

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'D' KOLKATA

[Before Hon'ble Shri P.M.Jagtap, AM &amp; Shri S.S.Viswanethra Ravi, JM ]

**ITA No.1913/Kol/2016**  
**Assessment Year : 2012-13**I.T.O., Ward-2(3)  
Durgapur

-versus-

Amzad Ali Khan  
Kolkata  
(PAN: AETPK 7846K)  
(Respondent)

(Appellant)

For the Appellant: Shri Arindam Bhattacharjee, Addl. CIT

For the Respondent: None

Date of Hearing : 12.02.2018.

Date of Pronouncement : 28.03.2018.

**ORDER****Per S.S.Viswanethra Ravi, JM**

This is an appeal by the Revenue against the order dated 14.07.2016 passed by C.I.T-(A)-Durgapur for A.Y.2012-13.

2. The only issue is to be decided as to whether the CIT(A) is justified in deleting the addition made on account of cash payments in violation of section 40A(3) of the Income Tax Act, 1961 (Act) in the facts and circumstances of the case.

3. The Id. DR relied on the order of the AO. We find that the adjournment application filed by the Id. AR by stating that he was unable to represent the case before this tribunal as was entrusted to him yesterday i.e. 11.02.2018. On perusal of the record, we find that the issue is covered by various orders of this Tribunal including the leading case in the case of Amrai pachwai & C.S.Shop vs DCIT in ITA No.1251/Kol/2011 order dated 15.01.2014. Therefore we reject the adjournment application filed by the AR and proceeded to dispose of the appeal, taking into consideration the material facts on record.

4. Heard rival submissions and perused material on record. It is noticed that the AO found from the statement received from United Bank of India, Mayabazar branch that the assessee paid an amount of Rs.2,33,23,967/- in cash to IFB Agro Industries Ltd and non production of any evidence showing that the said payments were made in account payee cheque or bank draft and for violation of the provisions of section 40A(3) of the Act, the aforesaid amount was brought to tax by the AO. Before the CIT(A) it was contended by the assessee that the cash payments were made to IFB Agro Industries Ltd, Panagarh Bazar, Budbud as per the compliances to be made with West Bengal Excise (supply of country spirit on payment of Duty) Rules, 2005 and it is a credit to the agent of the State Government and as such payments are covered by the exceptions contained in Rule 6DD (b) of Income Tax Rules, 1962 that the ITAT, Kolkata benches in the case of Amrai Pachwai & C.S.Shop vs DCIT (supra) held that Rule 6DD(b) is applicable that if the payments made to the Government agent in legal tender under the rules framed by it and considering the same and taking into consideration the facts and circumstances of the case that the assessee purchased country liquor and country spirit from the territorial licensee bottling plant IFB Agro Industries Ltd and payments in cash made thereto is protected by the exemption in terms of Rule 6DD(b) of Income Tax Rules, 1962 as per the notification issued by the Government. In view of the same, we find no infirmity in the order of CIT(A) as the grounds 1 to 5 raised in the appeal by the revenue are dismissed.

5. In the result the appeal by the revenue is dismissed.

**Order pronounced in the open Court on 28.03.2018.**

Sd/-

[P.M.Jagtap]  
Accountant Member

Sd/-

[ S.S.Viswanethra Ravi ]  
Judicial Member

Dated : 28.03.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1. Amzad Ali Khan, Mayabazar C.S.Shop, Durgapur, Burdwan-713207.
2. A.I.T.O., Ward-2(3), Durgapur.
3. C.I.T.(A)-Durgapur.
4. C.I.T.-Durgapur.
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary  
Head of Office/D.D.O., ITAT, Kolkata Benches