

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 180/JP/2016
निर्धारण वर्ष / Assessment Year : 2010-11

The ACIT, Circle-2, Alwar.	बनाम Vs.	M/s Dalas Biotech Ltd. E-292-A, Industrial Area, Bhiwadi, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCS4061Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sagoni (C.A.)
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 12/12/2017
उदघोषणा की तारीख / Date of Pronouncement: 19/02/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the Revenue is directed against the order dated 02.12.2015 of CIT (A), Alwar for the assessment year 2010-11. The Revenue has raised the following grounds:-

" Appeal is filed on the following grounds against the order of Id. CIT), Alwar in appeal No. 87/2013-14 dated 02.12.2015 in the case of M/s Dalas Biotech Ltd., E-292-A Industrial Area, Bhiwadi, Alwar (AACCS4061Q) for the A.Y. 2010-11:-

1. That the Id. CIT(A) has erred on the facts & circumstances of the case in deleting the additional of Rs. 52,00,000/- made on account of unexplained cash credits.

2. That the Id. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance of Rs. 3,41,069/- made on account of Commission paid to Sh. Premlal C Shah.

3. That the Id. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance of Rs. 4,81,562/- u/s 40(a)(ia) of the Act made on account of Commission paid to foreign parties.

4. That the Id. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance of Rs. 1,20,000/- made out of remuneration paid to Smt., Lekha Rajani.

5. That the Id. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance of Rs. 33,086/- made u/s 40(a)(ia) of the I.T. Act, 1961.

6. That the Id. CIT(A) has erred on the facts & circumstances of the case in deleting the disallowance of Rs. 45,915/- made on account of late deposit of employees contribution towards ESI & PF.

That the appellant craves leave to add, amend or alter the grounds of appeal on or before the date of appeal is finally heard for disposal."

2. Ground No. 1 is regarding deletion of addition made on account of unexplained cash credit. During the assessment proceedings the AO noted that the assessee has shown a loan of Rs. 52,00,000/- received from Smt. Lekha Rajani one of the Directors of the company. The assessee was asked to furnish confirmation, PAN, Designation of AO

and copy of ITR, Bank Statement of the creditor. The assessee furnished confirmation, PAN and Designation of the AO of Smt. Lekha Rajani. Thereafter, the assessee also submitted that the bank statement of the loan creditor as well as certificate issued by Oriental bank of Commerce, Delhi certifying a loan of Rs. 52,00,000/- against CDR of Mrs. Lekha Rajani on 31.03.2010. The AO issued summons u/s 131 to Smt. Lekha Rajani for examination and the statement of Smt. Lekha Rajani was recorded by the AO. The AO observed that Smt. Lekha Rajani has clearly denied having given any loan to anybody during the relevant assessment year or during the earlier years. Further, Smt. Lekha Rajani also stated that she did not have any source of income except salary from the company which she started receiving from financial year 2009-10. The Assessing Officer after analyzing the statement of Smt. Lekha Rajani as well as the bank details held that the genuineness and credit worthiness of the loan of Rs. 52,00,000/- is doubtful and unexplained. Accordingly, the AO made an addition of Rs. 52,00,000/- as unexplained cash credit of the assessee company. The assessee challenged the action of the AO before the Id. CIT(A), and filed additional which was forwarded to the AO for examination and comments. The AO submitted the remand report along with the

relevant excerpts of her statement recorded during the remand proceedings. After considering the remand report and the statement of Smt. Lekha Rajani recorded during the remand proceedings the Id. CIT(A) deleted the addition made by the AO on this account.

3. Before us, Id. DR has submitted that AO has recorded the statement of Smt. Lekha Rajani during the assessment proceedings and as per the question no. 20 to 24 and 28 Smt. Lekha Rajani has denied having any income or source of fund for giving alleged loan of Rs. 52 lacs to the assessee company. He has referred to the relevant part of the statement and submitted that she has denied having giving any loan to the assessee company. Therefore, once that Smt. Lekha Rajani has denied having any source of income or fund as well as giving any loan to the assessee company then the genuineness of the transaction could not be proved by the assessee. He has further contended that Smt. Lekha Rajani was not a third person but is one of the directors of the assessee company and therefore, statement recorded during the remand proceedings is an afterthought and self serving which is contrary to the statement recorded during the assessment proceeding. In the absence of the any allegation of mistake in the statement or coercion applied by the AO during the course of assessment

proceeding, the second statement of Smt. Lekha Rajani cannot be accepted. Further, even if she has accepted giving loan she has failed to explain the sources of the loan. The income of Smt. Lekha Rajani and the details of her bank account shows that the funds credited to her bank account do not belong to her and may be the unaccounted fund of the assessee company routed through the bank account of the Director. He has relied upon the orders of the authorities below.

