SNR & COMPANY
CHARTERED ACCOUNTANTS

KRESTON SNR

INCOME TAX BULLETIN

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Delhi, Pune, Bangalore

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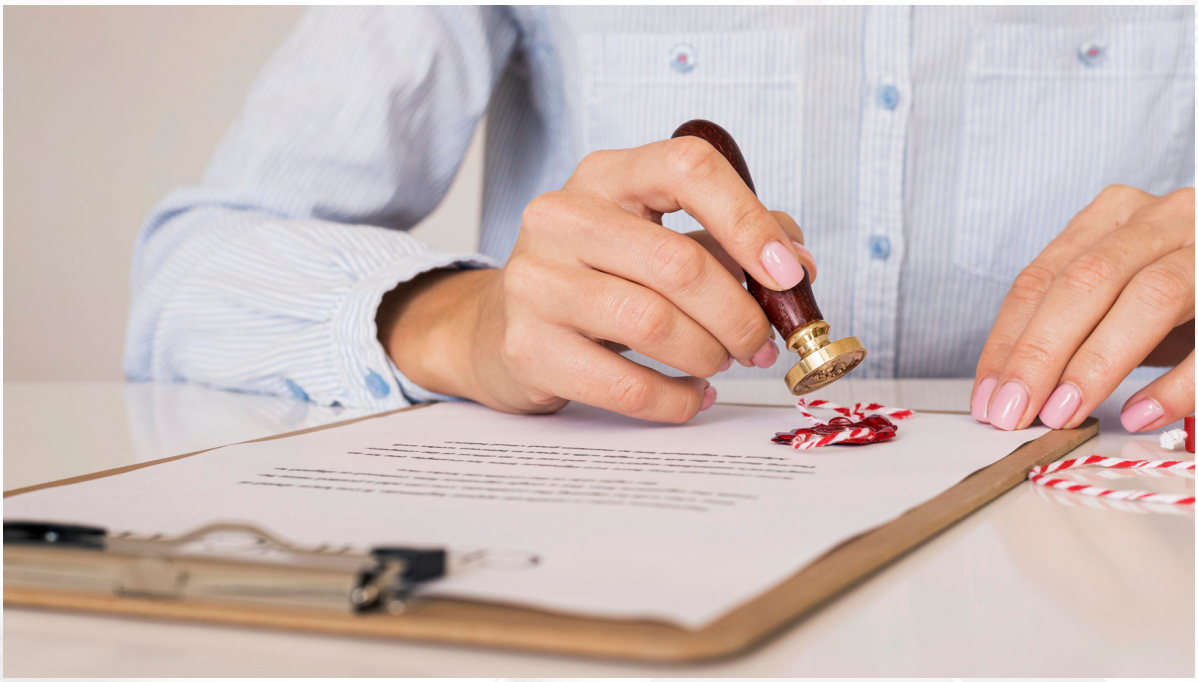
1. The tribunal ruled on Time Limit for provisionally registered trusts seeking regular registration by invoking harmonious interpretation:

Case of : Global Schools Holdings Pte. Ltd Vs ACIT
Decision by : ITAT, Pune
In favour of : Assessee
Date of Judgement : 05-01-2024

- Assessee (Trust) filed an application in Form 10AB for approval under Section 80G on Mar 27, 2023. Revenue dismissed the same since it was filed beyond the specified time and held it as time barred and thus unmaintainable. Assessee received provisional approval under Section 80G(5) on Aug 19, 2022 for the period from Aug 19, 2022 to AY 2025-26.
- CIT(E) held that Assessee was required to make an application within six months from the date of provisional approval i.e. on or before Feb 18, 2023, however, the instant application was filed on Mar 27, 2023.
- ITAT noted that new registration provision was introduced by Finance Act, 2020 with the concept of 'Provisional Approval' as per which the existing trust already having registration under Section 12AA or 80G(5) were to apply for fresh registration.
- **Tribunal further noted that there is a distinction between newly formed Trusts and the Trusts which are already doing charitable activities.** Tribunal Observed that in the second category, there are two possibilities, first, a trust having Section 12AA or 80G(5) registration and already doing charitable activity, such trusts were directed to re-apply for registration under new procedure.
- Tribunal opined that the phrase ***"within six months of commencement of its activities"*** applies for those trusts which have not started charitable activities at the time of obtaining provisional registration and not for those trusts which have already started charitable activities before obtaining Provisional Registration.



