

# The Crucx of Section 43B(h)



**CA. PRAMOD JAIN**

FCA, FCS, FCMA, LL.B, MIMA, DISA, IP

**Shared at**

**ICAI – Jaipur Branch (CIRC)**

**21<sup>st</sup> March 2024**

**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

- MSME 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 1

26.6.2020

- Change in classification w.e.f. 1.7.2020

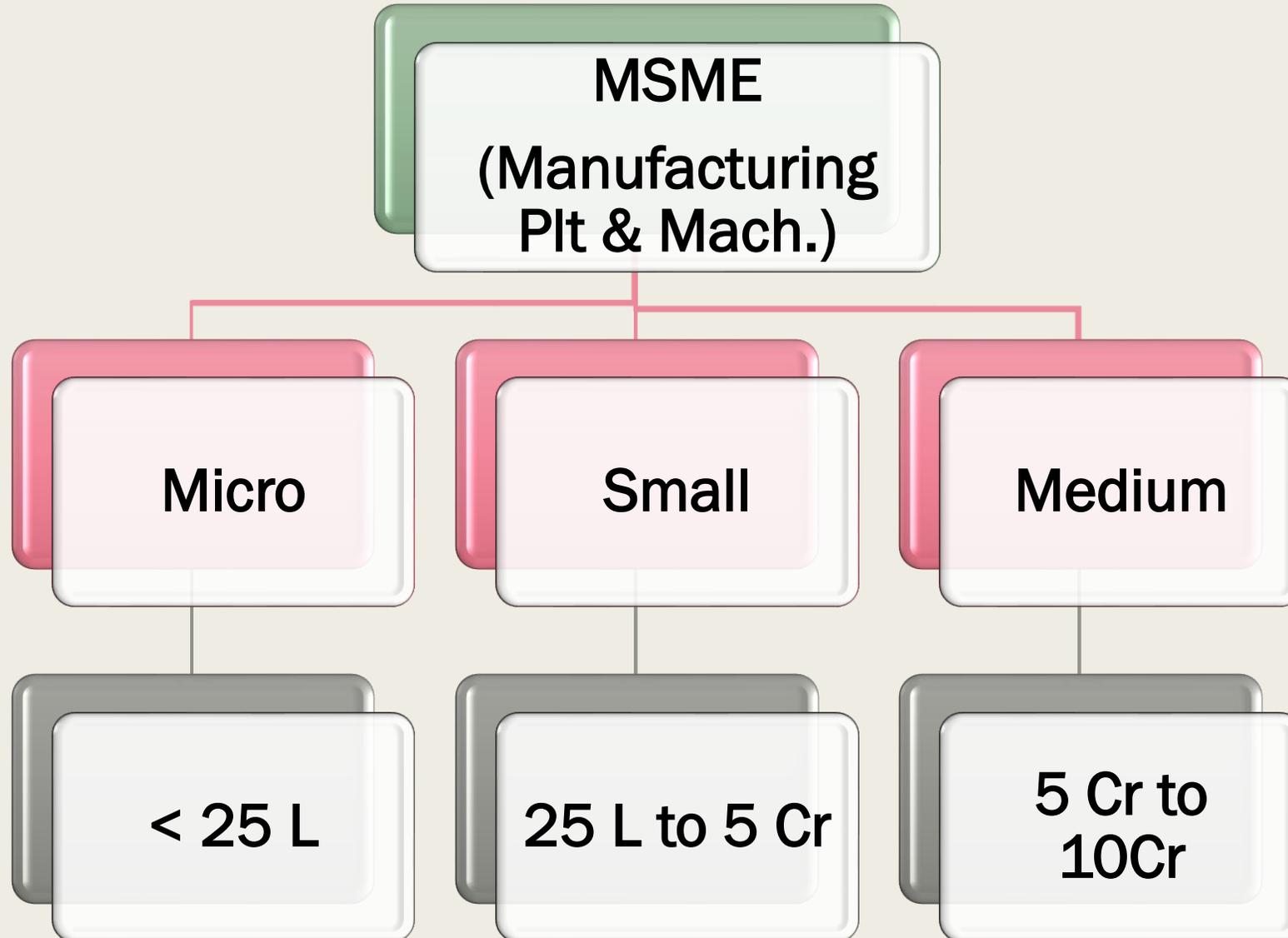
2.7.2021

