

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH "D", KOLKATA**

**BEFORE SH.S.S.VISWANETHRA RAVI, JUDICIAL MEMBER &  
SH. A.L.SAINI, ACCOUNTANT MEMBER**

**ITA No.1977 & 1978/KOL/2018  
(ASSESSMENT YEAR-2013-14 & 2014-15)**

ITO, Ward-1(3), Asansol.	<b>vs</b>	M/s. Crony Enterprise, C/o-Sh. Nitish Pal, Chakdola More, Bahadurpur, Burdwan-713362. PAN-AAFFC0939H
<b>(Appellant)</b>		<b>(Respondent)</b>

**C.O. No.-118 & 119/KOL/2018  
[IN ITA No.1977 & 1978/KOL/2018]  
(ASSESSMENT YEAR-2013-14 & 2014-15)**

M/s. Crony Enterprise, C/o-Sh. Nitish Pal, Chakdola More, Bahadurpur, Burdwan-713362. PAN-AAFFC0939H	<b>vs</b>	ITO, Ward-1(3), Asansol.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>Appellant by</b>	Sh. Radhey Shyam, CIT DR & Sh. Shankar Halder, Sr.DR JCIT	
<b>Respondent by</b>	None	
<b>Date of Hearing</b>	28.03.2019	
<b>Date of Pronouncement</b>	28.03.2019	

**ORDER**

**PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

These two appeals by the Revenue and two Cross-objections by the assessee against the orders dated 25.06.2018 and 13.08.2018 passed by CIT(A), Asansol for AYs 2013-14 & 2014-15 respectively.

First we take up ITA No.1977/Kol/2018.

**ITA No.1977/KOL/2018  
(ASSESSMENT YEAR-2013-14)**

2. At the time of hearing, we find no representation on behalf of the respondent-assessee nor filed any application seeking adjournment. The

respondent-assessee called absent and set ex-parte. Therefore, we proceed to hear Ld. DR and pass order by perusing material available on record.

3. Heard Ld. DR and perused material available on record. The only issue is to be decided as to whether the CIT(A) justified in deleting the addition made by the AO by invoking Rule DD(h). On perusal of the impugned order at page No.2, it is noted that the assessee challenged the action of the AO in disallowing entire purchase price of kerosene u/s 40A(3) of the Act. It is noted that the contention of the assessee that the said cash payments were made to the person as per the provisions laid down under the Essential Commodities Act. Further, the CIT(A) observed that on similar issue, the Tribunal in assessee's own case in ITA No.2084/Kol/2014 for AY 2010-11 vide order dated 12.07.2017 held the issue under consideration in respect of assessee is covered by the exception of Rule 6DD(h) of Rules and deleted the addition made therein by the AO which is reproduced herein below for better understanding:-

*"2<sup>nd</sup> ground of appeal : The A.O. had added the entire purchases of Rs.1,20,47,024/- of the appellant as payments were made in cash in a day exceeding Rs.20,000/- in violation of the provision of sec. 40A(3) of the IT act with regard to the trading of kerosene oil business of the appellant. During the course of the appeal proceeding, the appellant stated that the entire distribution system of kerosene oil within the State of West Bengal is controlled by the Sub-Division Controller (Food & Supplies) who issues necessary license for trading of kerosene oil to various dealers. The appellant also produced the sample copies of the orders of the Sub-Divisional Controller, Food & Supplies, Asansol wherein it is seen that orders have been issued by Sub-Divisional Controller (Food & Supplies) to various agents to supply kerosene to the appellant as per the quantity noted on cash payment according to the rate fixed by the Government. The appellant also drew attention to the Hon. ITAT, Kolkata Benches decision for the A.Y. 2006-07 vide ITA No.2084/Kol/2013 and A.Y. 2010-11 vide ITA no.*

*360/Kol/2014 dated 12-07-2017 wherein on a similar issue, in the appellant own case, the Hon. ITAT had decided the matter in favour of the appellant and held that the appellant is covered by the exception set out in Rule DD (H) of the Rules. The relevant portion of the Hon. ITAT's order is reproduced as under:*

*In the present case, the following facts are not disputed.*

*1) The appellant is a resident of Chakdola village and he carries out his business of distribution of kerosene oil from the said village, distributing the same to various MR shops in the region.*

*2) The said Shakhdola village is located in a remote corners of the District of Burdwan, nearest town being Jamuria is situated about 5 KM away, and the nearest bank located at Jamuria Town.*

*3) In the financial year 2005-06, there was no banking facility at Chakdola Village Now in the year 2013, also there are no Banks at Chakdola Village.*

*4) Payments in cash are mad by the appellant for purchase of goods at Government fixed rates, at Chakdola Village.*

5) Kerosene Oil are transported in Oil Tankers, to Chakoda Village, and stored in Oil Drums for further distribution, down the line, and tank are also paid by the appellant.

6) Even though the appellant has a bank NC at Jamuria town it is mostly inoperative because it is practically not possible to pay by A/c payee cheques, because a single cheque will take 15 days time for clearance, and the entire chain of distribution will break down.

*In the light of the undisputed facts set out above, we are of the view that the case of the Assessee would fall within clause (h) of Rule 6DD of the Rules and therefore no disallowance ought to have been made U/S 40A(3) of the Act. Though the Assessee made the above submissions before the CIT(A), the CIT(A) has not given any findings on the applicability of Rule 6DD(h) of the Rules. For the reasons given above, we hold that no disallowance u/s 40A(3) of the Act ought to have been made in the case of the assessee as the case of the assessee is covered by exceptions set out in Rule 6DD(H) of the Rules. The disallowance is directed to be deleted. The appeal of the assessee is allowed."*

4. On perusal of the above, we note that this Co-ordinate Bench observed that the assessee has a bank account which is mostly inoperative, it is practically not possible to pay account payee cheque because a single cheque will take 15 days time for clearance and held that the case of the assessee would fall within Clause (h) of Rule 6DD of Rules. Ld.DR did not controvert the same and bring on any decision contrary to the order of this Tribunal passed in assessee's own case for AY 2006-07 & 2010-11.

5. In view of the same, we find no infirmity in the order of CIT(A) and it is justified. Thus, Grounds raised by the Revenue are dismissed.

6. In the result, the appeal of the Revenue is dismissed.

**ITA No.1978/KOL/2018**  
**(ASSESSMENT YEAR-2014-15)**

7. We find that the issues raised in this appeal are similar to the grounds raised in ITA No.1977/Kol/2018 wherein we discussed the same in the aforementioned paragraphs and confirmed the order of CIT(A). The view taken by us in ITA No.1977/Kol/2018 is applicable to this appeal also.

8. In the result, the appeal of the Revenue is dismissed.

**C.O. No.-118 & 119/KOL/2018**  
**[IN ITA No.1977 & 1978/KOL/2018]**  
**(ASSESSMENT YEAR-2013-14 & 2014-15)**

9. We find that the issues raised by the assessee in both Cross-objections supporting the order of CIT(A) wherein we confirmed the order of CIT(A) in the appeals filed by the Revenue in the afore-mentioned paragraphs. Therefore, the grounds raised in cross-objections require no adjudication, become academic.

10. In the result, both cross-objections of the assessee are dismissed as infructuous.

11. In the final result, both appeals of the Revenue are dismissed and cross-objections of the assessee are also dismissed as infructuous.

**Order pronounced in the open court on 28.03.2019.**

**Sd/-**  
**(A.L.SAINI)**  
**ACCOUNTANT MEMBER**

*Date:- 28.03.2019*

*\*Amit Kumar\**

**Sd/-**  
**(S.S.VISWANETHRA RAVI)**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant- ITO, Ward-1(3), Asansol.
2. Respondent- M/s. Crony Enterprise, C/o-Sh. Nitish Pal, Chakdola More, Bahadurpur, Burdwan-713362.
3. CIT-Kolkata
4. CIT(Appeals)-Kolkata
5. DR: ITAT -Kolkata Benches

By order

**AR/H.O.O**  
**ITAT, KOLKATA**