

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B' JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवं श्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 147/JP/2024  
निर्धारण वर्ष/Assessment Year : 2010-11

M/s. Dalas Biotech Ltd. E-292, RIICO Industrial Area Bhiwadi	बनाम Vs.	The ACIT Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCS 4061 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Rohit Tiwari, Adv (Physical)  
Ms. Shivani, Adv (VC)  
राजस्व की ओर से / Revenue by: Shri Anup Singh, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 21/08/2024  
उद्घोषणा की तारीख / Date of Pronouncement: 30 /09/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 18-12-2023, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2010-11 raising therein following grounds of appeal.

“1 That on the facts and circumstances of the case and in law, the Ld. CIT(A)/AO grossly erred in making the addition of Rs 52,00,000 under section 68 of the Act

1.1. That the Ld CIT(A)/AO erred in not appreciating that the amount of loan of Rs 52,00,000 being repaid in the subsequent assessment year along with interest, therefore the addition under section 68 of the Act is not sustainable in law,

1.2. That the Ld. CIT(A)/AO erred in alleging that the appellant failed to substantiate the creditworthiness of the lender being the Director of the appellant company

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A)/AO grossly erred in making the addition of Rs. 481,562 under section 40(a)(i) of the Act on commission paid to non-resident commission agent on vague and irrelevant consideration.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) grossly erred in dismissing the appeal of the appellant

2.1 Apropos Ground No. 1 of the assessee wherein brief facts of the case are that the assessee being engaged in the manufacturing and trading of Pharmaceutical Products filed its return of income on 4-10-2020 for the year under consideration declaring total income of Rs.3,73,80,585/-. The case of the assessee was selected for scrutiny and thereafter the AO completed the assessment u/s 143(3) of the Act and made several additions and disallowances to the returned income resulting in an increased assessed income of Rs.4,30,62,150/-.

2.2 Aggrieved by the said, the assessee preferred an appeal before the ld. CIT(A) who partly allowed the appeal of the assessee.

2.3 Dissatisfied with order of ld. CIT(A), the revenue preferred appeal before ITAT, Jaipur who vide its order dated 19-02-2018 in ITA No. 180/JP/2016 restore the matter to the file of the AO.

2.4 On receiving back the file, the AO further provided the opportunity of hearing to the assessee by calling for certain information by issuing notices and consequently the AO after considering replies submitted by the assessee on computed income of the assessee thereby making addition on account of unexplained cash credit and disallowance of commission paid to various parties. Subsequently in 2<sup>nd</sup> round, the assessee again preferred appeal before the ld.CIT(A) who dismissed the appeal of the assessee on merits.

2.5 Against the order of dismissal of appeal of the ld.CIT(A), the assessee preferred the present Appeal before us on the ground mentioned hereinabove.

2.6 The first ground raised by the assessee relates to challenging the order of the ld. CIT(A) in sustaining the addition made u/s 68 of the Act.

2.7 In this regard, the ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the lower authorities and also relied upon his written submission.

2.8 On the other hand, the ld. DR relied upon the order passed by the AO dated 27-12-2018 and ld. CIT(A) dated 18-12-2023. The ld. DR out rightly submitted in this case that the assessee had shown a loan of Rs.52.00 lacs received from

Smt.Lekha Rajani, one of the Director of the company during the relevant assessment year but during the course of assessment proceedings in the first round of litigation the statement was recorded by the AO but perusal of those statements show that Smt.Lekha Rajani has clearly denied having given any loan to anybody during the relevant assessment or during earlier years. It was further submitted by DR that although the assessee has shown the loan of Rs.52.00 lacs from Smt.Lekha Rajani but on the contrary the said Smt.Lekha Rajani in her statement recorded u/s 131 of the Act on 11-02-2013 clearly stated that she did not have any savings or any source of income in the last 10 years and even she denied having given any loan to the assessee. It was further submitted that although the assessee was required to explain the identity, genuineness and creditworthiness of the loan from Smt.Lekha Rajani but even in spite of several opportunities, the assessee could not prove the above three ingredients. Therefore, the ld. DR supported the orders of the Revenue Authorities and thereby the additions were made and sustained on account of unexplained cash credit of Rs.52.00 lacs . The ld.DR further submitted that by simply furnishing the confirmation, PAN, Bank Statement, the onus of the assessee does not get discharged. In such a situation, the lender has already denied of having given any loan to the assessee and has denied of having any source of income or savings. In this regard, the ld.DR relied upon the specific findings

recorded by the AO at pages to 6 to 12 of the assessment order wherein detailed reasonings have been given by the AO for making addition of Rs.52.00 lacs.

2.9 We have heard the Counsel for both the parties and also perused the materials filed before us, judgement cited by the respective and orders of the lower authorities. As far as the addition u/s 68 of the Act is concerned, it is necessary for us to evaluate the facts of the case before deciding this ground. It is an undisputed fact on record that Smt.Lekha Rajani was director of the assessee company and had advanced loan of Rs.52.00 lacs to assessee company on 31-03-2010. In this regard the source of advancing the loan by Smt.Lekha Rajani was from India Millennium Deposits and this regard our attention was drawn to point out the fact by the ld. AR that Smt.Lekha Rajani had invested in Millennium Bonds in the year 2000 which facilitated the loan amount of Rs.52.00 lacs. The copies of such certificate have been attached in Pages 181 to 292 of the Paper Book. Undisputedly, the amount of Rs.52.00 lacs was given to the assessee company in bank account and in this regard the document is at PB page 130. The said loan amount was subsequently repaid by the assessee company to Smt.Lekha Rajani alongwith charges and copy of the ledger account of Smt.Lekha Rajani has also been attached at PB Pages 94 to 150 and in this ledger account entry of loan amount repayment is shown. It important to mention here that aforesaid loan amount has already been closed by Smt.Lekha Rajani and the copy of the same is attached at PB page 192. Apart from

this, the evidence showing that Smt.Lekha Rajani has fixed deposits used for raising aforesaid demand has also been placed on record at pages 182 to 186 of the paper book. Therefore, after appreciating the above facts, it is clearly evident that Smt.Lekha Rajani had advanced loan of Rs.52.00 lacs to the assessee company and in addition to above, it has also been brought to our knowledge and notice and also on record that aforesaid amount has already been repaid by the assessee on 16-04-2010 and in this relation the bank account of assessee company has also been placed on record at PB pages 243 and 244. It is noted that the ld. AR has made efforts to brief us regarding earlier proceedings of first round of litigation and towards explaining it, the ld. AR specifically submitted that Smt.Lekha Rajani though being Director of the Company had neither looked after the financial affairs of the assessee company nor recorded her financial matters. It was submitted by the ld. AR that normally financial matter of the company as well as of Smt.Lekha Rajani was managed by her husband Shri Anil Rajani. It was also pointed out to us that in the original proceedings, the AO had recorded the statement of Smt.Lekha Rajani wherein she had not been able to explain the transaction of Rs.52.00 lacs because of stress being first time interrogated by the Department whereas it was submitted by the ld AR that entire loan of Rs.52.00 lacs was given by Smt.Lekha Rajani through cheque to the assessee company and the said amount has already been repaid by the assessee company to Smt.Lekha Rajani but still the addition of

Rs.52.00 lacs has been made by the AO as unexplained cash in original assessment proceeding.

2.10 After evaluating the entire facts as narrated by us above, we now proceed to decide on merit of this ground but it is imperative for us to first of all evaluate the order passed by the Coordinate Bench during the first round of litigation and finding of ITAT is recorded as under:-

*“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 a 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 third parties 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. According, 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.”*

The AO after remand of this case has again passed a fresh order of assessment and the relevant portion is reproduced as under:-

*“Thus, the source of the above sums credited in the aforementioned account of Smt. Lekha Rajani remains unexplained. Accordingly the source of CDR of Rs. 55 Lacs and hence the source of loan of Rs. 52 Lacs shown by assessee as received from the Smt. Lekha Rajani remains unexplained (as Mrs. Lekha Rajani had already stated that she neither had any income nor any savings in all these*

years). Thus, the above clearly shows that Smt. Lekha Rajani had no creditworthiness to lend the sum of Rs. 52,00,000/- to the assessee company.