- MSME Ministry Office Memorandum

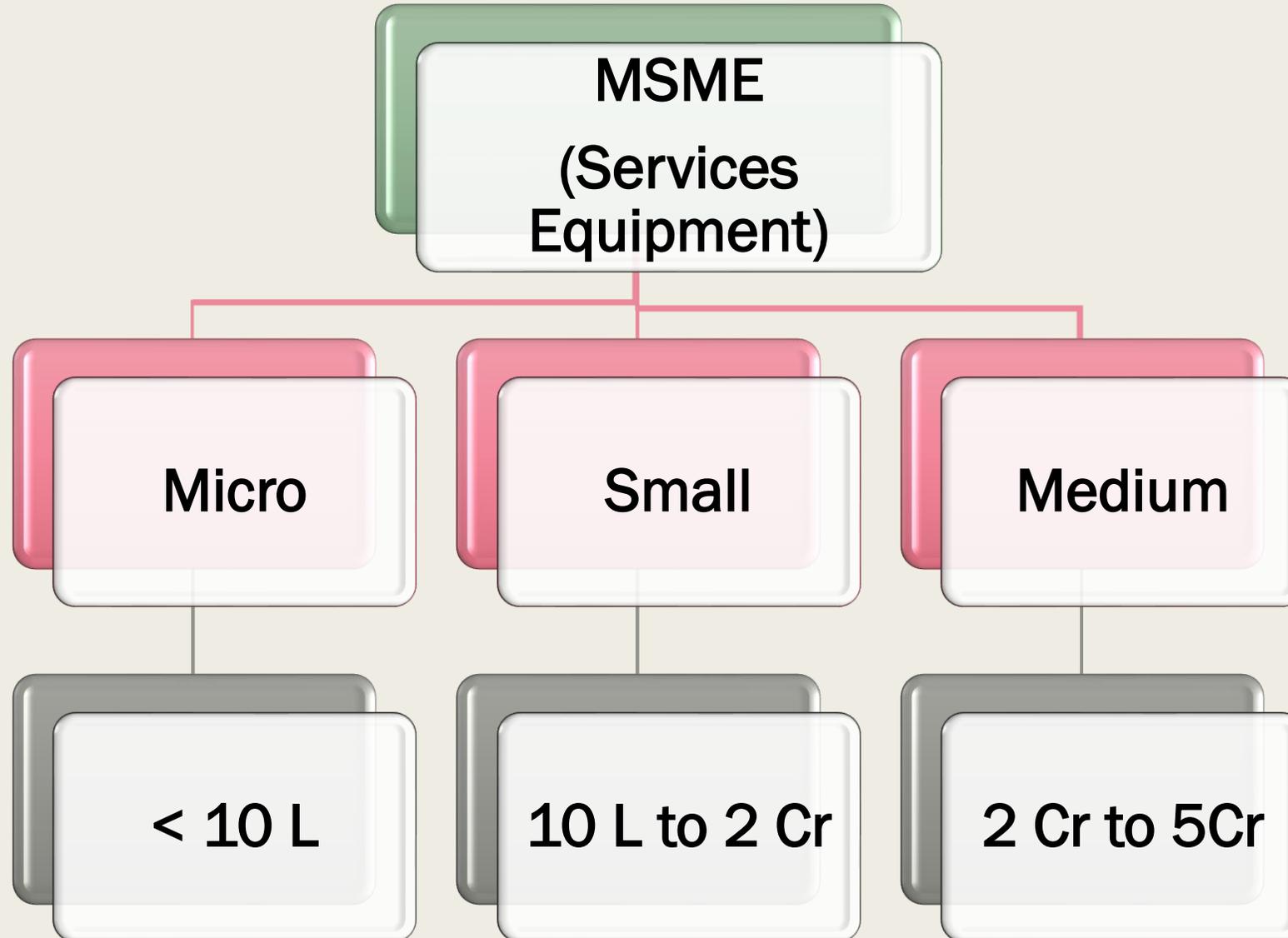
1.4.2024

- S. 43B(h) Income Tax Act

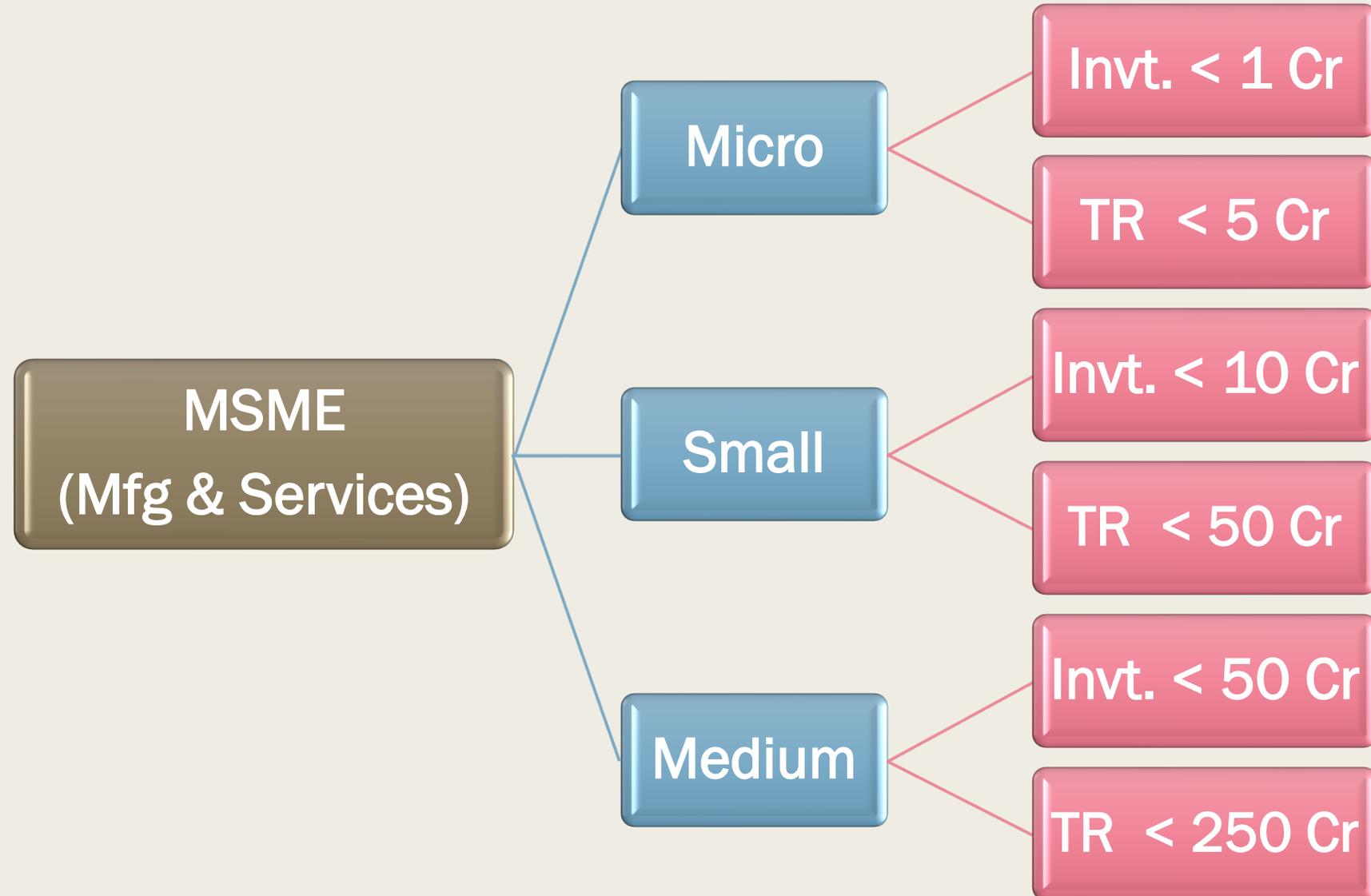
# Prior to 1.7.2020



# Prior to 1.7.2020



w.e.f. 1<sup>st</sup> 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.
- Default if payment not made:
  - *If date agreed upon in writing - within that date (can't agree beyond 45 days from day of acceptance / deemed acceptance)*
  - *If not agreed in writing - before appointed day (within 15 days of date of acceptance)*

# IMPORTANT DEFINITIONS

- **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**

# 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 1<sup>st</sup> 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(1), 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