- Tribunal further observed that the provisional approval is upto AY 2025-26 and it can be cancelled by the CIT(E) only on the specific violations by the Assessee whereas in the instant case CIT(E) did not mention about any violation by the Assessee.
- Thus, Tribunal held that that the Assessee made the application in form 10AB within the prescribed time limit and hence it is valid application.

Full Judgement: Shri Kailash Math Trust

SNR's Take

ITAT relied on a Supreme Court judgement to avoid interpretations that lead to illogical outcomes. Tribunal also gave a very pragmatic distinction between newly formed trusts and those already involved in charitable activities, ensuring that the time limit for filing the application for regular registration is reasonable and practical. The ITAT's direction to the CIT(E) to treat the application as filed within the prescribed time limit and verify the eligibility of the assessee provides a fair opportunity for the trust to establish its compliance with the law. Overall, it appears to be a well-reasoned decision aimed at ensuring fairness and adherence to statutory requirements.

2. ITAT denied the applicability of Section 69B on the difference in stock valuation revealed during the survey:

Case of : Ethiraj Hotel Mart Vs The DCIT
Decision by : ITAT, Chennai
In favour of : Assessee
Date of Judgement : 29-12-2023

- Assessee (Company), engaged in the business of wholesale trading of stainless steel items, crockery, aluminium and electric items, was subject to survey procedure under Section 133A.
- Revenue noted that physical stock available at the business premises of the Assessee was inventoried during the course of survey and on comparison with the stock recorded in books of account, an excess stock of Rs.1.04 Cr was found during the course of survey and the Assessee offered the same to tax.
- ITAT noted assessee's submission that the Revenue did not provide any information about the inventory of physical stock taken during the course of survey, either at the assessment stage or during appellate proceedings or even under Right to Information Act. Tribunal found *assessee's modus operandi*, being a small business that deals in items like tea spoons, table spoons, katoris, etc., is to purchase in either unit of dozens or weight, but sold in unit of pieces.
- Tribunal further noted the Assessee's argument that the very basis of physical inventory of stock is absurd and how the Department has valued these items. Tribunal also took note of the fact that the physical stock inventory prepared and submitted by the Revenue contains a loose sheet titled 'stock-in-hand', computing the value of closing stock on day after the survey procedure at Rs.88.95 Lacs and which was admitted by the one of the Assessee's partner and that the Assessee also computed its value of closing stock as on the date of survey at Rs.206.44 Lacs.

- **Based on this, Tribunal considered Assessee's submission that there is a deficit stock and not excess stock, as on the date of survey and even if the allegation of excess stock at the time of survey is taken to be correct, still the same cannot be treated as unexplained investment under Section 69B and taxed under Section 115BBE**, because stock accumulated over the years and that too, when it is not clear which item of stock is found by the Revenue.
- Thus, **Tribunal concluded that the said income was admitted and offered to tax by the Assessee, thus held that the difference in valuation of stock cannot be treated as unexplained investment under Section 69B.**

Full Judgement: Ethiraj Hotel Mart

SNR's Take

The ITAT rightly emphasized the importance of evidence and proper substantiation by the revenue department regarding the source of the alleged excess stock. ***Since the assessee had already disclosed and paid taxes on the income derived from the stock, treating it again as unexplained investment would be unjustified.***

3. The compensation received by the journalist upon non-renewal of the contract is not taxable:

Case of : Sri Vetri Vinayagar Educational Trust Vs ITO **Decision by :** ITAT, Delhi
In favour of : Assessee
Date of Judgement : 30-01-2023

