



Ref. No.LUB/2021-22/300

Date:- 10/12/2021

Smt. Nirmala Sitharaman ji,  
Hon'ble Minister of Finance  
and Corporate Affairs,  
Govt. of India,  
North Block  
New Delhi -110001

**Sub: Technical Issues face by the MSME with respect to processing of Income tax return under by CPC under New Income Tax Portal.**

Respected Madam,

Please accept greetings from Laghu Udyog Bharati, an all India Organisation with vision to Promote, Protect, Preference and Progress of Micro and Small Industries having presence in around 500 districts throughout the Country.

Laghu Udyog Bharati has been in constant touch with Ministry of Finance and other related Authorities in relation to various concerns of MSME sector with respect to Income Tax Law, GST Law etc. We are grateful to your goodself that you have always patiently heard concerns raised by Laghu Udyog Bharati from time to time relating to various section of MSMEs industries.

We would like to bring to your kind notice about a technical issue being faced by some of the MSME units during the processing of Income Tax Return at CPC u/s 143(1) of Income Tax Act 1961.

**Issue & Concern**

The Intimation received for A.Y. 2020-21 u/s 143(1)(a) Of Income Tax Act 1961, have been disallowed and added the same to the Income of the assessee.

**The amount has been wrongly added to income just because of reporting of the Information in the Form 3CD which is a general practice and not liable to be added to Income. For better understanding, the details of some of these cases are being enclosed.** According to our understanding of the issue, it seems that Income Tax Portal is still not working properly and hence, these mistakes are being noted.

Further, **Rectification request for these intimation passed are not available on the Income Tax Portal and the procedure of going to appeal is a cumbersome process and additional cost to these MSMEs.** The Intimation u/s 143(1) issued with such errors are creating uncertainty among the assesseees and sense of fear also. Such errors are also leading to unwanted and unnecessary litigations.



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**Sincere Request**

- 1) To kindly intervene in the matter and give necessary instruction to the concern department to look into the issue and arrange to Re-issue intimation for all such cases so that unnecessary litigations can be avoided.
- 2) An online proceeding being a new system for Income Tax Payees and specifically MSMEs are not well equipped, hence period for filing of appeal u/s 246A against such Intimation Orders must be extended.

We sincerely request you to consider our above submissions favourably and bring the necessary relief to the stakeholders.

With warm regards

Yours Sincerely,

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**(1) Deduction of employee's contribution not allowed in the intimation issued u/s 143(1) due to Reporting under form 3CD for information purpose:**

**Legal Provision:**

(1) The section 36(1) of Income Tax Act, 1961 provided that "The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28-

(va) any sum received by the assessee from any of his employees to which the provisions of sub- clause (x) of clause (24) of section 2 apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date.

*Explanation (1)- For the purposes of this clause, "due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification issued there under or under any standing order, award, contract of service or otherwise;*

<sup>1</sup>*Explanation (2) For the removal of doubts, it is hereby clarified that the provisions of section 43B shall not apply and shall be deemed never to have been applied for the purpose of determining the "due date" under this clause"*

1- This explanation are inserted by the Finance Act, 2021 (w.e.f. 01-04-2021)





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(2) The section 2(24) of Income Tax Act, 1961 provided that "Income" includes –

(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees State Insurance Act, 1948 (34 of 1948) or any other fund for the welfare of such employees;"

**Issue:**

- (1) The section 2(24)(x) of Income Tax Act, 1961 specified that any contribution i.e. ESI, PF etc. received by the employer from the employee to deposit to employee's fund shall be deemed as income of the employer. The deduction of such contribution will be allowed if it is deposited to employee fund on or before due date specified under relevant statute or standing order etc.
- (2) In the case laws of **CIT v/s Rajasthan State Ganganagr Sugar Mills Ltd (2017) 393 ITR 421 (Raj.)** was held that where assessee-company made payment of employees' contributions to ESI and EPF after due dates of payment under relevant acts but much before date of filing of return under section 139(1) of Income Tax Act, assessee would clearly be entitled to deduction of said payment.
- (3) Further explanation has been inserted by the Finance Act 2021 under section 36(1)(va) and 43B of Income Tax Act, 1961 to differentiate the due date and such explanation will be **effective from 01.04.2021**. The due date specified under section 36(1)(va) should not be the date specified under section 43B of Income Tax Act, 1961. On or after A.Y. 2022-23, Assessee should deposit the amount received from employee by way of contribution on or before due date specified under relevant statute. If he has not deposited such amount on or before due date then such amount will be disallowed. Upto A.Y. 2021-22, if employee's contribution is deposited on or before due date of filing of Income Tax return u/s 139(1) of Income Tax Act, 1961 then deduction of such amount is allowed from income in the year in which it received.



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(4) The Income Tax Portal (CPC) at the time of processing u/s 143(1) of the Income tax for A.Y. 2020-21, has proposed to disallow the amount received from employee by way of contribution (which are required to report in table 20(b) of tax audit report even if it is paid on or before due date of filing of return u/s 139(1) of Income Tax Act, 1961 - **M/s Automalleable – Ack.No.205144391130121**) The Income Tax Portal (CPC) has disallowed whether or not assessee has paid the due employee contribution within due date specified relevant statute (**M/s Bhagwati Udyog-Ack.No.766975941301120**). The processing done by the Income Tax Portal (CPC) is not legally valid. The system also has not provided any option to submit response in this regard. It is processing error (technical mistake) of the system.

**(2) Deduction of tax, duties and cess not allowed in the intimation issued u/s 143(1), even though law allows:**

**Legal Provision:**

(1) The section 43B of Income Tax Act, 1961 provided that *“Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-*

(a) *any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or*

- (b) .....
- (c) .....
- (d) .....
- (e) .....
- (f) .....
- (g) .....

*shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him :*





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**Provided** that nothing contained in this section shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub-section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

*Explanation 2.—For the purposes of clause (a), as in force at all material times, "any sum payable" means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.*

<sup>1</sup>*Explanation 5.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply and shall be deemed to never to have been applied to a sum received by the assessee from any of his employees to which the provisions of sub-clause (x) of Clause of (24) of section 2 applies."*

1. This explanation has inserted by the Finance Act, 2021 (w.e.f. 01-04-2021)

**Issue:**

- (1) The section 43B overrides all the other provisions of Income Tax Act, 1961 and specified that deduction of specified expense is allowed only on actual payment basis irrespective of accounting followed by the assessee. However the proviso has been added to the Section that if such specified expenses are paid on or before due date of filling of return u/s 139 (1) of Income Tax Act, 1961 then it is allowed in the previous year in which liability of payment was incurred.
- (2) The sub-section (a) of 43B of Income Tax Act, 1961 specified that any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force shall be allowed if it is paid on or before filling of return u/s 139(1) of Income Tax Act, 1961.



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- (3) The Income Tax Portal (CPC) at the time of processing u/s 143(1) of Income tax return for A.Y. 2020-21 has disallowed the amount of GST and TDS Payable which are required to be reported in the table no.26(i)(B)(a) of income tax audit report even if it is paid on or before filling of return u/s 139(1) of Income Tax Act, 1961. The section 43B of Income Tax Act, 1961 disallowed if taxes and duties payable are not paid on or before filling of return. The disallowance made by the Portal is not lawfully valid, as the payment were made well before due date of filling Income Tax Return and was shown only for information purpose by Auditor. The assessee (**Nagaur Agrotech Limited- CPC/2021/A6/164863488**) has paid the tax amount before filling of return and describes such payment details in notes to accounts of financial statements. The intimation u/s 143(1) provides a manner to rectify/ submit response with respect to such disallowance but Portal does not provide any such option. The assessee has raise grievance on the Portal with respect to not appearing any response option but no reply has been received from another side.