CA. Pramod Jain

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 !!**

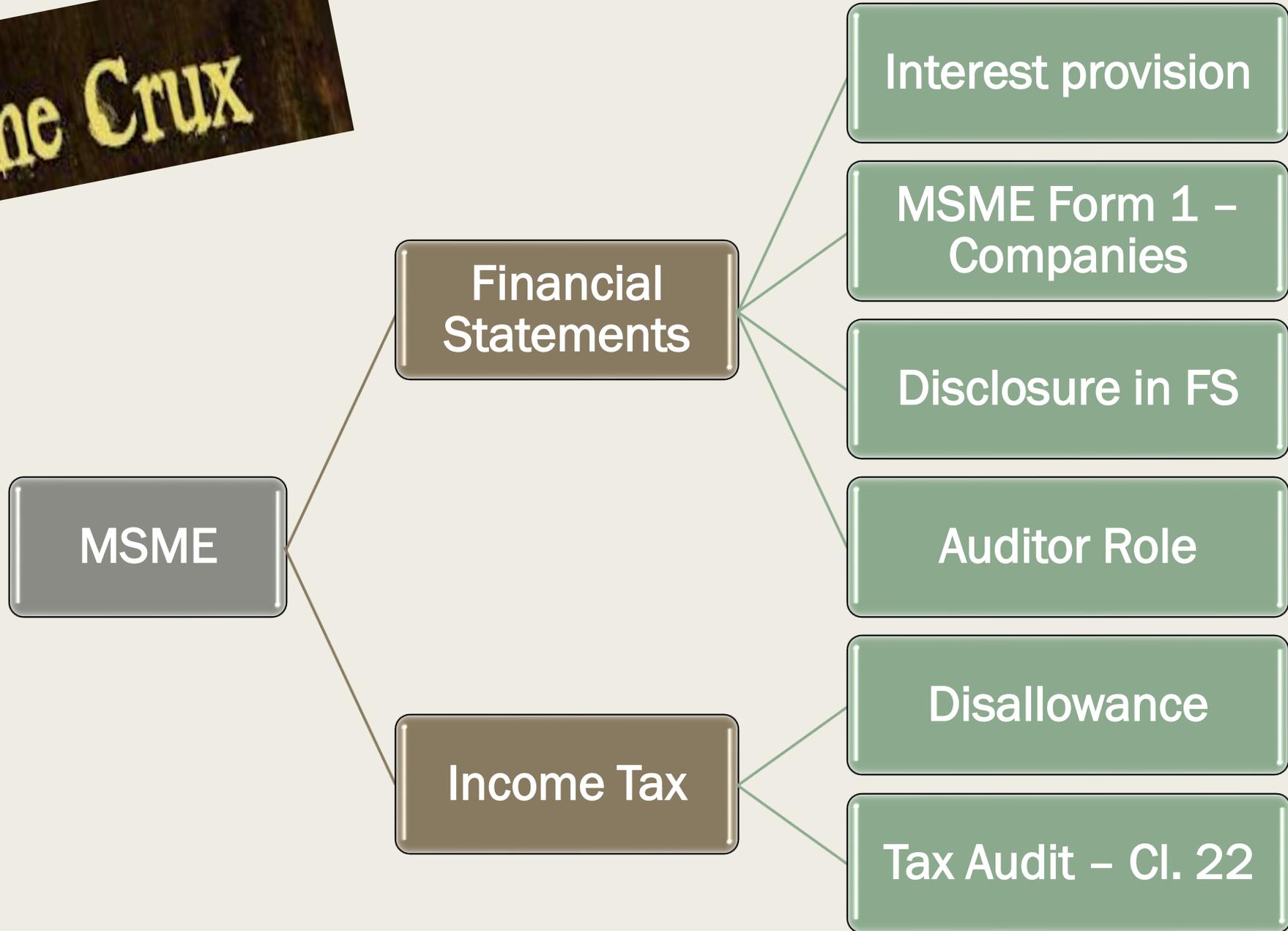
# ISSUES

- S. 44AD / 44ADA / 44AE
- Interest not receivable due to agreement or waiver
- Interest even if delay is there but amount due paid by 31<sup>st</sup> March
- TDS on interest
- MSE registration surrendered

# ISSUES

- Payment on LIFO basis
- Buyer is not MSE. Is he covered?
- Are Charitable Trusts covered?
- TDS not deducted – 40(a)(ia) or 43B – 3CD
- Retention money
- Audit fee
- Provisions / unbilled expenses

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