4. On the other hand, Id. AR of the assessee has submitted that the AO again examined the loan creditor during the remand proceedings wherein she has explained the source of funds as well as loan giving to the assessee company. Therefore, once the entire transaction is reflected in the bank account of the loan creditor and produce before the AO then, the assessee has discharged its onus to explain the cash credit in the books. He has supported the order of the Id. CIT(A).

5. We have considered the rival submissions as well as relevant material on record. There is no dispute that during the assessment proceedings Smt. Lekha Rajani stated in her statement that she is having no other source of income except salary from the assessee company. The relevant part of her statement reproduced by the AO as well as Id. CIT(A) as under:-

- प्रश्न 20 आपका कम्पनी के वेतन के अलावा अन्य आय के स्रोत के बारे में बतावें?
- उत्तर कम्पनी के वेतन के अलावा आय के स्रोत नहीं हैं।
- प्रश्न 21 वित्तीय वर्ष 2009-10 से पहले के नौ-दस वर्षों में आपने बताया कि आप कोई कार्य नहीं कर रहे थे तो क्या इन वर्षों में आपकी कोई आय थी?
- उत्तर मेरी कोई आय (Income) नहीं थी। इन वर्षों में वर्ष 2000 के बाद मेरी कोई आय नहीं है। इन वर्षों में मेरी Savings नहीं थी।
- प्रश्न 22 वित्तीय वर्ष 2009-10 एवं उससे पहले की कोई सेविंग्स या बैंक खातों में कितना पैसा है उसके बारे में बतावें?
- उत्तर F.Y. 2009-10 एवं उससे पहले के वर्षों में मेरी कोई सेविंग्स नहीं हैं। बैंक में वित्तीय वर्ष 2009-10 एवं उससे पहले भी सेविंग्स/बैलेंस नहीं थी। सेविंग्स इण्डिया में और बाहर लन्दन में भी नहीं थी। वर्तमान में बैंक OBC नई दिल्ली में 2 लाख रु. हैं।
- प्रश्न 23 वित्तीय वर्ष 2009-10 एवं उससे पहले जब आप लन्दन में थे आपके नाम से अचल एवं चल सम्पत्ति के बारे में विवरण दीजिए।
- उत्तर मेरे नाम से चल एवं अचल सम्पत्ति नहीं हैं एवं FDRs भी मेरे नाम से नहीं है। चल, अचल एवं FDRs न भारत में है न ही लन्दन में (ना ही पहले थी)।
- प्रश्न 24 वित्तीय वर्ष 2008-2009 एवं 2009-10 में या उससे पहले आपने कोई लॉन/गिफ्ट लिया है, उसके बारे में बतावें?
- उत्तर वित्तीय वर्ष 2008-09, 2009-10 में या उससे पहले मैंने किसी से कोई लॉन/गिफ्ट नहीं लिया है।
- प्रश्न 25 वित्तीय वर्ष 2009-10 में क्या अपने कोई लॉन/गिफ्ट दिया है, क्या कम्पनी में शेयर केपिटल में भी कोई निवेश किया है तो विवरण दें?
- उत्तर नहीं। वित्तीय वर्ष 2009-10 एवं उससे पहले के वर्षों में मैंने किसी भी प्रकार का लॉन/गिफ्ट किसी को नहीं दिया है, ना ही मैंने शेयर केपिटल में भी निवेश किया है, ना ही बाद के सालों में लॉन/गिफ्ट, शेयर केपिटल दिया है।
- प्रश्न 26 दिनांक 31.03.2010 को मैं, दलास बायोटेक लिमिटेड की किताबों में आपके नाम से रूपये 52 लाख का लोन आपके नाम से रिसिव होना बताया गया है। रूपये 52 लाख का लॉन आप द्वारा दलास बायोटेक को दिया गया है। इसके बारे में आपका क्या कहना है?
- उत्तर इसके बारे में मुझे कुछ मालूम नहीं।
- प्रश्न 27 आपने मै. दलास बायोटेक लिमिटेड को दिनांक 31.03.2010 को क्या आपने रूपये 52 लाख का लॉन दिया है, यदि हाँ, तो उसके स्रोत के बारे में विवरण बतावें।

उत्तर इसके बारे में मुझे कुछ मालूम नहीं।

प्रश्न 28 आपको हम एक confirmation दिखा रहे हैं जो कि मै. दलास बायोटेक लिमिटेड ने F.Y. 2009-10 से सम्बन्धित निर्धारण के दौरान दिया है जिसमें आपने इन्हें रूपये 52 लाख का लॉन देने को confirm किया है जिसमें आपके हस्ताक्षर हैं एवं आपको एक OBC का खाता सं.10488011000696 दिखा रहे हैं जिसमें दिनांक 31.03.2010 को रूपये 52 लाख का डेबिट हुआ है एवं दिनांक 16.04.2010 को रूपये 52,21,661.00 की adjustment entry है कृपया इसका विवरण दें। कृपया इन दोनों entries का विवरण दें। उपरोक्त खाता सं. क्या आपका है?

उत्तर इनके बारे में मुझे जानकारी नहीं है।

She has even stated that before the financial year 2009-10 she was not having any income since the year 2000 except saving of Rs. 2 lacs she was not having any fund in the bank. Even, in response to question No. 27 and 28 she has denied having knowledge about the alleged loan of Rs. 52 lacs given to the assessee company. Thus, it is clear that though the loan transaction is shown from the account of Smt. Lekha Rajani the director of the assessee company however, the funds in the account and even the operation of that account was not in the knowledge of Smt. Lekha Rajani. It appears that the said bank account of Smt. Lekha Rajani has been operated by her husband who is also the director of the company and therefore, the possibility of unaccounted money of the assessee company rooted through the bank account of Smt. Lekha

Rajani cannot be ruled out. It appears to be a matter of benami stock transaction of using the bank account of Smt. Lekha Rajani.

6. As regards the statement recorded during the remand proceeding, we find that there is no allegation either by the assessee or Smt. Lekha Rajani that her statement during the assessment proceedings was recorded by the AO under duress or coercion. Even there is no allegation or clarification subsequently that she has made an incorrect statement during the assessment proceeding. The statement recorded during the remand proceedings is a tutored statement to sever the interest of the assessee company. It is not a case of statement recorded by the AO of a third party at the back of the assessee but the statement of the Director of the assessee company itself was recorded by the AO. Hence, we are of the considered opinion that the second statement cannot be given precedent to the first statement recorded during the assessment proceedings. Rather the chances and possibilities of tempering and tutoring of statement given subsequently at the time of remand proceedings are more likely. Thus, though the entire transaction has been done through the bank account of Smt. Lekha Rajani however, the question remains whom the funds flow from the bank account belong to. Accordingly, we set aside this issue to the

record of the Assessing Officer for carrying out a proper examination and investigation on this point. Needless to say the assessee be given an opportunity of hearing before passing a fresh order on this issue.

7. Ground No. 2 is regarding the deletion of disallowance of Rs. 3,41,069/- on account of commission paid. The AO noted that the assessee has claimed a sum of Rs. 16,27,690/- against commission paid expenses. The AO asked the assessee to furnish the details of the commission paid. The assessee was also asked to furnish the name and address, amount and PAN of the parties to whom commission was paid during the year under consideration. After availing various opportunities and reminders the assessee finally filed its reply and submitted that commission credited to M/s G.C. Chemie Pharmie Ltd. could not be paid to the party due to some differences and the amount was written back in the subsequent year. Thus, the assessee submitted that the amount was considered as income in the subsequent year and therefore, the same could not be disallowed in the year under consideration. The AO after considering the reply of the assessee has disallowed a some of Rs. 1,68,681/- on account of commission credited to M/s G.C. Chemie Pharmie Ltd. The assessee has also claimed Rs. 3,41,069/- as commission paid to Shri Permal C Shah. The assessee

filed a confirmation from Shri Permal C Shah wherein he has admitted the payment of commission of Rs. 3,02,047/- for the financial year 2007-08 and financial year 2008-09. The AO proposed to disallow the said amount on the ground that it does not pertain to the assessment year under consideration. The assessee then explained that though the invoice of commission relates to the earlier assessment years however, the amount was paid during the financial year 2009-10 relevant to the assessment year under consideration and TDS on the said commission was also debited and deposited in the financial year 2009-10. Accordingly, the AO disallowed the said amount of Rs. 3,41,069/-. On appeal the Id. CIT(A) has allowed the claim of the assessee regarding commission payment of Rs. 3,41,069/- to Shri Permal C Shah on the ground that when the TDS was deducted during the year under consideration on the payment made during the year then, the AO is not justified in disallowing the amount.

8. Before us, the Id. DR has submitted that this commission expenditure pertains to the earlier assessment years then merely the payment was made during the year will not make it allowable deduction. He has relied upon the order of the AO.

9. On the other hand, Id. AR of the assessee submitted that since, the issue was crystallized during the year under consideration, therefore, it is allowable in the year of crystallization. He has supported the order of the Id. CIT(A).

10. We have considered the rival submissions as well as relevant material on record. As far as payment of the commission and deduction of TDS during the year under consideration is concerned the same is not in dispute therefore, if the assessee has not claimed this expenditure in the earlier assessment year then the same is allowable claim as the expenditure liability was crystallized during the year under consideration on receipt of debit note. However, there is not dispute that the commission relates to the financial years 2007-08 and 2008-09 as admitted by the assessee in its reply, therefore, only rider for allowing the claim of the assessee is whether this claim was earlier made by the assessee or not. Accordingly subject to the verification that the said claim has not been made in the earlier assessment years we do not find any reasons to interfere with the order of the Id. CIT(A). The AO is directed to verify whether the assessee has made any claim of this amount in the earlier years or not.

11. Ground No. 3 is regarding disallowance of commission u/s 40(a) (ia) of the Act. The AO noted that the assessee has paid commission to foreign parties of Rs. 4,81,562/- however, the assessee has not deducted tax on the same. Accordingly, the AO made disallowance of the said amount of Rs. 4,81,562/- by invoking the provisions of Section 40(a)(ia) of the Act. The Id. CIT(A) allowed the claim of the assessee on the ground that the recipient of the commission is not having permanent established (PE) in India and therefore, this amount was not taxable in India in the hand of the recipient.

12. Before us, Id. DR has submitted that the AO has clearly discussed the facts in respect of this amount and pointed out that the assessee has not produced any documentary evidence to show the income was not accrued in India. Further, the assessee has claimed certain expenses on account of visit by the Bangladesh agents to India and therefore, the AO has clearly establish the fact that the services were rendered in India and income is also accrued in India.

13. On the other hand, Id. AR of the assessee has submitted that the recipient are having no P.E. in India and they have not rendered any services in India to the assessee. The assessee made the payment in foreign currency as the services were rendered outside India. Thus,

when the income has not arisen or accrued in India in the hand of recipient because of no PE in India then, the assessee is not under obligation to deduct TDS. He has supported the order of the Id. CIT(A).

14. We have considered the rival submission as well as relevant material on record. The commission in question was paid to the non resident who was not having permanent establishment (PE) in India however, neither the AO nor the Id. CIT(A) has discussed the nature of services rendered by the non residents to the assessee. Further, it is also not emerging from the record whether the assessee is having any business outside India. Therefore, in the absence of nature of service rendered by the non-resident as well as in the absence of any contract /agreement between the parties produce before us it is not possible to give a concluding finding on this issue. Neither the assessee nor the Revenue has filed any document or details showing the nature of services rendered by these non residents to whom the commission was paid. Accordingly, we set aside this issue to the record of the Assessing Officer to carry out a proper enquiry and examination of the facts regarding the nature of services as well as the business connection of the assessee outside India and then, decide this issue as per law. Needless to say the assessee be given an opportunity of hearing.

15. Ground No. 4 is regarding the deletion of disallowance made on account of remuneration paid to Smt. Lekha Rajani u/s 40A(2)(b) of the Act. The AO noted that the assessee company has paid remuneration of Rs. 6,00,000/- to Smt. Lekha Rajani a specified person u/s 40A(2)(b). The AO further noted that during the immediately preceding year the assessee did not pay any remuneration to Smt. Lekha Rajani whereas during the year under consideration the assessee paid a sum of Rs. 6,00,000/- towards salary/remuneration. The AO held that she has not involved in the working of the company, therefore, remuneration paid to her is not justified. Accordingly, the AO has disallowed 20% of remuneration paid to her. On appeal Id. CIT(A) allowed the claim of the assessee.

16. Before us, Id. DR has submitted that as per the statement recorded by the AO Smt. Lekha Rajani has admitted that she was not having knowledge about the affairs and work of the company. Therefore, when she was not a active director involving in the affairs of the company then the remuneration paid to her is exclusive. He has relied upon the order of the AO.

17. On the other hand, Id. AR of the assessee has submitted that during the remand proceeding Smt. Lekha Rajani has stated in the

statement that she rendered services and looked after the house keeping of the company she is also holding past experience in U.K. and well qualify, therefore, the remuneration was paid @ 50,000/- per month is commensurate to her services rendered to the company. He has further submitted that the claim of remuneration of Rs. 12 lacs has been allowed by the AO for the assessment year 2012-13 while passing the scrutiny assessment u/s 143(3) of the Act. He has relied upon the orders of the Id. CIT(A).

18. We have heard the rival submissions as well as relevant material on record. We find that the AO has disallowed 20% of the remuneration paid to the Director only on the basis of the statement recorded and without examining the issue of fair market remuneration as required u/s 40A(2)(b) of the Act. The Assessing Officer has not carried out any exercise of determining the fair market or reasonable value of services rendered by the Director. The Id. CIT(A) has rightly considered this issue in paras 10.7 and 10.8 as under:-

"10.7 During the course of assessment proceeding details of salary paid to employees were also sought and provided with TDS details. AO found that the employees are getting higher salary than remuneration paid to Smt. Lekha Rajani, Director of the assessment company. The AO was required to compare the remuneration with employee who has lesser responsibility than director getting higher salary but it was not done. Therefore

before making addition u/s 40(a)(ia) onus is cast upon the AO for making disallowance u/s 40(a)(ia) of the Act, 1961, which was not done at all the fair market value of services rendered were not compared.

10.8 Having considered the material available on record, I find that the claim of remuneration payment of Rs. 12 lacs to Smt. Lekha Rajani has been allowed by the AO in AY 2012-13, by order passed u/s 143(3) of the IT Act. Therefore, considering her experience of more than 30 years, I hold that there is no justification in making a disallowance of remuneration paid to her. Accordingly, I delete the disallowance of Rs. 1,20,000 made by the AO u/s 40A(2) of the IT Act."

Thus, in view of the facts that the AO has not carried out any exercise to determine the fair market value of service and further the remuneration of Rs. 12 lacs paid Smt. Lekha Rajani for the assessment year 2012-13 was allowed, we do not find any error or illegality in the order of the Id. CIT(A) qua this issue.

19. Ground No. 5 is regarding deletion of disallowance made u/s 40(a)(ia) in respect of commission paid to Nectar Drugs Pvt. Ltd. The AO noted that the assessee has paid a sum of Rs. 33,086/- to M/s Nectar Drugs Pvt. Ltd. without deduction of tax at source. The AO has referred to the reply of the assessee wherein the assessee admitted that TDS on the above payment was required to be deducted but it was not deducted thus, the assessee offered the said amount for disallowed.

On appeal, the Id.CIT(A) deleted the disallowance made by the AO on the ground that this was not a payment of commission but it represents the amount of rebate and discount allowed by the assessee to Nectar Drugs Pvt. Ltd.

20. Before us, Id. DR has relied upon the orders of the Assessing Officer and submitted that the assessee itself agreed to the disallowance.

21. On the other hand, Id. AR of the assessee has submitted that the assessee furnished the complete details before the AO as well as Id. CIT(A) and also details of the TDS deducted as per rate applicable. He has supported the order of the Id. CIT(A).

22. We have considered the rival submissions as well as relevant material on record. Though the Assessing Officer has disallowed a sum of Rs. 33,086/- by treating the same as commission payment u/s 40(a)(ia) of the Act however, the Id. CIT(A) found that this payment does not pertain to the commission but it represents rebate and discount. Relevant finding of the Id. CIT(A) in para 11.7 is as under:-

"During the course of assessment proceedings details of salary paid to employees were also sought and provided with TDS details. AO found that the employees are getting higher salary than remuneration paid to Smt. Lekha Rajani, Director of the assessee company. The AO was required to compare the

remuneration with employee who has lesser responsibility than director getting higher salary but it was not done. Therefore before making addition u/s 40A(2) of the IT Act, 1961, which was not done at all the fair market value of services rendered were not compared."

The Id. CIT(A) has given a finding of fact that the nature of payment is rebate and discount and not commission and therefore, no TDS is required on this amount. In the absence of contrary fact brought before us, we do not find any reasons to interfere with the order of the Id. CIT(A) qua this issue.

23. Ground is no. 6 is regarding disallowance deleted by Id. CIT(A) on account of late payment of ESI & PF.

24. We have heard Id. DR as well as AR and considered the relevant material on record. The Id. CIT(A) has deleted the disallowance made by the AO by following the decision of Hon'ble jurisdiction High Court in case of CIT Vs. State Bank of Bikaner & Jaipur 363 ITR 70 as well as the other decision of the Hon'ble High Court. The relevant finding of Id. CIT(A) in paras 13.5 to 13.7 is as under:-

"13.5 I have perused the assessment order as well as remand report of the AO, submissions made including judicial citations and cross reply of the appellant and find that an addition of Rs.45,916/- has been made by the AO, based on the ground that

payments for ESI and PF have been deposited after the due date specified in the respective Acts.

13.6 The appellant has stated that the payments of ESI & PF were made before the due date of filing of income tax return and AO has made the addition after ignoring the applicable judgments of Hon'ble Supreme Court in the case of Alom Extrusions 319 ITR 0306 and Vinay Cement Ltd. 213 CTR 268 on this issue, which are squarely applicable in this case. Further, AO has also ignored the judgments of Hon'ble Rajasthan High Court in the case of CIT V/s State Bank of Bikaner and Jaipur as reported in 360 ITR 70, CIT vs Udaipur Dugdh Utpadak Sahkari Sangh Ltd. 265 CTR 59, etc; came to the similar conclusion vide order dated 06, January, 2014 that where the PF and/or EPF, CPF, GPF etc., if paid after the due date under respective Act, but before filing of the return of income under Section 139(1), cannot be disallowed.

13.7 In view of the above facts and after considering the judgment of Hon'ble Supreme Court and of Hon'ble Rajasthan High Court, I find no justification in the action of the AO in making the said addition and therefore the addition of Rs.45,916/- is deleted."

We further note that the Hon'ble jurisdiction High Court has reiterated this view in case of Jaipur Vidyut Vitran Nigam Ltd. 49 taxmann.com 540 wherein the Hon'ble High Court has held in para 6 is as under:-

"6. We have considered the arguments advanced by the learned counsel for the Revenue and have also gone through the impugned orders. In our view no substantial question of law arises out of the orders of the Tribunal as it is an admitted fact that the entire amount was deposited by the respondent-assessee at least on or before the due date of filing of the returns under s. 139 of the IT Act and being a concurrent finding of fact

by the respective authorities and in the light of the judgments rendered by this Court in the case of CIT v. State Bank of Bikaner & Jaipur/ jaipur Vidyut Vitran Nigam Ltd. [\[2014\] 363 ITR 70/43 taxmann.com 411](#) of even date wherein it has been held that if the amount has been deposited on or before the due date of filing the return under s. 139 and admittedly it was deposited on or before the due date then the amount cannot be disallowed under s. 43B of the IT Act or under s. 36(1)(va) of the Act. In fact in the above matters one of the parties is same as in the present appeals, therefore, the issue is no more res Integra in the light of judgments of this Court referred to supra and, in our view, no substantial question of law arises out of the impugned orders of the Tribunal, which may require attention of this Court.

Thus, when the payment was undisputedly deposited before the due of filing of return u/s 139 of the Act then no disallowance is called for in view of the binding precedent of Hon'ble jurisdiction High Court. Accordingly, we do not find any error or illegality in the order of the Id. CIT(A) qua this issue.

In the result, the appeal of the Revenue is partly allowed.

Order pronounced in the open court on 19/02/2018

Sd/-
(भागचंद)
(Bhagchand)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur
दिनांक/Dated:- 19/02/2018.

*Santosh.

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- ACIT, Circle-2, Alwar.
2. प्रत्यर्थी / The Respondent- M/s Dalas Biotech Ltd., Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 180/JP/2016}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar