

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA  
{VIRTUAL COURT HEARING}**

**(Before Shri P.M. Jagtap, Hon'ble Vice-President, KZ & Shri Aby T. Varkey, Hon'ble Judicial Member)**

**ITA No. 2640/Kol/2019**  
Assessment Year: 2008-09

**Deputy Commissioner of Income Tax, Circle-1(2), Kolkata.....Appellant**

**Vs.**

**M/s. The Jute Corporation of India Ltd.....Respondent**  
**15N, Hudco Building**  
**Nellie Sengupta Sarani**  
**Kolkata - 700 087**  
**[PAN : AABCT 8820 B]**

**Appearances by:**

*Shri Biswajit Syam, Advocate, appeared on behalf of the assessee.*

*Shri T.P. Singh, CIT, D/R, appearing on behalf of the Revenue.*

Date of concluding the hearing : August 16<sup>th</sup>, 2021

Date of pronouncing the order : September 8<sup>th</sup>, 2021

**ORDER**

**Per P.M. Jagtap, Vice-President, KZ :-**

This appeal is preferred by the revenue against the order of the Learned Commissioner of Income Tax (Appeals) - 5, Kolkata, (hereinafter the 'ld. CIT(A)'), dt. 26/08/2019, passed u/s 250 of the Income Tax Act, 1961 (the 'Act').

2. In the first ground, the revenue has challenged the action of the ld. CIT(A) in deleting the addition of Rs.86,91,408/- made by the Assessing Officer on account of the alleged undisclosed closing stock.

3. The assessee in the present case is a public sector undertaking which is mainly engaged in the business of trading in raw jute. In the assessment originally completed u/s 143(3) of the Act vide order dt. 31/12/2010, the total income as declared by the assessee in the return of income of Rs.74,65,76,153/- was accepted by the Assessing Officer. He, however, subsequently reopened the assessment for the reason that there was escapement of income of the assessee on account of undisclosed closing stock amounting to Rs.86,91,408/- and also on account of failure of the assessee to deduct tax at source u/s 194I and 194C of the Act from the payments aggregating to Rs.10,60,90,375/- made during the year under consideration which required disallowance u/s 40(a)(ia) of the Act. The Assessing Officer accordingly issued a notice u/s 148 of the Act to the assessee on 07/12/2012. During the course of reassessment proceedings, the following explanation was offered on behalf of the assessee in respect of the undisclosed closing stock of Rs.86,91,408/- as alleged by the Assessing Officer:-

*“That there no exclusion of stock, as pointed out. The data disclosed in the schedule 20 item no. 24 is an disclosure as additional information as per provision of Part II of schedule VI of the Companies Act, 1956. the real fact may please be dealt in the Trade account of Internal Raw Jute-Price support & internal raw jute- commercial at page 54 & 55 of the accounts for the year 2007-08. there is no question arises of non-inclusion of the 4248 bales of Jute in the accounts. The said 4248 bales comprises the weight gain of 3134 bales under internal raw jute- commercial and weight loss of 1245 bales under internal raw jute-price support and claim receipt of 2359 bales (3134+2359-1245) during the financial year please be informed that, JCI procures raw jute from growers and process the same into baled form for supplies to end users. The inherited normal nature in jute fiber causes hanging gain/loss while making baled jute. From the raw jute. It is customary not to account for the gain in normal situation as the said quantum is included in the end stock, which were sold subsequently and accounted for as sales. Question of no reflection of undervaluation arises at all the in the case. Trade accounts punted out may please be perused accordingly. Universally accepted rule is not to value normal gain in account as per accepted norms while preparation of accounts, as the same is absorbed, please note. As regard the valuation of stock, the company over the years valuates the stock on consistent basis, there is no comment of the CAG & Statutory Auditors and which has been accepted by, Ministry of Textiles Govt. of India and also by your department.  
 This explanation of the assessee company is not accepted & hence a sum of Rs.86,91,408/- is disallowed and is added back to the total income of the assessee.”*

The explanation offered by the assessee as above was not found acceptable by the Assessing Officer and he proceeded to make an addition of Rs.86,91,208/- to the total income of the assessee on account of undisclosed closing stock.