- Assessee filed her return for AY 2020-21 declaring income of Rs.18.51 Lacs. During scrutiny assessment, it was observed that Assessee received Rs. 3 Cr from a publishing company 'Spiegel Verlag' for termination of contract which was claimed exempt under section 4 considering it as capital receipt.
- It was noted that a labour dispute was raised in the Labour Court of Hamburg which was dismissed and a writ petition in this context was also dismissed by the single judge of the jurisdictional HC. Thereafter, before the division bench it was informed to the Court that the Assessee and the publisher arrived at an amicable settlement wherein Rs.3 Cr was paid as full and final settlement of the dispute.
- Revenue held it to be taxable Section 28(ii)(e) read with CBDT Circular 8/2018 and also under Section 56(2)(xi). CIT(A) upheld the AO's order. Before the ITAT, Revenue highlighted that the Assessee paid self-assessment tax on the said compensation and later claimed refund.
- ITAT noted that Assessee never showed the compensation of Rs.3 Cr. in her profit and loss account and only out of abundant precaution and to avoid future levy of interest, the Assessee paid Self assessment tax.
- Tribunal further observed that the Assessee never took a stand that the said compensation is taxable in her return of income and consistently claimed that the said compensation, being capital receipt, was not taxable. Thus, Tribunal dismissed Revenue's allegation that the Assessee took contradictory stands before the lower authorities as factually incorrect.
- Tribunal held compensation of Rs.3 Cr received by a freelance journalist from a German publisher for non-renewal of contract as not taxable under Section 28(ii)(e) or under Section 56(2)(xi).

Full Judgement: Ms. Padma Rao

SNR's Take

*The fact that the assessee consistently treated the **compensation as a capital receipt** and did not include it in her profit and loss account supported her case.The decision by the ITAT appears to be a fair interpretation of tax law, ensuring that taxpayers are not unduly burdened with taxes on receipts that are not part of their regular income stream but are instead capital in nature.*

4. Hyatt Fees in India is Business Income and not Royalty. HC seeks Clarification, Upholds PE:

Case of : Hyatt International-Southwest Asia Ltd Vs ADIT
Decision by : High Court, Delhi
In favour of : Both, Partially
Date of Judgement : 22-12-2023

- Assessee Company 'Hyatt International Southwest Asia Ltd.' is a tax resident of UAE. Instant batch matters pertain to AY 2009-10 to AY 2017-18. Assessee entered into two Strategic Oversight Services Agreements ('SOSA'). One in respect of a hotel (Hyatt Regency, Delhi 'Hotel') owned by Asian Hotels Limited, in Delhi, and the other in respect of a hotel located at Mumbai.
- As per the SOSA, Assessee agreed to provide strategic planning services and "Know-How" to ensure that the Hotel is developed and operated as an efficient and a high quality international full-service hotel. Asian Hotels was re-organized and the SOSA was partially amended.
- For AY 2009-10, Assessee filed Nil return of income claiming that there is no specific article in India-UAE DTAA for taxing Fees for technical Services. Also, it did not have a fixed place PE as there was no branch or office. Similarly, the presence of Assessee's employees in India did not exceed the specified period of nine months, thus, there was no PE under Article 5(2). Thus, business income was not taxed as per Article 7.
- Revenue held that Assessee was "actually operating the hotels belonging to the owners in each and every manner". Also held that the Assessee's activities constituted:

  (i)business connection under Section 9(1)(i),
  (ii)PE under Article 5 of the DTAA,
  (iii)royalties and FTS under Section 9(1)(vi)/(vii) of the Act and,
  (iv)royalties under Article 12 of the DTAA. Further alleged the Assessee was providing Central Reservation System (CRS) services, which also constituted a fixed place of business.
- Revenue computed the tax payable at 10% of the gross receipts. Royalties and FTS relatable to the PE were taxed on net basis in accordance with Article 7 of the DTAA and Section 44DA. Assuming that the Assessee's net profit would be 25% of the receipts, the tax was payable at 10% of the gross receipts.

- DRP upheld the draft order. ITAT relied on SC judgment in the case of Formula One and held that Assessee had a Fixed Place PE and directed for attribution.
- HC noted that six senior employees of Assessee visited India and they had exercised a certain amount of supervisory control. Further, found that there is no bar at the SOSA which prevented Assessee from managing other hotels while being stationed at the Hotel premises. Thus, held that Assessee has a Fixed Place PE from which it carried on its business.
- Court observed that Assessee was not required to manage day-to-day operations of the Hotel which was done by HYATT India, however, it was as per the strategic policies set out by the Assessee. Further, found that Assessee was called upon to provide the job description of various employees deputed by the Assessee to visit India for rendering assistance for operation of the Hotel.
- Court remarked that for a Fixed Place PE a legal and exclusive control is not necessary but only a sufficient control for the purpose of carrying on business would be enough to construe it as available at the disposal of the Assessee. Court noted that since the Assessee was responsible for the entire management of the Hotel including deputation of employees without any recourse to Hyatt India or the owner, confirmed that the Hotel premises was at the disposal of the Assessee. Thus, upheld ITAT finding on Assessee having a fixed place PE.
- Court further observed, as per the terms of SOSA, the Assessee provided Sales, Marketing and Management Services to the Owners of Hotels (one is Asian Hotel Delhi and other one in Mumbai).
- Court further Noted that simultaneously, another agreement is entered between the Owners and Hyatt India to provide day to day operations, management assistance and technical assistance services to oversee the implementation of the overall strategic planning and Know-How (as per SOSA) to be provided by the Assessee. Court Further noted that the owners entered into separate agreements for availing technical services, and use of HYATT trademarks. Thus, court observed that Assessee was required to render services in the area of strategic planning, maintaining the Hyatt Operating Standards and covering all aspects of the operations of the Hotel.
- Court Found that Assessee had an overarching role in the management of the Hotel albeit at the policy level, with further right to oversee its implementation to ensure that the Hotel is operated as per Hyatt Operating Standards, policies and procedures framed by the Assessee covering every aspect of the management of the Hotel.
- Court further observed that Assessee also agreed to provide the Owner and other employees of the Hotel, proprietary, written knowledge, skills, experience, operational and management information and associated technologies related to operation of international, luxury full-service Hotels, however, it was incidental to the extensive services provided by the Assessee, **thus, it was not taxable as royalty.**
- Court rejected Revenue's contention that consideration is for use or for the right to use any design, model, process and also for information concerning commercial and scientific experience. Also, held that since the Assessee is in the business of providing such services for management of Hotels, it is not fee for technical services but business income.
- Court further Observed, "fee is not a consideration for use of or the right to use any process or for information of commercial or scientific experience. The fees payable is in consideration of providing the services as set out in SOSA". Upheld ITAT finding that there is no need to examine Article 5(2) when PE is held to exist as per Article 5(1).
- Court Confirmed the direction of the ITAT and provided opportunity to the Assessee to submit its working regarding apportionment of revenue, losses etc. on a financial year basis so that the profits attributable to the PE can be determined judicially.

Full Judgement: Hyatt International-Southwest Asia Ltd

SNR's Take

This case clarifies the tax treatment of payments for strategic oversight services provided by foreign entities to Indian hotels. It emphasizes the importance of analysing the specific terms of agreements and the nature of services provided to determine the tax implications. ***The decision provides guidance on the interpretation of PE under DTAA and the characterization of income for tax purposes.***

5. High Court Allows Assessee's Writ Petition for Refund Due to Delayed ITR Filing and TDS Issue:

Case of : Ramjibhai Lavabhai Undhad Vs CCIT
Decision by : High Court, Gujarat
In favour of : Assessee
Date of Judgement : 21-12-2023

- Assessee, (Individual), filed a case for additional compensation towards acquisition of his agricultural land and was awarded the additional compensation, which was challenged by the State authorities before the co-ordinate bench.
- During the course of proceedings, the co-ordinate bench directed the irrigation department to deposit 50% of the awarded amount with the Court and out of 50% amount, half of the amount was permitted to be withdrawn by the Assessee and the remaining half was ordered to be deposited in a fixed deposit to be maintained with a nationalized bank for five years.
- While depositing 50% of the awarded amount with the Court, the Irrigation Department deducted tax at source on the interest portion of the amount deposited and withdrawn, however the Assessee was not informed regarding the deduction of tax and Form-16A was not issued to the Assessee.
- Therefore, the Assessee could not file the return of income to claim refund before the due date. Assessee after having come to knowledge about the TDS, realized that the date of filing the return of income to claim a refund of the amount of TDS had already passed, thus filed an application with the Revenue for condonation of delay in filing the return of income with a claim of refund, which was rejected by the Revenue.
- Aggrieved, the Assessee preferred the present writ petition challenging Revenue's order rejecting Assessee's applications to condone delay in filing the return of income and to claim the refund under section 119(2)(b). Court Noted Assessee's submission that as per SC judgment in Hari Singh, Revenue ought to have condoned the delay and issued the refund with interest. Court took note of Revenue's argument that Assessee failed to provide any explanation for the inordinate delay in filing the return of income and as per CBDT Circular No. 9/2015 delay cannot be condoned in absence of any reasonable cause and credible evidence justifying the inordinate delay.

- Court Concurred with Assessee's contention that the delay was condoned in case of similarly situated persons, thus the Revenue cannot take a contrary view to what is taken in the cases of similarly situated persons. Thus, allowed Assessee's writ petition.

Full Judgement: GE Precision Healthcare LLC

SNR's Take

The court highlighted the Supreme Court's judgment in Hari Singh, emphasizing the importance of condoning delay in genuine cases, especially when it causes undue hardship. While acknowledging the CBDT Circular's emphasis on reasonable cause, the court found the assessee's lack of knowledge due to the Irrigation department's omission to issue Form 16A to be a valid explanation. It sets a positive precedent for future cases involving genuine delays.

6. ITAT Upholds Non-Resident Status for Indian Investor, Expands Interpretation of 'Employment' under Section 6(1)-Explanation 1(a):-

Case of : Asstt. Commissioner of Income Tax Vs Nishant Kanodia
Decision by : High Court, Mumbai
In favour of : Assessee
Date of Judgement : 08-01-2024

- Assessee (Individual) was served with notice under Section 153A pursuant to search and seizure procedure under Section 132/133A on in the case of Matix (Nishant Kanodia) Group and centralisation of Assessee's case.
- **Assessee in the return of income filed in response to Section 153A notice, claimed his residential status to be non-resident and accordingly did not offer his global income to tax in India.**
- Assessee submitted that as he stayed in India only for 176 days in the AY 2013-14, and left India for the purpose of employment in Mauritius, his residential status shall be determined as non-resident as the period of 60 days under section 6(1)(c) shall be substituted with 182 days as per Section 6(1) Explanation 1(a).
- Revenue, rejected Assessee's application on the ground that, as per the work permit issued by the Government of Mauritius, the Assessee went to Mauritius on an occupation permit to stay and work in Mauritius as an investor with Firstland Holdings Ltd. and not as an employee. Accordingly, Revenue determined Assessee's residential status to be 'resident', thereby made addition towards Assessee's global income.
- CIT(A) deleted the said addition and held that the Assessee was away from India for the purpose of employment outside India and is accordingly entitled to take the benefit of Explanation 1(a) to Section 6(1). Aggrieved, Revenue preferred the appeal before the tribunal.
- ITAT noted Revenue's argument that the Assessee left India not for the purpose of employment but as an Investor on a business visa to Mauritius, thus Section 6(1) Explanation 1(a) is not applicable in the present case. ITAT then analysed Section 6(1) and observed that an individual is said to be resident in India in any previous year, if he has within four years preceding the relevant year been in India for a period of 365 days or more and is in India for a period of 60 days or more in the relevant year.

- Tribunal further observed that there is no dispute that the Assessee was in India for a period of 365 days in the four years preceding the relevant year. Explained that as per the Explanation 1(a) to Section 6(1), period of 60 days is substituted 182 days in case of a citizen of India who has left India for the purpose of employment outside India.
- Tribunal Considered the summary of the number of days of stay in India along with a copy of the relevant pages of his passport furnished by the Assessee and concurred with the Assessee that he stayed in India only for a period of 176 days during the relevant AY. Tribunal Took note of the appointment letter issued by Firstland Holdings Ltd., Mauritius, whereby the Assessee was appointed as Strategist – Global Investment and was offered a salary of USD 100,000 per month along with various other benefits, perquisites, allowances, etc.
- Tribunal further Noted Revenue's argument that the Assessee was holding 100% shareholding in Firstland Holdings Ltd., Mauritius, from which the Assessee received alleged salary, thus, the Assessee has considerable control over affairs of the said company and the copy of the appointment letter and salary slips provided by the Assessee are self-serving documents in view of the fact that the Assessee had no permit for employment in Mauritius.
- **Tribunal relied on Hyderabad ITAT ruling in K. Sambasiva Rao, Delhi ITAT ruling in Jyotinder Singh Randhawa and Col. Joginder Singh, and Kerala HC judgment in Abdul Razak,** wherein it was held that no technical meaning can be assigned to the word 'employment' used in Explanation 1(a) to Section 6(1), thus going abroad for the purpose of **employment also means going abroad to take up self–employment like business or profession.**
- Tribunal Further observed that the Kerala HC further held that the term **'employment' should not mean going outside India for purposes such as tourists, medical treatment, studies, or the like.**
- Thus opined that if the **taxpayer has left India for the purpose of business or profession the same has been considered to be for the purpose of employment outside India under Section 6(1) Explanation 1(a).** Upheld the CIT(A) order and held that the Assessee has rightly claimed to be a 'non-resident' during the year. Thus, dismissed Revenue's appeal.

