

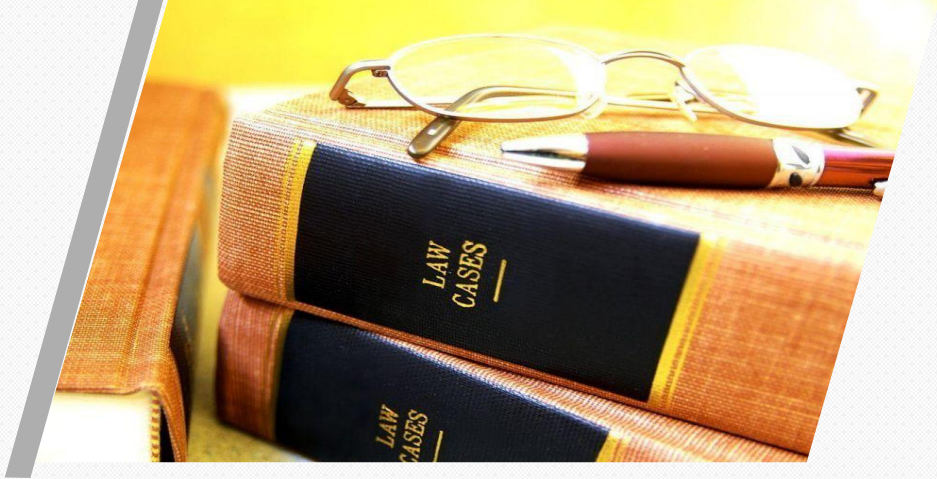


January 2024

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Direct Tax Case Laws



Case Law 1:

HIGH COURT OF BOMBAY

Renaissance Global Ltd v. National Faceless Assessment Centre

WRIT PETITION (L) NO. 34670

Facts :

The assessee filed objections under section 144C(2) with the Dispute Resolution Panel (DRP) and a copy thereof was filed with the Jurisdictional Assessing Officer. It did not upload the objections on the portal. The assessee explained that this non-upload was due to a technical impediment in the portal.

The Faceless Assessing Officer was unaware that the assessee had filed objections. Despite this, the Faceless Assessing Officer proceeded to pass the assessment order without waiting for the DRP's directions under sub-section 5 of section 144C and issued demand notice.

Held:

- The prayer clause (a) in the petition is asking the Hon'ble Court to review and cancel the final assessment order and the notice of demand issued to the petitioner. The petitioner is requesting the court to use its authority to examine the records related to their case and determine if the assessment order, passed on November 13, 2023, is legal and appropriate. If the court finds any

issues, the petitioner wants the order and the demand notice to be quashed or set aside.

- In this case, Petitioner had filed its objections under Section 144C(2) of the Income Tax Act, 1961 ("the Act") with the Dispute Resolution Panel ("DRP") and a copy thereof was filed with the Jurisdictional Assessing Officer. Petitioner, admittedly, however, did not upload the objections in the portal. Mr. Gandhi states it was due to a technical impediment in the portal.
- The Faceless Assessing Officer unaware of the fact that the Petitioner has filed its objections, proceeded to pass the assessment order without waiting for the directions of DRP under Sub-section 5 of Section 144C of the Act.
- Therefore, without going into merits of the matter and in view of the view expressed by us in *Sulzer Pumps India Private Limited v. Deputy Commissioner of Income Tax, Circle-15(3)(2) and Others* (Writ Petition (L) No. 15811 of 2021 dated 27th October 2021 (Unreported).) and the view expressed by the Hon'ble Delhi High Court in *Pepsico India Holdings Private Limited v. Assessment Unit ITDNFAC and Others* (Writ Petition (C) No. 15322 of 2023 dated 1st December 2023 (Unreported)), we hereby quash and set aside the assessment order dated 13th November 2023.

Direct Tax : Case Laws

- The Assessing Officer may pass an assessment order once DRP passes its directions.
- Consequently, the notice of demand in Form No. 7 dated 13th November 2023 is also quashed and set aside.
- Petition disposed.

All rights and contentions of parties are kept open.

Direct Tax Circulars & Notifications



S. No Notification

1. Notification No. 105/2023 :

CBDT wide Notification No. 105/2023 has introduced Form ITR 1 Sahaj and Form ITR 4 Sugam for AY 2024-2025 I.e. FY 2023-2024.

Link : <https://incometaxindia.gov.in/communications/notification/notification-105-2023.pdf>

2. Notification No. 104/2023 :

CBDT wide Notification No. 104/2023 has notified amendments to Rule 10TA and Rule 10TD of the Income Tax Rules that relate to safe harbour provisions for international transactions, with effect from April 1, 2024.

It has amended the definition of 'intra-group loan' to mean a loan advanced to an associated enterprise being a non-resident, where the loan is not advanced by an enterprise, being a financial company including a bank or a financial institution or an enterprise engaged in lending or borrowing amendment to the safe harbour rules provides for intra-group loans where the condition of sourcing the loan in Indian rupees is being removed. This is primarily to align with the normal course of business; and does not include credit line or any other loan facility which has no fixed term for repayment. Proposed the current global economic scenario where the money could be sourced by the lending Indian company other than Indian rupees and as such this condition of sourcing in Indian rupees has been removed.

Further, the proposed amendment in Rule 10TD outlines the scope of allowable credit rating agencies to benchmark loan transactions instead to just CRISIL as earlier.

The minimum rates of interest applicable on such international group transactions have now been rightly revised and international benchmark rates have been introduced as the reference rates instead of the domestic rates since the transactions involve foreign currency funds. The interest spread over the benchmark reference rate has also been revised with applicable rates separately for the amounts below and above Rs 250 crore to facilitate a more realistic assessment in line with the rating of the associated group enterprise.

Link : <https://incometaxindia.gov.in/communications/notification/notification-104-2023.pdf>

3. Notification No. 103/2023

CBDT wide Notification No. 103/2023 has inserted clause (x) in rule 17C to provide "Investment by way of acquiring units of POWERGRID Infrastructure Investment Trust" as a mode for investment or deposit for accumulation or setting apart money out of remaining 85 percent income, where eighty-five per cent of the income is not applied or deemed to have been applied for charitable or religious purposes in India during the previous year but is accumulated or set apart for application to such purposes in India.

Link: <https://incometaxindia.gov.in/communications/notification/notification-103-2023.pdf>

Direct Tax Circulars & Notifications

S. No Circulars

1. Circular No. 20 of 2023: CBDT releases guidelines for deduction of tax under Section 194-O

The Circular details several types of situations with examples and provides clarity on multiple issues.

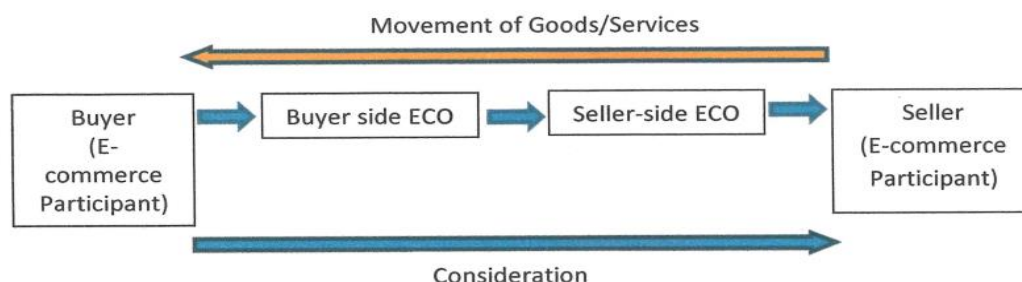
Section 194-O of the Income tax Act, 1961 provides that an e-commerce operator shall deduct income tax at the rate of one percent of the gross amount of sale of goods or provision of services, or both, facilitated through its digital or electronic facility or platform.

CBDT has issued various guidelines, we have covered following points:

▪ Who should deduct tax at source where there are multiple e-commerce operators (ECO) involved in a transaction?

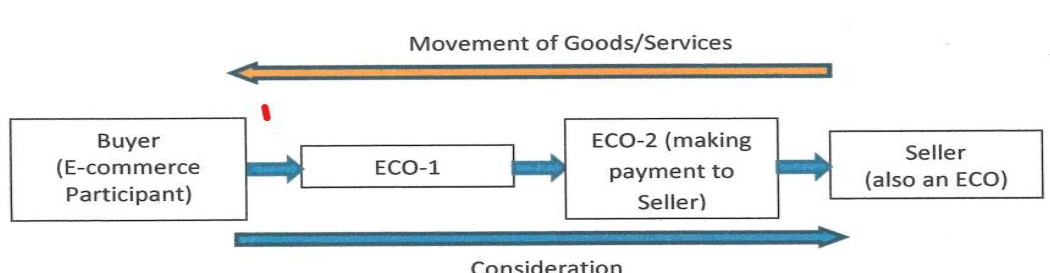
There may be a platform or network on which multiple e-commerce operators are participating in a single transaction. For example, there could be a buyer side ECO involved in buyer side functions and seller side ECO involved in seller side functions. In this case there may be two situations:

i. **Situation 1:** Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is not the actual seller of the goods or services.



In this situation, the compliance under section 194-O of the Act is to be done by the seller-side ECO who finally makes the payment or the deemed payment to the seller for goods sold or services provided.

ii) **Situation 2:** Where multiple ECOs are involved in a single transaction of sale of goods or provision of services through ECO platform or network and where the seller-side ECO is the actual seller of the goods or services



Direct Tax Circulars & Notifications

S. No Circulars

In this situation, the compliance under section 194-0 of the Act is to be done by the ECO which finally makes the payment or the deemed payment to the seller for goods or services sold, which in this case is ECO-2.

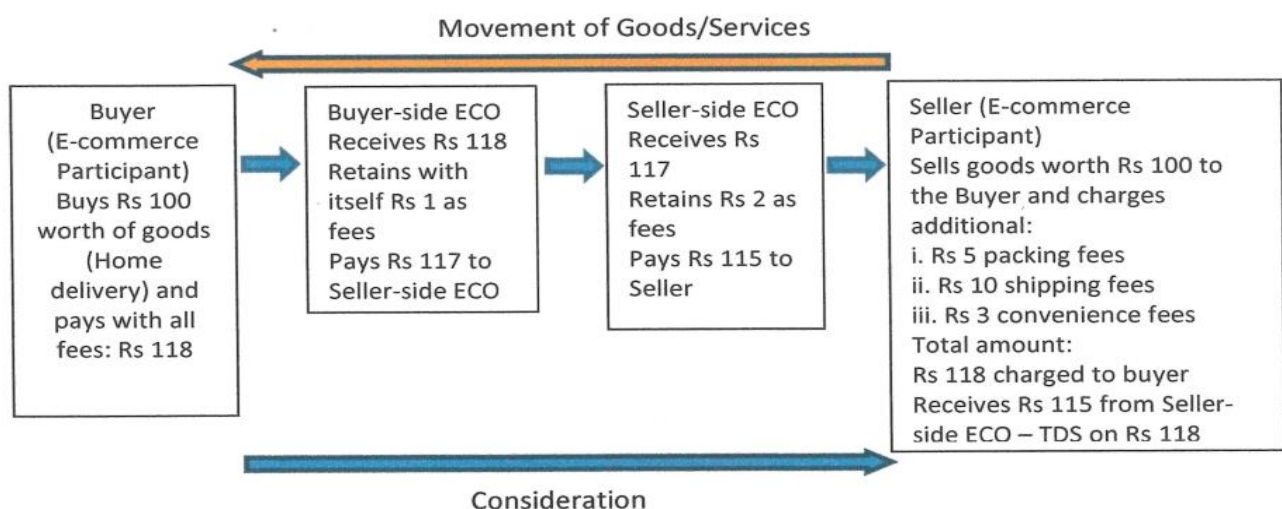
2. E-commerce operators may be levying convenience fees or charging commission for each transaction and seller might levy logistics & delivery fees for the transaction. Payments may also be made to the platform or network (e.g. ONDC) provider for facilitating the transaction. Would these form part of "gross amount" for the purposes of TDS under section 194-0 of the Act?

In e-commerce, it is common for an order to be shipped to the buyer from the seller. It is therefore common for the sellers to charge the buyer additionally for shipping in the form of logistics/delivery/shipping/packaging fees.

Further, the buyer-side ECO and seller-side ECO may charge a commission to the seller to enable the online transaction, and the seller may choose to recoup all or part of that amount from the buyer.

Example 1:

A Buyer purchases goods worth Rs 100 from Seller and opts for home delivery. The Seller charges the Buyer an additional Rs 5 as packing fees, Rs 10 as shipping fees, and Rs 3 as a convenience charge (to recoup the fees charged by the seller-side ECO, which includes Rs 1 charged by the Buyer-side ECO and Rs 2 charged by the Seller-side ECO itself). So the seller will issue an invoice for Rs 118 (i.e. Rs 100 + 5 + 10 + 2 + 1) to the buyer. The shipping fees, packaging fees and convenience fees are separately charged to the buyer to provide services in relation to the main supply. In such a case, TDS is to be deducted under sub-section (1) of section 194-0 of the Act on Rs. 118 since this is the gross amount of sales.



It is thus clarified that TDS shall be deducted by the seller-side ECO on the gross amount of sales of goods (Rs 118) or provision of services at the time of payment (including deemed payment) or credit. Seller-side ECO would file the requisite TDS return in Form 26Q and issue

Direct Tax Circulars & Notifications

S. No Circulars

certificate to the seller under Form 16A.

Under sub-section (3) of section 194-0 of the Act, a transaction on which tax has been deducted by an ECO under sub-section (1) of section 194-0 of the Act shall not be liable to TDS under any other provision of Chapter XVII-B. Accordingly, this exclusion will also apply to the amount received by ECO for provision of services which are in connection with the main transaction of sale of goods or provision of service or both referred to in sub-section (1) of section 194-0 of the Act. However, sub-section (4) of section 194S of the Act overrides Section 194-0 of the Act and states that if tax is deducted under section 194-S of the Act, no tax is deductible under Section 194-0 of the Act.

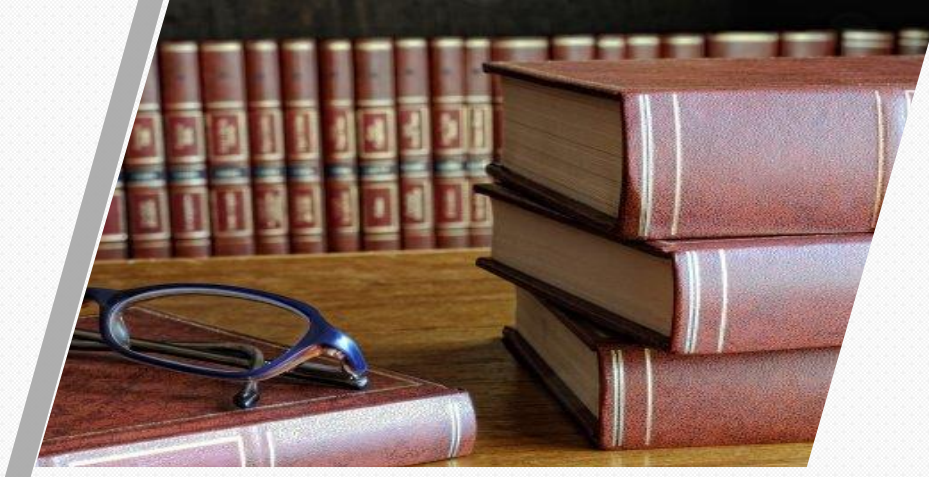
In this example, fees charged by the seller-side ECO (Rs 3 charged to the seller) and buyer-side ECO (Rs 1 charged to the seller-side ECO) for services provided would ordinarily have been subjected to TDS under section 194H of the Act and the seller and seller-side ECO respectively would have had to deduct tax and file TDS return with respect to the fees paid.

However, as tax has been deducted under sub-section (1) of section 194-0 of the Act on the gross amount of sales of Rs. 118, this amount (which includes buyer-side ECO fee of Rs 1 and seller-side ECO fee of Rs 2 charged to the end customer) will not be subject to TDS under any other provision. However, this is subject to provisions of sub-section (4) of section 194S of the Act.

Payments may also be made to the platform or network (e.g. ONDC) provider for facilitating the transaction. These would form part of "gross amount" for the purposes of TDS under section 194-0 of the Act if they are included in the payment for the transaction. If these payments are being paid on a lump-sum basis and are not linked to a specific transaction, then these need not be included in the "gross amount".

Indirect Tax :

Case Laws



Case Law 1:

Facts of the case :

M/s. Deepak Sales Corporation is a trading concern registered under the Haryana VAT Act during the pre-GST regime and after the introduction of GST, it migrated to the GST regime. The company realized while filing return for Dec 2017 they have erroneously claimed excess ITC in Jul'2017. They requested guidance from the tax authorities on how to reverse the excess ITC, but no revert received. Ultimately, the company corrected the error by reversing the excess ITC in its return for July 2018. During the tax Audit in 2020, the petitioner received SCN dated October 27, 2020, demanding interest, and penalty. The company replied to the notice, and while the interest demand was upheld, the penalty was not imposed. The company appealed this decision, and the appellate authority partly allowed the appeal by confirming the interest liability and imposing a penalty on the company.

Rulings of the case :

The company filed appeal in Punjab and Haryana High Court. With reference to section 50(3) of CGST Act, 2017 which mandates interest payment on undue or excess claims of ITC. They clarify that they have never utilised the excess ITC, and therefore, no interest or penalty should be imposed.

The appellate authority carefully examined the provision and observed that penal proceedings are not warranted until the erroneously claimed ITC is used. Therefore, if

the credit is wrongfully reflected in the electronic credit ledger but is subsequently reversed before utilization, no interest or penalty should be imposed.

This judgment provides relief to taxpayers who rectify inadvertent errors promptly and underscores the importance of considering the actual utilization of ITC before imposing penalties. The ruling aligns with the principles of fairness and equity, ensuring that genuine mistakes do not result in undue financial burdens on taxpayers under the GST framework.

In the matter of Deepak Sales Corporation Vs Union of India (Punjab and Haryana High Court) against appeal number: CWP No. 283 of 2023.

Indirect Tax

Notifications & Circulars



S. No Notifications

1. **Deadline Extension: GSTR-3B Filing for November 2023 in Specific Tamil Nadu Districts**

CBIC vide Notification No.55/2023-Central tax dated 20nd Dec 2023, notifies that the last day to file return for the month of November 2023 will be 27th of December,2023 instead of 20th December 2023 for the districts of Chennai, Tiruvallur, Chengalpattu and Kancheepuram in the state of Tamil Nadu.

Link: <https://taxinformation.cbic.gov.in/view-pdf/1009957/ENG/Notifications>

2. **Extension of Time Limit for Order Issuance under Section 73(9) for Tax Recovery**

CBIC vide Notification No.56/2023-Central tax dated 28th Dec 2023, extends the time limits for the issuance of orders under section 73(9) of the CGST Act,2017 pertaining to FY 2018-19 & FY 2019-20 for the recovery of tax or excess ITC utilized.

- The deadline for issuing orders for FY 2018-19 is 30th April 2024.
- The deadline for issuing orders for FY 2019-20 is 31st August 2024.

Link : <https://taxinformation.cbic.gov.in/view-pdf/1009964/ENG/Notifications>

Legal & Regulatory Notifications



S. No Notifications

1. Ministry of Corporate Affairs, Press release dated December 28, 2023

In the framework of corporate governance, the Ministry of Corporate Affairs (MCA) continues to focus on bolstering 'ease of compliance' and 'ease of doing business' in the year 2023. MCA has released a press release in this regard.

Link : <https://pib.gov.in/PressReleasePage.aspx?PRID=1991275>

2. Master Direction - Reserve Bank of India (Internal Ombudsman for Regulated Entities) Directions, 2023

A review of Internal Ombudsman schemes has been undertaken by the Reserve Bank in line with the integration of the erstwhile three RBI Ombudsman Schemes as also with the objective to improve the customer service standards in regulated entities. The framework reaffirms that the Internal Ombudsman mechanism should work as envisaged and the Internal Ombudsman shall be positioned as an independent, apex level authority on consumer grievance redress within the regulated entities.

Link : <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12586&Mode=0>



Loans and Investment by Company

By – Alka Thakkar

IBA

Overview :

In India, the Companies Act, 2013 (“the act”) governs various aspects of corporate affairs, including regulations related to loans and investments made by companies. These provisions aim to ensure transparency, accountability, and prudent financial management within companies, safeguarding the interests of all the stakeholders.

Section 186 of the Companies Act, 2013 outlines the provisions regarding loans and investments made by companies. It provides certain conditions under which companies can provide loans, give guarantees, acquire securities or make investments. Identifying the importance of this provision, it is crucial for companies to ensure compliance and avoid penalties.

A company can give loans and guarantees, acquire securities or make investments in another company or body corporate with the consent of the board or shareholders as the case may be. Such loans given by a company to other companies or body corporates are known as inter-corporate loans. When a company invests in another company, it is known as inter-corporate investment.

Explanation :

A company shall not unless otherwise prescribed, make investment through not more than two layers of investment companies. Section 186(1) has further two following exceptions:

- a company may acquire any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- a subsidiary company can have an investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

Section 186(2) of the act states that a company can directly or indirectly:

- Give any loan to any person or other body corporate;
- Give any guarantee or provide security in connection with a loan given to any other body corporate or person;
- Acquire securities of other body corporates by way of purchase, subscription or otherwise.

However, a company can give loans, guarantee and acquire securities of up to 60% of its paid-up share capital, securities premium account and free reserves or 100% its free reserves and securities premium account, whichever is more.

And in case the limit as said above exceeds then approval via special resolution by the shareholders has to be passed first.

Few check points to be kept in mind: -

- While calculating the abovesaid limit, consider the aggregate of the amount of loan or investment already made and the amount proposed to be given.
- Disclose in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient.
- Approval of Shareholders via special resolution is not required in case of a company and its wholly owned subsidiaries, joint ventures.
- No loan shall be given at an interest rate lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.
- Pass resolution for approval at a meeting of the Board with the consent of all the Directors present at the meeting.
- Prior approval of the public financial institution concerned where any term loan is subsisting, is required to obtain.
- No company which is in default in the repayment of any deposits shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.
- A register to be maintained for loans and investment by the company.

Exemptions :

Except the requirement of section 186(1), nothing under section 186 shall apply to the following: -

- a banking company
- an insurance company
- a housing finance company in the ordinary course of its business
- a company engaged in the business of financing of companies or of providing infrastructural facilities
- an investment company
- a non-banking financial company

Penalties on contravention :

If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Conclusion :

The regulations set forth under the Companies Act, 2013 regarding loans and investments by companies aim to strike a balance between fostering business growth and preventing misuse of funds. Adherence to these provisions not only ensures legal compliance but also reinforces the credibility and financial stability of companies, fostering investor confidence and promoting responsible corporate governance.

Christmas Celebration



We enjoyed Christmas with great enthusiasm. Our Secret Santa-exchange of gifts, brought out the creativity and thoughtfulness of our amazing team. A heartfelt thank you to each and every one of you who contributed to making this day so special.

Give It Back - Donation Drive



In our small attempt to help and support underprivileged people, we continue to organize a drive to provide winter essentials and dry ration to them. We received immense response from our team members which is highly appreciable.

Upcoming Compliances

Date	Compliance
January 11, 2024	Due Date for filing of Form GSTR-1 for the period December 2023 for the registered taxpayers who have opted for monthly filing of GST Returns
January 13, 2024	Due Date for submission of invoices through IFF under QRMP scheme for the period December pertaining to quarter October-December 2023 for the registered taxpayers who have opted for quarterly filing of GST Returns
	Due Date for filing of Form GSTR-6 for the period December 2023 for the registered taxpayers who have obtained Input Service Distributor (ISD) registration
January 14, 2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of November, 2023
January 15, 2024	Quarterly statement of TCS for the quarter ending December 31, 2023.
January 20, 2024	Due Date for filing of Form GSTR-3B for the period December 2023 for the registered taxpayers who have opted for monthly filing of GST Returns
January 20, 2024	Due Date for filing of GSTR-3B and Challan Payment for the period October- December 2024 for the registered taxpayers who have opted for QRMP scheme.
January 30, 2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA,194-IB,194M in the month of December, 2023
January 31, 2024	Quarterly statement of TDS for the quarter ending December 31, 2023.

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