4. The addition made by the Assessing Officer on account of undisclosed closing stock was challenged by the assessee in the appeal filed before the Id. CIT(A) and the following submission was made on behalf of the assessee in support of its case on this issue:-

*“That the AO has erroneously made an addition of Rs 86,91,408/-, considering value of 4248 bales of raw jute stocks, assuming that the said 4248 bales were not included in closing stock to accounts . It was explained to AO during regular assessment that there was no such exclusion of the said 4248 bales to end stock as the stocks were taken as per physical verification at the time of annual closing. Raw Jute by nature, in process of baled form, causes gain/(loss) of weight due to moisture and the corporation following the basic principle of accounting over the years duly adjust the same in its annual accounts. The said stock of 4248 bales have already considered as excess to the accounts and the value taken accordingly. The excess 4248 bales as were shown in schedule-19 , Notes to Accounts in Item no.24, to disclose the quantitative data as required for disclosure under VI schedule of the Co Act 1956 and had already impacted on value as the quantity of closing stock. On subsequent sale of the said quantities in following year the income generated therefrom duly accounted in following years also.*

*A reconciliation statement as presented here under will clear the position of said shocks to the accounts and its effect for the year Closing stock reconciliation statement;*

	<i>Particular</i>	<i>Quantity (In bales)</i>
	<i>Opening Stock of Raw Jute on 01.04.2007</i>	<i>4,07,691</i>
<i>Add.</i>	<i>Purchases during the year</i>	<i>7,66,076</i>
	<i>Sub Total</i>	<i>11,73,767</i>
<i>Less</i>	<i>Sales during the year</i>	<i>5,91,835</i>
<i>Less</i>	<i>Stock loss due to damage/claims</i>	<i>2,359</i>
	<i>Actual Closing stock as on 31.03.2008</i>	<i>5,79,573</i>
	<i>Closing stock as credited in Profit &amp; Loss Account</i>	<i>5,83,821</i>

*So, it is clearly reflected that stocks as per reconciliation stands 579573 bales whereas actually taken to accounts for 583821 bales and hence the difference of 4248 bales (583821- 579573) have already taken into accounts and there is no under assessment of income for the year.”*

5. The above submission made on behalf of the assessee was forwarded by the Id. CIT(A) to the Assessing Officer for the latter’s comment and after taking into consideration the entire record available on record including the remand report submitted by the Assessing Officer, the Id. CIT(A) deleted the addition made by the Assessing Officer on account of the alleged undisclosed closing stock for the following reasons:-

*“I have considered the submission of the appellant and perused the relevant assessment record. It appears that the addition of 4248 bales of Jute valued at Rs.86,91,408/- has been made on wrong appreciation of facts. The A.O. in the assessment order has summarily dismissed the explanation given by the appellant that there was no undervaluation of stock and that the company has been following the same method of accounting uniformly over the years. The A.O. had also confirmed that 4248 bales is included in stock as on 31.02.2008. The A.O. rejected the explanation without assigning any reasons. The same line of reasoning was given by the A.O. in the remand report dated 04.08.2014 in which had been given. On perusal of the audited accounts of the appellant, it is found that in Sub-section 3 of Schedule-19, the auditor had remarked that “the value of the stock of raw jute at the close of the year has been arrived at after providing loss/gain due to prolonged storage and handling as per trade practice.” The A/R of the appellant also furnished reconciliation statement which clearly indicates that the difference of 4248 bales has been reflected in the accounts. I find no grounds, not to accept the above reconciliation statement submitted by the appellant. Therefore, after consideration of the submission of the appellant, the audited balance sheet and relevant records, the addition of Rs.86,91,408/- is deleted. This ground of appeal succeeds and is therefore allowed.”*

6. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The limited contention raised by the Id. D/R is that, the submission made on behalf of the assessee on this issue before the Id. CIT(A), duly supported by the reconciliation statement was not submitted before the Assessing Officer during the assessment proceedings and the Assessing Officer, therefore, should

be given an opportunity to examine/verify the same. However, as rightly pointed out by the Id. Counsel for the assessee, the submission made on behalf of the assessee on this issue along with the reconciliation statement was forwarded by the Id. CIT(A) to the Assessing Officer seeking the latter's comments and after taking into consideration the comments offered by the Assessing Officer in the remand report dt. 04/08/2014 submitted to the Id. CIT(A), this issue was decided by the Id. CIT(A) in favour of the assessee. Moreover, the explanation as regards the alleged closing stock as pointed out by the Assessing Officer was also made on behalf of the assessee even during the course of assessment proceedings before the Assessing Officer and as rightly observed by the Id. CIT(A) in his impugned order, the same was summarily rejected by the Assessing Officer without assigning any reason. It is noted that the Id. CIT(A), on the other hand, had duly considered and examined the submission of the assessee in the light of the reconciliation statement prepared and furnished by the assessee and on such examination, he found that the undisclosed 4248 bales of raw jute stock as allegedly pointed out by the Assessing Officer were already included in the closing stock as on 31/02/2008 as credited by the assessee in the profit and loss account. At the time of hearing before us, the Id. D/R has not been able to rebut or controvert this finding recorded by the Id. CIT(A) in this impugned order while deleting the addition made by the Assessing Officer on account of alleged closing stock. We, therefore find no justifiable reason to interfere with the impugned order of the Id. CIT(A) on this issue giving relief to the assessee and dismiss Ground No. 1 of the revenue's appeal.

7. In Ground No. 2, the revenue has challenged the action of the Id. CIT(A) in restricting the disallowance of Rs.10,60,90,375/- made by the Assessing Officer u/s 40(a)(ia) to Rs.40,25,900/-.

During the course of assessment proceedings before the Assessing Officer, the following explanation was offered on behalf of the assessee in support of its case that there was no failure to deduct tax at source from the payments made on account of godown and storage charges and freight charges:-

*"For conducting MSP operation JCI hired go down to different places in jute growing areas, some are at very nominal rate which are not subject to TDS and some storage points were hired since long and as they are at remote area, the rent is very low and does not come under the purview of TDS. However in case of big storage points, necessary TDS were made and deposited accordingly. As regard deduction of TDS return, corporation has deducted tax at source as per guidelines of income tax act and deposited the amount so deducted to respective authority and also compiled with the requirement of filing TDS return. In both case for*

*payments of storage charges and payment of freight, where the provision applies TDS has been discharged accordingly. It is pertinent to mention here that, all the payments as pointed out of Rs.22,24,24,047/- & 8,28,66,338/- are not subject to TDS, as there are some payments which doesn't attract TDS as per IT rules and please note that the corporation has faithfully and rigidly followed the provision of the I.T. Act."*

8. The above explanation of the assessee was not found acceptable by the Assessing Officer and he proceeded to make a disallowance of Rs.10,60,90,375/- u/s 40(a)(ia) of the Act on the ground that no further details and documents were filed by the assessee to support and substantiate its explanation on this issue.

9. The disallowance made by the Assessing Officer u/s 40(a)(ia) of the Act was challenged by the assessee before the Id. CIT(A) and the following submissions were made on behalf of the assessee before the Id. CIT(A) in support of its case on this issue:-

*"That AO has erroneously made addition of Rs 10,60,90,375/- for non-deduction of TDS on payment of storage charges and freight. In course of hearing it was explained to the AO that TDS were duly deducted in all applicable cases and proper compliances were made It was informed to AO that as most of the storages were hired in year's back at remote localities of jute prone areas with very nominal rate of monthly rent they did not qualified for TDS for the year. However TDS were deducted in all eligible cases as applicable under the provision and necessary documents were shown in this regard to AO during assessment. As regard payment of freight, the corporation had deducted 1 T at source in applicable cases and necessary compliances were made and it was explained to AO during assessment.*

*As referred to TAR in point no. 27(a) that it was mentioned that assessee had deducted tax at source and paid to the credit of central government accordingly for the year. So it clarifies that there was no omission to deduct TDS in applicable cases. To substantiate the issue we are submitting one TDS statement along with date of deduction and deposit of the same from the auditors in a certificate who have issued the TAR for the year and also a deposit statement as generated from NSDL to authenticate all payments of TDS to government accounts accordingly.*

*I have considered the submission of the appellant and perused the relevant assessment record. The A.O. in the assessment order had disallowed Rs.10,60,90,374/- on the grounds provision of the Act. The A/R of the appellant.....certificate in which it was certified that the verification of records, the appellant company had deducted TDS u/s 194C amounting to Rs.10,15,269/- and u/s 194I Rs.15,92,838/-. A remand was called for from the A.O. to verify the claim of the appellant who had also submitted additional evidence in support of his claim."*

10. The relevant details and documents to support and substantiate its submission made before the Id. CIT(A) on this issue were also furnished by the assessee during the course of appellate proceedings before the Id. CIT(A). The said details and documents constituting additional evidence were forwarded by the Id. CIT(A) to the Assessing Officer for verification. After verifying the details and documents filed by the assessee, a remand report was submitted by the Assessing Officer to the Id. CIT(A) giving his remarks as under:-

### “GODOWN RENT & STORAGE CHARGES

Name of the RO	Godown rent & storage charges	TDS claimed to have deducted	Whether details of payment vis-a-vis TDS deduction filed?	Remarks
Sheoraphully	886379	NIL	Yes	It appears from the details that the payment made to landlord is below the threshold
Barasat	998838	NIL	Yes	It appears from the details that the payment made to landlord is below the threshold
Krishnagar	1454298	NIL	No	No details filed and hence no inference can be drawn on the submission.
Bethuadahari	607731	NIL	Partial details	As no landlord wise details are available, no inference can be drawn on the submission ;
Berhampore	1102981	NIL	Partial details	As no landlord wise details are available, no inference can be drawn on the submission.
Malda	1801608	142161	Partial details	As no landlord wise details are available, no ! inference can be drawn on the submission.
Siliguri	837817	NIL	Yes	It appears from the details that the payment made to landlord is below the threshold
' Coochbehar	947344	22535	Yes j	No TDS was made on payment of Rs. 122516 made to RMC, Tufanganj and Rs. 120750 to Prakash Ch. Patni, though these payments were liable to TDS deduction.
Dhubri	529597	NIL	Yes	It appears from the details that the payment j made to landlord is below the threshold
puwahati	965293	NIL	Yes	No TDS was made on payment of Rs 687135 and Rs. 72\230 made to ASWC, though these payments were liable to TDS
Nagaon	2438792	188030	Yes	No TDS was made on payment of Rs 356131 made to Industrial Paper Assam Ltd, though this payment was liable to TDS
Purnea	1220981	96400	Yes	No TDS was made on payment of Rs 356131 made to Industrial Paper Assam Ltd. though this payment was liable to TDS
Saharsa	622236	Nil	Partial details	As no landlord wise details are available, no inference can be drawn on the submission

Cuttack	310559	NIL	Yes	it appears from the details that the payment made to landlord is below the threshold unit
[Agartala	118260	Nil	Yes	It appears from the details that the payment made to landlord below the threshold limit
Head Office	6751469	1143712	No	No details filed and hence no inference can be drawn on the submission

### FREIGHT CHARGES

Name of the RO	Freight Charges	TDS claimed to have	Whether TDS details filed?	Remarks
Sheoraphully	1232708	24960	Yes	It appears that the assessee had deducted TDS at stipulated rate while paying the frieght charges.
Barasat	1965949	36645	Yes	In this case the assessee failed to deduct TDS on Rs. 12406 and 24772 (paid to M/s. Sarkar Enterprise). In rest of the transactions, the assessee failed to deduct TDS at the specified rate and hence, there
Bethuadahari	1897759	52473	Partial details	As no partywise details are available, no inference can be drawn on the submission.
Berhampore	4640410	97138	Partial details	As no partywise details are available, no inference can be drawn on the submission
Malda	5847307.5	115020	Partial details	As no partywise details are available, no inference can be drawn on the submission.
Siliguri	3588440	46097	Yes	The assessee failed to deduct tax on payment of Rs. 1531332 at stipulated rate. Ledger of M/s. Sarogi Roadways could have thrown some light on actual non-deduction/short deduction.
Coochbehar	3076677	65185	Yes	It appears that the assessee had deducted TDS at stipulated rate while paying the frieght charges.
Dhubri	3135746	6921-1	Yes	It appears that the assessee had deducted TDS at stipulated rate while paying the frieght charges.
Guwahati	4754987	105179	Yes	It appears that the assessee had deducted TDS at stipulated rate while paying the frieght charges.
Nagaon	470861	4423	Yes	The assessee failed to deduct tax on payment of Rs. 93497 made to Pranical Kakati
Purnea	3331538	52177	Yes	The assessee failed to deduct tax on payment of Rs 363952 and on Rs. 503347 made to Saraogi Goods Carrying Com. at

SAharsa	2890764	60978	Partial details	As no partywise-details are available, no inference can be drawn on the submission
Cuttack	80188		Partial details	As no party-wise details are available, no inference can be drawn on the submission
Agartala	21131	1053	Yes	It appears that the assessee had deducted TDS at stipulated rate while paying the freight charges
Head Office	45901862.5	284730	No	No details filed and hence no inference can be drawn on the submission

*From the above details, it is apparent that in some cases the assessee company failed to deduct TDS and in some cases it had short-deducted tax on payments. In some cases, no details were filed by the assessee and hence, no verification could be made.*

*On perusal of the remand report, it is clear that the appellant had deducted TDS u/s 194C and 194I of the I T Act, 1961. However, in some cases, there had been no deduction of TDS. The appellant had not deducted TDS on payments amounting to Rs. 16,62,007/- on freight charges u/s 194C and Rs.23,63,893/- u/s 194I. Therefore, the addition of Rs.10,60,90,375/- is restricted to Rs.40,25,900/-. This ground of appeal partly succeeds and is therefore partly allowed."*

11. On perusal of the remarks made by the Assessing Officer in the remand report, the Id. CIT(A) found that the assessee had duly deducted TDS u/s 194C and 194I except in some cases involving pending amount of Rs.16,62,007/- on account of freight charges and Rs.23,63,893/- on account of godown and storage charges. He accordingly restricted the disallowance of Rs.10,60,90,375/- made by the Assessing Officer u/s 40(a)(ia) of the Act to Rs.40,25,900/-.

12. We have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted by the Id. Counsel for the assessee, the explanation offered by the assessee on this issue during the course of assessment proceedings to point out the due compliance of provisions of Section 194C and 194I was rejected by the Assessing Officer summarily without assigning any reasons and without giving the assessee an opportunity to furnish the relevant details and documents to support and substantiate the same. He has submitted that these details and documents, therefore, were furnished by the assessee before the Id. CIT(A) during the course of appellate proceedings and the same were duly forwarded to the Id. CIT(A) to the

Assessing Officer giving opportunity to the latter to verify the same. He has submitted that the said details and documents were duly verified by the Assessing Officer and on such verification, a remand report was prepared and submitted by him to the Id. CIT(A) giving remarks in respect of each and every party to whom the relevant payments were made. He has invited our attention to the said remarks reproduced by the Id. CIT(A) in his impugned order to point out that there was a failure on the part of the assessee to deduct tax at source only from the payments aggregating to Rs. 40,25,900/- on account of freight and godown/storage charges as specifically pointed out by the Assessing Officer. The Id. D/R also not been able to dispute this position which is clearly evident from the remarks made by the Assessing Officer in the remand report submitted to the Id. CIT(A). We, therefore, find no infirmity in the impugned order of the Id. CIT(A) restricting the disallowance of Rs.10,60,90,375/- made by the Assessing Officer u/s 40(a)(ia) of the Act to Rs.40,25,900/- and upholding the same on this issue, we dismiss Ground No. 2 of the revenue's appeal.

13. In the result, appeal of the revenue is dismissed.

***Kolkata, the 8<sup>th</sup> day of September, 2021.***

***Sd/-***  
**[Aby T. Varkey]**  
Judicial Member

Dated: 08.09.2021  
{SC SPS}

***Sd/-***  
**[P.M. Jagtap]**  
Vice-President

*Copy of the order forwarded to:*

**1. M/s. The Jute Corporation of India Ltd  
15N, Hudco Building  
Nellie Sengupta Sarani  
Kolkata - 700 087**

**2. Deputy Commissioner of Income Tax, Circle-1(2), Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar/DDO  
ITAT, Kolkata Benches