Full Judgement: Shri Nishant Kanodia

SNR's Take

This case applies to individuals leaving India for business or profession, not other purposes like studies or medical treatment. Its impact might be limited to a specific category of taxpayers. This case ***expands the interpretation of "employment" in the context of residential status, potentially benefiting individuals genuinely pursuing business or professional activities abroad.***

Circulars/ Notifications:

1. CBDT notifies Sec.10(46) exemption for Madhya Pradesh Professional Examination Board:

CBDT, vide Notification No. 3/2024, dated Jan 02, 2024, notifies income tax exemption under Section 10(46) to 'Madhya Pradesh Professional Examination Board, Bhopal', a Board constituted by the Madhya Pradesh Government.

Read Circular: 3/2024

2. CBDT notifies Sec.10(46) exemption for Karnataka State Rural Livelihood Promotion Society :

CBDT, vide Notification No. 2/2024, dated Jan 02, 2024, notifies income tax exemption under Section 10(46) to 'Karnataka State Rural Livelihood Promotion Society', a body constituted by the Government of Karnataka.

Read Circular: 2/2024

3. CBDT notified Sec.10(46) exemption for Bellary Urban Development Authority:

CBDT, notified income tax exemption under Section 10(46) to 'Bellary Urban Development Authority', an Authority constituted by the State Government of Karnataka.

Read Circular: 1/2024

4. Govt. notified NR's investments with 'IFSC capital market intermediary' under Sec.10(4G)(ii):

Central Government, by exercising powers under Section 10(4G)(ii) notified the activity of investment in a financial product by a non-resident. The condition attached to such investment activity is that it shall be in accordance with a contract between such non-resident and a capital market intermediary, being an IFSC Unit. Further, the income from such investment shall be received in the account of the non-resident maintained with the Offshore Banking Unit of IFSC as referred to in Section 80LA(1A).

Read Circular: 4/2024

5. CBDT notified Sec.10(46) exemption for State Legal Service Authority, Chandigarh:

CBDT notified income tax exemption under Section 10(46) to 'State Legal Service Authority Union Territory Chandigarh', an Authority constituted by the Administrator, Union Territory, Chandigarh under the Legal Services Authority Act, 1987.

Read Circular: 15/2024

6. CBDT notifies ITR-6 for AY 2024-25:

CBDT notified ITR-6 for AY 2024-25; ITR-6 is meant for companies other than companies claiming exemption under Section 11 and shall come into force from Apr 1, 2024.

Read Circular: 16/2024

7. CBDT extended time-limit for processing 'non-scrutiny ITRs' upto AY 2020-21 till Apr'24:

CBDT extended the timeframe prescribed under Section 143(1) for AYs upto AY 2020-21 from Jan 31, 2024 to Apr 30, 2024.This applies to all ITRs validly filed electronically with refund claims. The Order is issued to address grievances of taxpayers related to issue of refund. CBDT, thus, partially modifies prior orders dated December 1, 2023 (pertaining to AYs 2018-19, 2019-20 and 2020-21) and October 16, 2023 (pertaining to AY 2017-18) by extending the time-frame for processing the ITRs and keeps other content unchanged.

Read Circular: Order under section 119 dated 31.01.2024

Compliance Calendar:

Date	Particulars
07-02-2024	Due date for deposit of Tax deducted/collected for the month of January 2024. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan
14-02-2024	Due date for issue of TDS Certificate for tax deducted under section 194-IA,194-IB,194M and 194S in the month of January 2024
29-02-2024	Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, section 194-IB, section 194M and section 194-S in the month of January 2024. ***Note:*** Applicable in case of a specified person as mentioned under section 194S

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