Further, a perusal of return of income of Smt. Lekha Rajani furnished by the assessee for A Y. 2010-11 also does not show any detail regarding any loan given by her to the assessee company or to any other person.

The above discussion clearly shows that the genuineness as well as the creditworthiness of the said loan of Rs. 52,00,000/- shown by the assessee as received from Smt. Lekha Rajani is doubtful/Unexplained.

The above shows that this sum of Rs. 52,00,000/- is nothing but Unexplained Income of the assessee introduced by it in its books of accounts by showing it as a loan from Smt. Lekha Rajani.

The explanation offered by the assessee with regard to this sum of Rs. 52,00,000/ found credited in the books of the assessee maintained for the previous year is not found satisfactory. Hence, this sum of Rs. 52,00,000/- is being treated as Unexplained cash credits in the hands of the assessee company and is being added to the income of the assessee and taxed in its hands. Based on the above discussion, the sum of Rs. 52,00,000/ • was added to the income of the assessee by the than AO.''

It is important to mention here that during the remand proceedings both i.e. Smt.Lekha Rajani and her husband Shri Anil Rajani had expired and the assessee company had relied upon the documents placed on record in original proceedings. We are of the firm view that at the time of deciding as to the correctness of the addition made by the AO and sustained by the ld CIT(A), it is necessary for us to scrutinize and evaluate the identity, genuineness and creditworthiness of the transactions in question and therefore, in this regard, first of all we record our findings as per the identity of the parties in question. In this regard, we noticed that it remained undisputed fact on record that Smt.Lekha Rajani during her life time

was director of the assessee company and had extended loan of Rs.52.00 lacs to the assessee company. However, during the remand proceedings, she clarified that her initial denial was due to her inability to recall the exact date and details of the transactions which occurred on the last day of the financial year. She had further stated that without relevant documents at hand she could not accurately recall the transactions details and thus responded that “ I have no Idea.” We have further noticed that Smt.Lekha Rajani was not fully aware of the Court procedure and this was a family business and she was not very active in financial matters focusing primarily on administrative responsibilities but she had confirmed that loan transaction was genuine and provided the detailed explanation alongwith documentary evidences to support her claim during remand proceedings which in our view prove the identity of Smt.Lekha Rajani.

2.11 Now as far as the genuineness of the transactions are concerned. In this regard, we observed that entire trail of loan transactions had already been explained and supporting documents have been placed on record. The loan was sanctioned by Smt.Lekha Rajani, Banker against India Millennium Deposits held with SBI, NRI Branch, Bombay which were subsequently converted into FCNR deposits with OBC, M-Block, Connaught Circus, Delhi. These deposits were used to secure an OD Facility from the bank and the loan amount of Rs.52.00 lacs was credited to the assessee account from this facility. The transaction was confirmed

by the Bank and the loan was also repaid to the Bank on 16-04-2010 alongwith interest. The Remand Report from the AO confirms the details provided by Smt.Lekha Rajani. The AO has confirmed in the order that entire transaction has been conducted through the banking channel and through the bank account of Smt.Lekha Rajani. Now the only question remains as to whether Smt.Lekha Rajani could provide the loan and as to whether the account indeed belongs to her. The same has been confirmed by the Id. CIT(A) and also by the AO. Therefore, the genuineness of the transaction agreed by the AO in his order that said transactions were undisputedly done from the account of Smt.Lekha Rajani and through banking channel. In this regard, we draw strength from the decision in the case of Pr. CIT vs Anshika Consultants (P) Ltd. (2024) 162 Taxman 792 (Alld) wherein the Hon'ble High Court held as under:-

*“In this the hon'ble High Court of Allahabad held that, the suspicion voiced by the Assessing Officer as to the source of deposit received by the assessee was gone into. On the strength of material and evidence that was brought on record, the Tribunal reached a finding that the loans obtained by the assessee were interest bearing. Interest was actually paid. Second, the Tribunal found that the Assessing Officer had not been able to doubt the identity and existence of the creditors. As to the source of money deposited by the creditors, adequate enquiry had not been conducted by the Assessing Officer to doubt the claim made by the assessee. Once the deposits were credited in the bank account of the assessee through banking channel, prima facie evidence existed of genuine transactions. In any case, the Assessing Officer was not successful in establishing that the money deposited by the creditors was not theirs but that it had been routed through the creditors by the assessee. In that regard, the Tribunal has categorically observed that there was no proof to establish that such money had been received by the creditors through cash deposits made by the assessee. Merely because the Directors of the two companies were common may have given rise to suspicion that the deposits received by the assessee company from the other, was bogus.*

*Yet, the Tribunal has found, there is no material or evidence on record to establish that the creditors were shell companies. The observation made by the Assessing Officer in that regard is described as unfounded. Besides the above, the Tribunal has taken note of the loan confirmation, Certificate of Incorporation, PAN registration, copy of the ITR, balance sheet, profit & loss account, bank statement of the creditors, to reach a conclusion that the transactions of deposit received by the assessee company were genuine. In face of such findings recorded by the Tribunal based on material and evidence on record, no question of law arises, as proposed. Accordingly, the present appeal lacks merit and is dismissed.’’*

Further in the case of DCIT vs Paswara Papers Ltd. (2024) 159 Taxman 604 (Alld.) wherein the Hon’ble Court has held as under:-

*‘‘The relevant extract of the hon’ble High Court of Allahabad judgement is produced below, Thus, it is seen that other than the suspicion raised by the assessing officer as to the genuineness of the transaction, no credible/ tangible material was brought on record by the assessing authority as may have led to any satisfaction or finding that the transaction was not genuine. The assessee not only disclosed the name of the jewelers to whom the jewellery was sold by the creditors of the assessee but it also established the mode of payment through banking channel. No doubt was raised by the assessing authority as to the genuineness on these critical aspects. Thus, no inquiry, whatsoever was made from the jeweler M/s Raghunandan Jeweler Pvt. Ltd. from where it purchased jewellery, valued at the Rs. 3,48,00,852/-. Once the money was thus made available to the creditors of the assessee, they had the source available to make the deposit with the assessee. Existence of such deposit is also not in dispute.*

*Thus, the finding recorded by the Tribunal are findings of fact, based on the evidence and material on record. They do not give rise to any substantial question of law. Accordingly, appeal lacks merit and is dismissed.’’*

Now coming to the third ingredient i.e. Creditworthiness of the transactions and in this regard we noticed that financial standing and ability to provide loan was substantiated with detailed documentary evidence. Smt.Lekha Rajani held substantial investment in India Millennium Deposits and FCNR accounts which

were utilized to secure the loan. The Bank statements and certificates provided during the remand proceedings confirmed that the funds were available and the loan transaction was genuine despite her initial statements during the remand proceedings but the subsequent remand report verified her creditworthiness based on the documents submitted before the Revenue Authorities. Now since the Revenue Authorities have raised two important questions i.e. Whether Smt. Lekha Rajani could provide the loan? And whether the Account belongs to her?. In this regard we proceed to decide first question and in this regard we have noticed that Smt. Lekha Rajani had OD facility backed by India Millennium Deposits. She had invested in Millennium Bonds in the year 2000 which facilitated the loan amount of Rs.52.00 lacs and the entire process of converting this deposit into the loan paid to the assessee company is detailed as under:-

<b>Detail</b>	<b>Description</b>	<b>Reference</b>
<b><u>OD Facility</u></b>	<b>OD Facility and India Millennium Deposits</b>	
	Backed by India Millennium Deposits with SBI NRI Branch, Mumbai	
	US\$ 25,000: Invested on 06.11.2000	Page 182 to 184 of Paper-book
	US\$ 50,000: Invested on 06.11.2000	Page 182 to 184 of Paper-book
	GBP 100,000: Invested on 06.11.2000	Page 182 to 184 of Paper-book
<b><u>FCNR Deposits</u></b>	<b>Conversion to FCNR Deposits</b>	

	The India Millennium Bonds were Converted into FCNR (CDR) on 18.03.2006	
	<p>The details of the FCNR deposits are:</p> <ul style="list-style-type: none"> <li>• GBP 147,793.58: Bearing folio No. 0483321000022</li> <li>• USD 122,041.80: Bearing folio No. 10483321000015</li> </ul>	Page 185 and 186 of Paper-book
	Maturity Date of FCNR deposits 06.01.2007	
	Interest Rates 4.33% and 4.61% per annum	
	Photocopies of FNCR deposits with O C Bank- enclosed for reference	Page 185 and 186 of Paper-book
	<b>Retention and Closure of FCNR Deposits</b>	
	<b>Retention Period:</b> The FCNR deposits were retained with the aforementioned bank until 13.02.2009.	
	<p>On closure, the bank credited the following amounts to the OD account:</p> <ul style="list-style-type: none"> <li>○ <b>GBP Rs. 1,20,92,383/-</b> from FNCR No. 10483321000022</li> <li>○ <b>USD Rs. 67,67,856/-</b> from FNCR No. 10483321000015</li> </ul>	
	Banker Certificate: Enclosed to support the credits	Page 187 of Paper-book
<b>Loan and Bank</b>	<b>Loan and Bank Transactions are produced below:</b>	

Transactions		
	Credit Position: Resultant position in the bank account was Cr Rs. 58,28,119/- on 13.02.2009	
	A CDR of Rs. 55 lakh was taken out of these fundsRs. 55 lakh taken out of these funds	Page 188 of Paper-book
	Ledger Entry	Page 94 of Paper-book
Demand Loan	Rs. 52,00,000/- sanctioned; confirmed by a bank letter dated 05.04.2013 (Copy enclosed in Paper-book)	Page 189 to 192 Paper-book
	Loan amount paid to Dalas Biotech limited (loan entry in bank account of Dalas Biotech Limited)	Page 242
Loan Repayment	Loan repaid to the bank on 16.04.2010	Page 130& 243 of Paper-book

We also draw strength from the decision in the case of Mod Creations (P) Ltd vs ITO (2011) 13 Taxman 114 (Delhi High Court ) wherein it has been held as under:-

*“The Tribunal has adopted an erroneous approach on the aspects of genuineness of the transactions in issue and the creditworthiness of the persons/creditors who lent money to the assessee. The first aspect, i.e., identity of the creditors was established before any of the authorities below. It will have to be kept in mind that section 68 only sets up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee. It cannot but be agaisaid that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the assessee to prove the creditworthiness of the sub-creditors.*

*In the light of the above principle, one should examine as to what the authorities below found vis-a-vis the genuineness of the transactions and the creditworthiness of their creditors.*

- (i) *The fact that there was sufficient balance available with the creditors when cheques have been issued to the assessee-company was established.*
- (ii) *It was also established that the funds available at the relevant point in time were not infused into the bank accounts of the creditors by way of cash but were, in fact, credited to their account again by way of cheques largely on account of commissions received by them save and except two transactions of Rs. 1 lakh each received by two creditors from verifiable donors.*
- (iii) *The bank accounts as well as returns filed by the creditors who were assessable to tax along with their PANs were also available with the Assessing Officer.*
- (iv) *The assessee in turn had received the monies by way of cheques in respect of which credits were made in its books of account.*
- (v) *The creditors had also placed on record receipts of commission as well as the gift deeds in respect of gifts made to the donors.*
- (vi) *The identity and addresses of sub-creditors was also available.*

*With this material on record as far as the assessee was concerned, it had discharged initial onus placed on it. In the event, the revenue still had a doubt with regard to the genuineness of the transactions in issue or as regards the creditworthiness of the creditors, it would have had to discharge the onus which had shifted on to it. A bald assertion by the Assessing Officer that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. An allegation, by itself, which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The Tribunal, without adverting to the aforementioned principle, laid stress on the fact that despite opportunities, the assessee and/or the creditors had not proved the genuineness of the transaction. Based on this, the Tribunal construed the intentions of the assessee as being mala fide. The Tribunal ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the Assessing Officer. If the Assessing Officer had any doubt about the material placed on record, which was largely bank statements of the creditors and their Income-tax returns, it could gather the necessary information from the*

*sources to which the said information was attributable to. No such exercise had been conducted by the Assessing Officer. In any event what both the Assessing Officer and the Tribunal lost track of was that they were dealing with the assessment of the company, i.e. , the recipient of the loan and not that of its directors and shareholders or that of the sub-creditors. If had any doubts with regard to their creditworthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors. [Para 14].''*

In the case of Deputy Commissioner of Income Tax Circle-2(4) v. Shri Asit Surendra Bhai Shah (ITAT Ahmedabad Bench 945/Ahd/18) wherein it has been held as under:-

*In this, 8 appeals are filed by the Revenue against the separate appellate orders passed by the Commissioner of Income Tax (Appeals), Ahmedabad arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961.*

*In this Allahabad High Court had made following observations,*

*14. We have considered the facts in the present case Shri Mukesh J. Shah sold his land during A.Y. 2009-10 for Rs. 51.09 crores and assessed to tax by ITO, Ward-5(2)(4) and assessed total income at Rs. 6,80,50,640/-. The so called unsecured loan was given by Account Payee cheques and also repaid by the assessee in the next financial year through banking channels. The recovery proceedings u/s. 226(3) initiated against Mukesh J. shah was also dropped by the A.O. Therefore the provisions of section 68 does not attract of the loan transactions between the assessee M/s. Savitaben Mangaldas Trust and Shri Mukesh J. Shah. Therefore the addition on this account is also liable to be deleted and the grounds raised by the Revenue is devoid of merits.*

*15. In the combined result, the appeals filed by the Revenue in ITA Nos. 945/Ahd/2018, 1249/Ahd/2018, 1252/Ahd/2018, 1253/Ahd /2018 1254/Ahd/2018 (for A.Y. 2009-10), ITA No. 457/Ahd/2020, 477/Ahd/2020 and IT(SS)A No. 54/Ahd/2021 (for A.Y.2010-11) are hereby dismissed.*

In the case of DCIT v/s Rohini Builders 256 ITR 360 (Guj), Hon'ble High Court held as under:- *"substantial Question of law - Cash Credit Assessee furnished complete addresses of - all the creditors along with GIR numbers /PAN as well as confirmations along with copies of assessment orders passed in the cases of individual creditors, wherever available, and copies of returns filed by' the creditors bin the remaining cases- All loans were received and*

*repaid by the assessee by account payee cheques along with interest Tribunal deleted the addition substantial question of law arises appeal of the department dismissed."*

*Apart from the above mentioned judgments of Hon'ble Jurisdictional High Court of Gujarat, Ahmedabad, the appellant's case has been found covered by the following judgments: -*

- i. CIT v/s. Meta Chem Industries 245 ITR 160 (MP)*
- ii. Nemichand Kolhani v/s CIT 264 ITR 254 (Gauhati)*
- iii. iSona Electric Co. v/s. CIT 152 ITR 507 (Delhi)*
- iv. Tam Tam Pedda Guruna Reddy v/s. JCIT 291 ITR 44 (Kar.)*

**In the case of M/s. Capaxo Logistics Pvt Ltd.**

*“14. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly the assessee has received amount of loan and advances for Rs. 5 crore each from Shri Rameshbhai Thakor and Shri Vinod Sharma which was treated as unexplained cash credit under section 68 of the Act by the AO which was deleted by the learned CIT(A) 14. 1 At the outset we note that assessee also received share application money for Rs. 3.5 core and 4 crores from each of the party namely, Shri Rameshbhai Thakore and Shri Vinod Sharma which was also treated as unexplained cash credit under section 68 of the Act by the AO on account of lack of proof of identity of party, genuineness of transaction and creditworthiness of the parties. However while dealing with the issue of share application money in the preceding paragraph of this order, we have held that identity of parties, genuineness of transaction and creditworthiness have been established by the assessee. Therefore, the only issue remains whether assessee has given advances to these parties on earlier occasion which has been received back in the year under consideration In this regard we note that the assessee has submitted ledger copies of both parties for the FY 2008-09 and 2009-10 which is available on pages 249 to 254 of paper book. On perusal of the same,*

*we find that the assessee as on 28-02-2009 has provided advances to both the parties through cheque which has been received back in the year under consideration through banking channel The assessee has also submitted bank book and bank statement showing the transaction which is available on paged 245 to 248 and 251 to 252 of paper book. 14.2 In view of the above, there remains no ambiguity that amount of Rs. 5 crore each received from Shri Ramesh Thakor and Shri Vinod Sharma represent repayment of advances given by the assessee in the month of February 2009. Therefore the provision of section 68 will not be applicable on this transaction. Hence the ground of appeal of the Revenue is hereby dismissed. 14.3 In the result appeal of the Revenue is dismissed."*

In the case of Ambe Tradecorp Pvt. Ltd, it has been held as under:-

*"....9.2 Furthermore, once the source of fund in the hand of above company was held as explained by learned CIT (A) then amount received by the assessee from that company cannot be held as unexplained under section 68 of the Act in the absence of contrary information. Likewise, there cannot be addition of one stem in the hands of two different persons*

2.12 After having gone through the facts of the present case and after taking into consideration all the documents placed on record and the orders passed by the Revenue Authorities, we are of the considered view that Smt. Lekha Rajani who was the director of the assessee company was NRI is not a dispute and the entire transactions between Smt. Lekha Rajani and the assessee company was based on the documents and moreover the entire amount paid by the Smt. Lekha Rajani to

the assessee company was through banking channel. We cannot lose sight of the fact that entire amount of loan has already been paid in the year 2010 through banking channel although Smt. Lekha Rajani and her husband Shri Anil Rajani has already expired during the course of litigation. It is noticed that entire case is based on the documents and Smt. Lekha Rajani was not expected to make parrot like statement. In our considered view the genuineness of the transactions stood proved on record by documents as loan transaction was carried out through comprehensive supporting documents. The creditworthiness of the investor also stood established by demonstrating the source of transactions which in this case is through a loan facility by her investments in India Millennium Deposits. The trail transactions also stood proved by documents thereby leaving no question about the creditworthiness. Hence, in our view considering the totality of the facts and circumstances of the case, the identity, genuineness and creditworthiness of the loan provider Smt. Lekha Rajani stands proved. Therefore, we feel no hesitation to direct the AO to delete the addition made by the AO on account of unsecured loan u/s 68 of the Act. Thus the Ground No. 1 of the assessee is allowed.

3.1 Apropos Ground No. 2 of the assessee, it is noted that the AO has disallowed the commission payment of Rs.4,81,562/- u/s 40a(ia) of the Act holding as under:-

“It is pertinent to mention that assessee company has furnished copies of bills of M/s Neon Chemicals and M/s Sharp Associates. Details of outward remittance transaction advices for M/s Sharp Associates are as under:

Date of advice	Date of transaction	Amount including all charges
06.01.2010	23.12.2009	1,68,514/-
12.02.2010	08.02.2010	1,25,468/
28.04.2010	07.04.2010	79,193/
	Total	3,73,175/

It may be noted that in support of this claim, the assessee company has submitted copies of above stated bills/advices only. From the above advices, nature of service and business connection of assessee company could not be ascertained as desired in Hon'ble ITAT order. Hence, reply filed by the assessee company is not tenable.

Therefore, the assessee has failed to deduct tax at source (TDS) on the Commission payments made to both these parties, therefore the sum of Rs. 4,81,562/- i.e.(Rs. 1,06,373/- Rs. 3,75,189/) is being disallowed In accordance with the provisions of section 40a(ia) and section 195(1) of the Income Tax Act, 1961.”

3.2 In first appeal, ld. CIT(A) has dismissed this ground of the assessee by observing as under:-

“10.4 In view of the above, as the appellant failed to submit any documentary evidences in support of his ground of appeal and also not submitted substantial evidence in support of his contentions in his statement of facts, I do not find any reason to

interfere in the assessment order passed by the Assessing Officer dated 27-12-2018.

8.3 Therefore, this ground of appeal no. 2 is dismissed.”

3.3 During the course of hearing, the ld. AR of the assessee submitted that commission agent did not have any permanent establishment in India, hence the liability of TDS u/s 195 of the Act does not apply. Hence, the disallowance of commission payment is not justified. The payments were genuine and non-deduction of TDS is in accordance with the provision of the Act. Thus the disallowance so made by the AO deserves to be allowed.

3.4 On the other hand, the ld.DR supported the orders of the lower authorities.

3.5 We have heard the Counsel for both the parties and perused the materials available on record. In this case, it is noticed that the AO disallowed the Commission payments 4,81,562/- i.e.(Rs. 1,06,373/- Rs. 3,75,189/-) u/s 40a(ia) of the Act which has been confirmed by the ld. CIT(A). From the records, we noticed that the commission payment of Rs. 4,81,562 was disallowed by the AO solely on the ground that the services were rendered in India, and thus the payment of commission attracted TDS @20% whose details are as under:-The details are as follows

Neon Chemicals, Lahore, Pakistan:	Rs. 1,06,373
Sharp Associates, Dhaka, Bangladesh	<u>Rs. 3,75,189/-</u>
Total:	Rs. 4,81,562

It is noticed that the ITAT sustained the decision of the CIT(A), Alwar, and approved the claim regarding the non-deduction of TDS on commission payment to foreign parties, in view of the CBDT circulars and provisions of section 195 of the Income Tax Act, 1961. The disallowance of R 4,81,562 is not justifiable. The *Hon'ble ITAT set aside the issue for two-fold verification regarding the nature of services and the business connection of the assessee outside India, as per law.* Further, it is noted that the parties in question are commission agents in their respective countries, providing services of procurement of orders for sales and raising the bills accordingly. Payments were made to them through the banking channel (PBP 72 to 79). As regards the commission and payment deduction, it is noticed from the details of commission payment of Rs. 1,68,681 to M/s Geochemie Pharmie Lid, on sales made through the party, who raised the bills is placed before the Bench. The due TDS was deducted and deposited with the Central Government. Copies of the commission on sale for Rs. 1,68,681 which are available at Annexure-2. As regards the details of Commission Paid to Foreign Parties as under:-

Sharp Associates:

Bangladesh Commission Paid: Rs. 3,75,189

The Supporting Documents are as under:

1. Copy of ledger account commission on sale debited Rs. 3,75,189 in their account.
2. Copy of bank statement of M/s Dalas Biotech Ltd. with OBC, Connaught Circus, Delhi of USD 3579 equivalent to INR 1,68,151.00 against a bill of Rs. 1,70,528
3. Copy of bank statement of M/s Dalas Biotech Ltd. with OBC Connaught Circus, Delhi of USD 2669.15 equivalent to INR 1,25,468
4. Copy of bank statement of M/s Dalas Biotech Ltd. with OBC Connaught Circus, Delhi of USD 1758 equivalent to INR 79,193 dated 7-04-2010

Neon Chemicals, Lahore:

1. Pakistan Commission Paid: Rs. 1,06,373
2. Supporting Documents like Copy of ledger account of the party in the books of the assessee company and Copy of bank account of the assessee company with OBC highlighting the entry in the bank statement dated 25.03.2010 of Rs. 1,06,373. (refer page no. 238 to 257 of paper book)

It is noted that the commission agents did not have any permanent establishment in India, hence, the liability of TDS u/s 195 of the Income Tax Act, 1961, does not apply. Hence in view of the above facts and supporting documents, the Bench feels that the disallowance of commission payments is not justified. The payments were genuine, and the non-deduction of TDS is in accordance with the provisions of the Income Tax Act. Hence the Ground No. 2 of the assessee is allowed.

4.0 The Ground No. 3 is general in nature which does not require any adjudication.

5. In the result, the appeal of the assessee is allowed with no orders as to cost

Order pronounced in the open court 30/09/2024.

Sd/-

(राठोडकमलेशजयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/09/2024

**\*Mishra**

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

1. The Appellant- M/s. Dalas Biotech Ltd. Bhiwadi
2. प्रत्यर्थी / The Respondent- The ACIT, Alwar
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No.147 /JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar