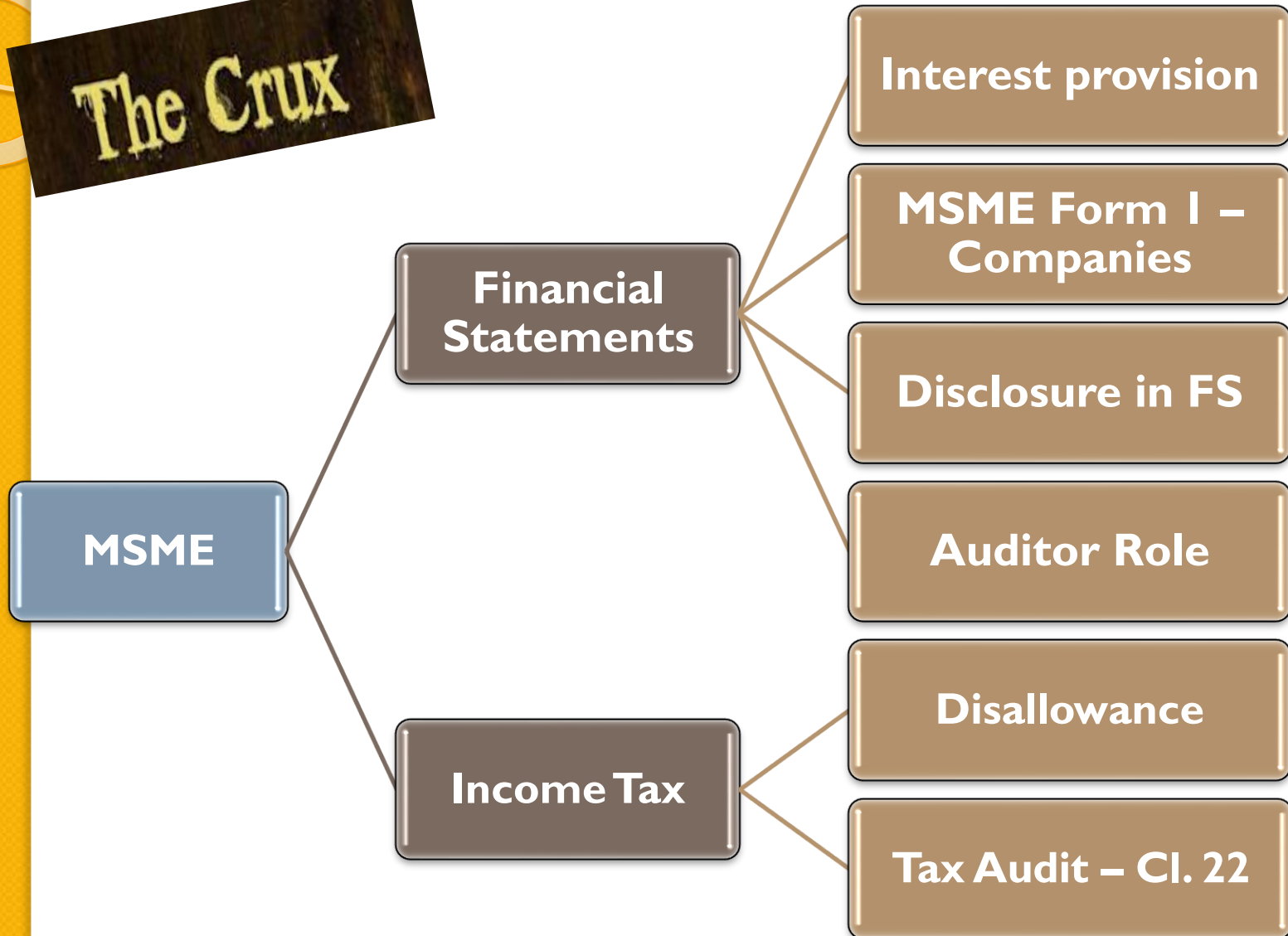
ISSUES

- **S. 44AD / 44ADA / 44AE**
- **Interest not receivable due to agreement or waiver**
- **TDS on interest**
- **MSE registration surrendered**
- **Payment on LIFO basis**
- **Buyer is not MSE. Is he covered?**

ISSUES

- **Are Charitable Trusts covered?**
- **TDS not deducted – 40(a)(ia) or 43B – 3CD**
- **Retention money**
- **Audit fee**
- **Provisions / unbilled expenses**

The Crux



S. 43B(h) & FORM 3CD

- **Cl 26 amended for S. 43B(h) on 5th March 2024**
- **Form 3CD again amended on 19.3.2024 –from Cl. 26 to Cl. 22**
- **Now Cl. 22:**
 - **The amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006 or any other amount not allowable under clause (h) of section 43B of the Income-tax Act, 1961**
- **No reporting in Cl 26 !!!**
- **Implementation Guide with respect to Changes in Form No. 3CD & No.3CEB**

Audit Trail



SECTION 128

- **Books of account, etc., to be kept by company.**
- (1) Every company shall prepare and keep at its registered office books of account and other relevant books and papers and FS for every FY which give a true & fair view of the state of the affairs of the company, including that of its branch office or offices, if any,
- Provided that ..
- Provided further that the company may keep such books of account or other relevant papers **in electronic mode** in such manner as may be prescribed.

RULE 3(I)

- **Manner of Books of Account to be Kept in Electronic Mode**
- (I) The books of account and other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times so as to be usable for subsequent reference.
- Provided that for the financial year commencing on or after the 1st day of April, 2023, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

AUDIT TRAIL

- **Applicable only for companies.**
- **For accounting period commencing on or after 1.4.2023**
- **Books of accounts using accounting software. Books of accounts includes records in respect of:**
 - **all sums of money received and expended**
 - **all sales and purchases of goods and services**
 - **assets and liabilities of the company; and**
 - **items of cost – cost records**

AUDIT TRAIL

- **Accounting software should have feature of:**
 - **Recording audit trail of each and every transaction,**
 - **creating an edit log of each change made in books of account**
 - **date when such changes were made; and**
 - **ensuring that the audit trail cannot be disabled.**

RULE 11(g)

- **Whether the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention**

AUDIT APPROACH

- **Identify records & transactions that constitute books of account**
- **Identify the software or any other IT component used for processing and or storing data for creation and maintenance of books of a/c**
- **Ensure such software have the audit trail feature;**
- **Ensure that the audit trail captures changes to each and every transaction of books of account; information that needs to be captured may include the following:**
 - **when changes were made**
 - **who made those changes**
 - **what data was changed**

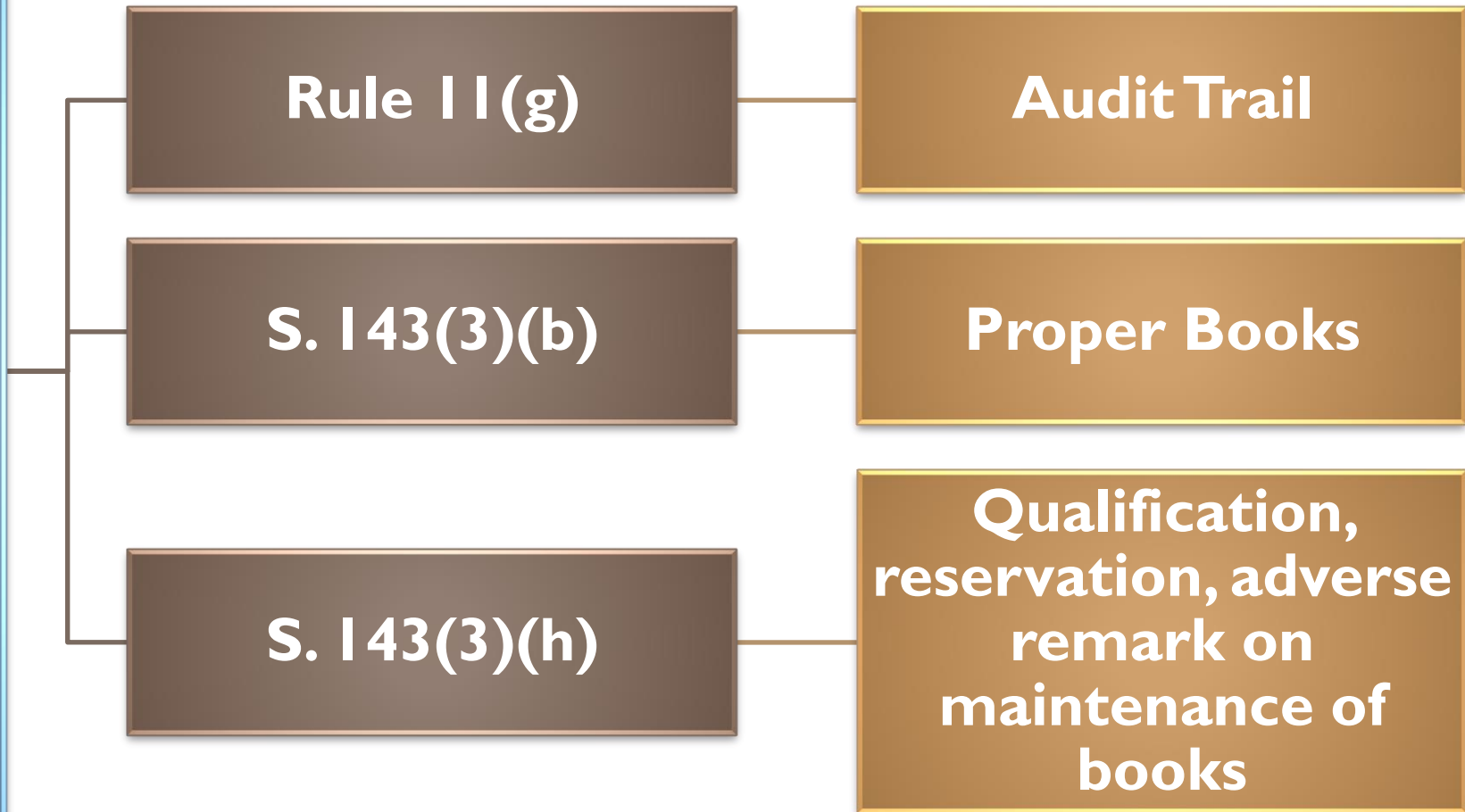
AUDIT APPROACH

- **Ensure that Audit Trail is:**
 - **Always enabled (not disabled)**
 - **Enabled at the database level (if applicable) for logging any direct data changes**
 - **Appropriately protected from any modification**
 - **Retained as per statutory requirements for record retention – 8 years (128(5))**
- **Ensure that controls over maintenance & monitoring of audit trail & its feature are designed & operating effectively throughout the period of reporting**

EXPECTED SCENARIOS

- **Management have not identified all records/transactions for which audit trail should be maintained.**
- **The accounting software does not have the feature to maintain audit trail**
- **In accounting software audit trail was not enabled throughout the audit period**
- **Management maintains adequate audit trail as required by the Account Rules.**

Audit Trail Reporting



REPORTING – RULE 11(g)

Based on our examination which included test checks, the company has used an a/cing software for maintaining its books of a/c which has a feature of recording audit trail (edit log) facility & the same has operated throughout the yr for all relevant transactions recorded in the software except that the audit trail feature of **XX** software used by the company to maintain payroll records did not operate throughout the year. Further, during the course of our audit we did not come across any instance of audit trail feature being tampered with.

The audit trail has been preserved by company as per the statutory requirements for record retention – from 2nd year onwards

REPORTING – S. 143(3)(b)

In our opinion, proper books of account as required by law have been kept by the company so far as it appears from our examination of those books [and proper returns adequate for the purposes of our audit have been received from the branches not visited by us] except for the matters stated in the paragraph (...) below on reporting under Rule 11(g)

REPORTING – S. 143(3)(h)

- **S. 143(3) (h) - any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith**
- **The [qualification/ adverse remark/ reservation] relating to the maintenance of accounts and other matters connected therewith are as stated in the paragraph (...) above on reporting under Section 143(3)(b) and paragraph (...) below on reporting under Rule 11(g)**

RULE 11(g) – MODIFIED REPORTING

S. No.	Scenario	Reporting
I	<p>Audit trail feature was disabled for one of the books of account/ records or for an accounting software - (e.g., PPE software did not have audit trail feature))</p>	<p>Based on our examination, the company, has used accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility except in respect of maintenance of PPE records wherein the accounting software did not have the audit trail feature enabled throughout the year. Further, the audit trail facility has been operating throughout the year for all relevant transactions recorded in the software except for the instances reported below..... Further, during the course of our audit we did not come across any instance of audit trail feature being tampered with.</p>

RULE 11(g) – MODIFIED REPORTING

S. No.	Scenario	Reporting
2	<p>Audit trail feature is not operating effectively during the reporting period</p>	<p>“.....except that the audit trail feature ofYYY software used by the company to maintain payroll records did not operate throughout the year....”</p> <p>“.....except that no audit trail enabled at the database level for accounting software AAA (database SQL) and BBB (database db2) to log any direct data changes.....”</p>

RULE 11(g) – MODIFIED REPORTING

S. No.	Scenario	Reporting
3	Accounting software is maintained by third party and auditor is unable to assess whether audit trail feature can be disabled during the reporting period	“Based on our examination, the company, has used an accounting software ABC which is operated by a third party software service provider, for maintaining its books of account and in absence of [state the type of control report] we are unable to comment whether audit trail feature of the said software was enabled and operated throughout the year for all relevant transactions recorded in the software or whether there were any instances of the audit trail feature been tampered with.”

RULE 11(g) – MODIFIED REPORTING

S. No.	Scenario	Reporting
4	Migration from one software to the other happened during the year or higher version of software installed and auditor is unable to obtain sufficient and appropriate evidence	The Company has migrated to [name of the software] from [old software/manual] during the year and is in the process of establishing necessary controls and documentations regarding audit trail. Consequently, we are unable to comment on audit trail feature of the said software

ERROR OR FRAUD

- Occurrence of an error or fraud may not be established due to lack of maintenance, availability or retrievability of audit trails.
- For evaluating severity of a deficiency for such instances specifically in cases of fraud, consider:
 - Likelihood that the deficiency will result in a material misstatement, and
 - Magnitude of such an outcome.
- S. 143(12) Reporting



- **Can transactional books be maintained through different period?**
- **For small companies, can all books be maintained after year end?**
- **Consolidated FS?**
- **IFCoR Reporting?**
- **Non- Compliance:**
 - **Company – 50k to 500k**
 - **Auditor – reporting**
- **ICAI Implementation Guide (Revised 2024)**

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