आयकर अपीलीय अधीकरण, न्यायपीठ – "A" कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
(समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष **एवं** श्री ए.टी. वर्की,न्यायिक सदस्य)
[Before Shri P.M. Jagtap, Vice President (KZ) & Shri A. T. Varkey, JM]

I.T.A. No. 2428/Kol/2017
Assessment Year: 2011-12

The Jute Corporation of India Ltd. (PAN: AABCT8820B)	Vs.	Income-tax Officer, Ward-1(3), Kolkata.
Appellant		Respondent

Date of Hearing	07.11.2019
Date of Pronouncement	10.01.2020
For the Appellant	Shri B. K. Pal, AR & Shri Biswajit Shyam, FCA
For the Respondent	Smt. Ranu Biswas, Addl. CIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal preferred by the Assessee against the order of Ld. CIT(A) – 1, Kolkata dated 08.08.2017 for AY 2011-12.

2. The assessee has raised three grounds of appeal which are as under:

"1. That the Ld. CIT(A) has erred and not justified in confirming the disallowance of Rs.1 11,44,319/- ordered by AO towards payment of leave encashment as per actuarial valuation in conformity with the related laws.

2. That Ld. CIT(A) has erred and not justified in confirming the disallowance of Rs.3,48,426/- ordered by AO towards actual loss in respect of quantity loss and quality deterioration claimed by the party.

3. That the Ld. CIT(A) has erred and not justified in confirming an amount of Rs.66,67,569/- as an income ordered by AO towards interest earned on application of fund received from Govt. of India for implementation of the projects."

3. Ground no. 1 is against the action of Ld. CIT(A) in confirming the disallowance of Rs.1,11,44,319/- claimed by the assessee towards payment of leave encashment as per actuarial valuation.

4. At the outset itself, we note that the similar issue had come up before this Tribunal in M/s. S. R. Batliboi & Co. vs. DCIT, ITA No. 1598/Kol/2011 for AY 2007-08 wherein the Tribunal vide para 4 has held as under:

> *"4. After hearing rival submissions and going through the facts and circumstances of the case and the order of the Tribunal cited supra, we find that the issue is dealt by the Coordinate bench of this Tribunal as under:*
>
> > *"3. At the outset, ld. senior counsel for the assessee submitted that in all these three appeals, the issue relates to allowability of provision for leave encashment in terms of sub-section (f) of section 43B of the Income Tax Act. The assessee had advanced its claim relying on the dec sion of the Hon'ble Kolkata High Court in the case of M/s. Exide Industries Ltd reported in 292 ITR 470. However, the Assessing Officer did not accept the assessee's claim observing that Department has preferred a Special Leave Petition before the Hon'ble Supreme Court and stay of the order of the Hon'ble Kolkata High Court was granted by the Hon'ble Apex Court. Ld. senior counsel submitted that under identical circumstances, Tribunal has restored the matter to the file of Assessing Officer to decide the issue in acc rdance with the decision of the Hon'ble Apex Court in the case of DCIT, Circle-8, Kolkata –vs.- M/s. Ernst & Young Pvt. Ltd. in ITA No. 1787/Kol./2008. He, therefore, submitted that the matter may be restored back to the file of Assessing Officer.*
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> > *4. Learned Departmental Representative did not raise any objection.*
> >
> > *5. We have considered the submissions of both the parties and have perused the records of the case. We find that Tribunal on identical issue in ITA No. 1787/Kol./2008 in the case of M/s. Ernst & Young Pvt. Ltd. has observed at para 12 in page 6 as under :-*
> >
> > > *"12. Ground No. 5 of the revenue's appeal is against the relief allowed by the CIT(A.) in respect of provision for leave encashment which was deleted by the CIT(A.) following the decision of the Hon'ble jurisdictional High Court in the case of M/s. Exide Industries Ltd. (supra). It was pointed out by the ld. DR that the Hon'ble Apex Court in"SLP (Civil) 22889 of 2008 has stayed the operation of the decision of the Hon'ble jurisdictional High Court. In view of the above, we set aside the orders of the authorities below on this point and restore the matter back to the file of the AO with the direction that he will readjudicate this issue as per decision of the Hon'ble Apex Court in the case of M/s. Exide Industries Ltd. (supra)".*

Respectfully following the same we set aside the orders of authorities below on this point and restore the matter back to the file of Assessing Officer for adjudication as per the decision of the Hon'ble Apex Court in the case of M/s. Exide Industries Ltd.(supra).

In view of the above and respectfully following the same, we set aside the orders of the authorities below and restore the matter back to the file of Assessing Officer for adjudication as per the decision of Hon'ble Apex Court in the case of M/s. Exide Industries Ltd. (Supra). This ground of appeal of assessee is allowed for statistical purposes."

5. In view of the aforesaid decision of the coordinate bench on a similar issue, we set aside the order of the Ld. CIT(A) and restore the matter back to the file of the AO for adjudication to await the final outcome of the Hon'ble Apex Court in SLP (Civil) 22889 of 2008 in M/s. Exide Industries Ltd. case and decide this issue as per the decision of Hon'ble Apex court in M/s. Exide Industries Ltd., supra. Thus, this ground of appeal of assessee is allowed for statistical purposes.

6. Ground no. 2 is against the action of the Ld. CIT(A) in confirming the disallowance of Rs.3,48,426/- ordered by the AO towards actual loss in respect of quantity loss and quality deterioration claimed by the respective parties.

7. Brief facts of the cas as noted by the AO are that during the previous year, the assessee had made a provision of claims of Rs.5,70,410/- which represents provision made for the year 2010-11 on account of prospective claims for sale of jute to customers on account of quality and short weight of deliveries of jute. The assessee through a written submission stated that "corporation makes provision on expected claims from mill parties on account of Raw Jute supplied to them during the year due to weight loss and quality loss on supplies. The provision of Rs. 5,70,410/- was made during the year on account of such loss by following uniform practice followed over the years. Details of claim bills pending for settlement from such provisions amount as follows ... ". The AO noted in his order that A/R has submitted before him that claim bills on hand, which are pending aggregated to Rs. 2,22,074/-. After considering the submissions of the assessee according to AO, it is undisputed that not all deliveries are subjected to deterioration, and even where such

deterioration does occur, the same is not uniform. It is also undisputed that the bills in respect of which provision was made had not actually been received by the assessee company on the date of closing of accounts. That is, the actual liability remained un-quantified as on the date of statement of accounts. Further, since the actual of adjustments of claims vis-a-vis sales have not been produced even in respect of completed sales, it is not possible to verify the accuracy of the mechanism of such estimation. The AO also noted that the mercantile basis of accounting allows computing accrued liabilities that may remain un-discharged, but this does not involve debiting of estimates. Moreover, the Income Tax Act does not recognize the allowability of unascertained liabilities. It is also apparen that the claim of the assessee that out of Rs. 5,70,4 10/-, it had already received claim bills of Rs. 2,22,074/-, but those bills are still pending for settlement, hence, re-consideration about actual provision for claims cannot be entertained at this instant time for want of settlement of the claims. In view of the above, the provision of claims in the nature of unascertained liability to the tune of Rs. 5,70,410/- is disallowed and added back to the total income of the asses ee. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) who after con idering the submission of the assessee which is reproduced as under:

> *"The corporation is following consistently over years to make necessary provisions due to inherent losses it occurred for quality and quantity deterioration on supply of Raw Jute to its cu tomers over times. Dealing in raw jute entails certain losses due to weight loss and quality loss that actually occurred between the period of packing and delivery thereon to mills. Such losses are incidental to business and were booked in accounts over the years following the accounting convention and principal as actual business liability. The amount of Rs.5,70,410/- was accounted for as liability for claims which is genuine one and not a mere provision. As per evidenced produced before AO that there was claim bills of Rs.2,22,076/- already raised by a customer forwards weight and quality loss and other claims are raised subsequently. All necessary claim bills pending to the corporation for settlement of claim was produced to the AO to establish that liability was provided on realistic basis as because corporation owns the liability for such settlement of claims to its debtors. So addition of Rs.5,70,410/- made by AO towards provision for such losses is not justified as such loss is inevitable to the corporation and if not allowed to deviate from general principle of business."*

8. After perusal of the aforesaid submission of the assessee, the Ld. CIT(A) has given partial relief to the assessee by noting as under:

"I have considered the material before me. The A.O. had disallowed the appellant's claim for provision for loss for sale of jute to customers on account of quality and short weight of delivery of jute amounting to Rs.5,70,410/-. The A.O. observed that as per the mercantile basis of accounting only undischarged accrued liabilities are allowable whereas the appellant's claim was on estimate basis and thus being an unascertained liability the amount of Rs.5,70,410/- was disallowed by the A.O.

The appellant's A.R. has contended through the written submission during in raw jute entails certain losses due to weight and quantity loss between the period of packing and delivery to mills which are incidental to the business was an allowable expenditure. It was also argued that copy of bills for claim of Rs.2,22,076/- was also produced before the A.O.

I have considered the material before me. The A.O. is found to have disallowed the impugned of Rs.5,70,410/- on account of provision of claim of loss by treating the same as provision for unascertained liabilities. However, the A.R. has claimed that the losses were incidental to the business and the appellant had already produced bills for claims for Rs.2,22,074/- before the A.O. in support f it claim. The A.O. is directed to allow the appellant's claim for claim to the extent of Rs.2,22,074/- after due verification that the liability in respect of the said claim had become due and crystallized during the relevant F.Y. 2010-11 The balance disallowance of Rs.3,48,426/- is confirmed as relating to unascertained liabilities. This ground is partly allowed."

9. Aggrieved, assessee is before us.

10. We have heard rival submissions and gone through the facts and circumstances of the case. Before us, the Ld. AR submitted that in this business it is common knowledge that during supply of jute to the mills quality and quantity deterioration happens and resultantly loss occurs to its customers. According to the Ld. AR, this occurs due to weight loss and quality loss that actually took place between the period of taking delivery thereon to the jute mills. Such loss, according to the Ld. AR are incidental to business and were booked in accounts over the years following accounting convention and principle as actual business liability. According to assessee, the amount of Rs.5,70, 410/- was accounted for as liability for claims which are genuine and not a mere provision as noted by the AO. According to the Ld. AR, a report is submitted after a joint inspection is carried out by experts and thereafter, the liability becomes an ascertained liability and not an unascertained liability as alleged by the authorities below. It was also brought to our notice that the amount in question has been disbursed in subsequent years. We note that during the first appellate proceedings before the Ld. CIT(A), the assessee had produced bills for

claims of Rs.2,22,074/- out of the claim of Rs.5,70,410/-, therefore, the Ld. CIT(A) has given relief to the assessee to that amount (after verification by AO) and confirmed the disallowance of Rs.3,48,426/-. However, during the hearing before us, when we asked the Ld. AR for supporting evidence/material for submitting that any evidence to support its claim that the liability is an ascertained liability as per the expert report etc. the Ld. AR submitted that the assessee has paid the amount of liability in respect of the claims by buyer for weight loss as well as for deterioration of quality following the prescribed formalities in vogue in the jute trade against provision of such liability and there is a system of assessment of such liability year after year. Finally has written back the said liability it was brought to our notice that in the accounts for the financial year 2017-18, huge liability has been written back in accounts. The following copies of related adjustments documents were produced:

a) copy of ledger accounts of claims for the year 2017-18 showing written back

b) Copy of notes to account (audited) for the year 2017-18, showing liabilities written back of Rs.13702523 00 (including claims of rs.7412820.00)

c) copy of ledger (claims payable) for the year 2013-14, to exhibit payment of earlier liability.

We note that these documents were not produced before the authorities below during the adjudication and need to be considered while adjudicating the issue. Therefore, we remand the ma ter back to the file of the AO to adjudicate the remaining claim of Rs.3,48 426/- after going through the documents produced by the assessee. This ground of appeal of assessee is allowed for statistical purposes.

11. Ground no. 3 is against the action of the Ld. CIT(A) in confirming an amount of Rs.66,67,569/- which the assessee received as interest.

12. Brief facts of the case as noted by the AO are as under:

> *"Interest earned on application of grants received from Govt. of India for upgradation of Jute Technology:*

It was noticed from the page 48 of the Annual Reports of 2010-2011 that the assessee mentioned in the note. 5A of schedule 18 (Note to accounts) different amounts received from Govt. of India for up-gradation of Jute Technology. In the said note, the assessee had also mentioned the amounts of interest earned, the amounts of disbursement and balance outstanding as on 31.03.2011. The total interest earned by the assessee is determined to 66,67,569/- only. Accordingly, during the course of hearing the assessee was requested to explain whether the interest accrued/earned had been offered for taxation. The A/R of the assessee stated that though the TDS deducted on interest accrued/earned in the instant case has been claimed by-the assessee company, but no such income has been offered for taxation.

In this regard, the A/R of the assessee has filed a written submission, which reads as follows:

"The corporation, since inception, following the prudent accounting principle and policy, account for the interest income on such fund earned by investment of the said fund considering the fact that the interest so accrued is not the income of the corporation but is the income of the fund. The said receipts are capital in nature, as the corporation is not the owner of the fund and also considering the fact that the unspent portion of the fund is to be refunded after implementation of the project. The TDS on such investment is made by the authori ies for simply compliance purpose and has nothing to with recognition of income.

The submission of the assessee is carefully perused. But, the interest income earned by the asses is definitely in the n ture f revenue receipts and the TDS on such income has also been claimed b the as essee in its return of income. Hence, reason cited by the assessee for non inclusion of income component does not hold much water.

Accordingly, I am of the opinion that the receipt of interest is revenue in nature and has to be included in the to al income of the assessee. Hence, total interest earned to the tune of R .66 67,569/- is added back to the total income of the assessee."

13. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the same after taking note of the assessee's submission as under:

"The corporation is a Nodal Agency of Government of India (GOI) to implement different schemes under Jute Technology Mission (Mini Mission-III). The Ministry provided funded for successful implementation of different schemes under the project with responsibility to execute the project within scheduled time frame to achieve its desired objective of socio economic benefits to the jute growing community of India. Corporation in course of execution of such schemes incurs expenses out of that funds and also engaged idle fund in temporary short term deposits of banks for the time being till disposal of final payments there from to the vendors. Any short term interest earned from such funds were met to fill up the gap between project outlay and actual cost incurred to the project and surplus sif remains anything to be refunded to the sanctioning authority at the end (copy of

sanction letter enclosed-5). Following the accepted norms of accounting corporation credited the interest earned out of that fund to fund account instead of treating the same as income of the corporation.

The corporation shows such fund in liability side of Balance Sheet by adding with fund and expenditure of project as well as balance in Cash & Bank in Asset side. The interest income of Rs.66,67,569/-, generated by the fund during the year was credited to fund account as per accepted principal and norms, but the AO has added the interest amount treating the same as business income of the corporation though corporation was not have any authority to deal with the same anything alternately otherwise as directed to the fund that same to be refunded.

Further the Corporation does not hold any proprietary to such fund nor does it claim any expenditure related to implementation of such project in its accounts. As stated interest income from investment of project fund was utilized to recoup the deficit in project budget on capital account due to cost over run over time and if there is any surplus same to be refunded. So such addition made by AO does not hold well and to be deleted."

14. After perusal of the submission of the Ld. AR of the assessee the Ld. CIT(A) has confirmed the order of AO by deciding as under:

"I have considered the material before me. The A.O. found from note No.5A of schedule 18 to notes to account that the appellant had earned total interest of Rs.66,67,S69/- which was not sh wn a income. The appellant has claimed that although TDS was deducted on the int rest/accrued earned but the said income was not offered for taxation being capit l in nature. The A.O. held that the interest income of Rs.66,67,569/- was in the nature of revenue receipt and TDS was deducted thereon and the amount was brough to tax as appellant's income. The appellant's AR has stated that the Ministry provided for implementation of different schemes and idle funds were ma ntained in short deposit of banks and the amount was short term interest earned from such funds. It was further argued that the appellant had shown such funds on the liability side of the balance sheet and the interest of income of Rs.66 67,569/ was credited to the fund account and that it did not hold any propr eta y ownership over the said funds.

After careful consideration and on perusal of the material on record, it is found that the appellant has not disputed the fact that the impugned amount of interest income of Rs.66,67,569/- was derived from short term deposits of funds received from Ministries/Sanctioning Authorities. The appellant's A.R. has argued that the interest was received as grant-in-aid from the Ministry of Textiles and that as per the terms for release of refunds and that the amounts were in the nature of capital receipt. On careful consideration of the rival submissions, it is observed that the issue in dispute concerns the determination of the nature of interest income of Rs.66,67,569/- derived from short term bank deposits by the appellant company. The A.R. has argued that the said grants and interest was depicted as capital grants/receipts in the books of accounts and were capital in nature. In this regard, it is found that it is well settled that the nature of receipt whether it is of capital or revenue nature is not determined by the accounting entries made by the appellant in the books of accounts. The facts of the appellant's case are found to be covered by the ratio of the decision of the Hon'ble

Supreme Court in Tutikorin Alkali Chemicals and Fertilizers Ltd. (1997) 222 ITR 172 (SC) wherein it was held "it is well settled that taxes attracted at the point when the income is earned taxability of income is not dependent upon its destination or the manner of its utilization. It has to be seen whether at the point of approval, the amount is of revenue nature and it so, the amount will have to be taxed ... It is well settled that income attracts tax as soon as it approves. The application or destination of the income has nothing to do with its approval or taxability. It is also well settled that interest income is always of revenue nature unless it is received by way of damages of compensation." The receipt in question being interest income of Rs.66,67,569/- on short term bank deposit is therefore held to be of revenue nature. Accordingly, I am of the view that there is no infirmity in the A.O.'s finding on this issue, which is confirmed. This ground is not allowed."

Aggrieved, assessee is before us.

15. Having heard both the parties and carefully perused th records, we note that the Ld. AR submitted that the assessee is a nodal agency of Govt. of India to implement different scheme under Jute technology mission and for that the Govt. of India provided funds for successful implementation of different schemes of Mini Mission-III of JTM, subject to various conditions given in letter no. 6/12/2009 Jute Export Govt. of India, Ministry of Textil s dated March 15, 2010. According to Ld. AR, at times, when the funds are utilized is deposited in bank by the assessee for temporary short term periods which in turn yielded interest income to the tune of Rs.66,67,569/- which was again ploughed back to the fund earmarked for the scheme and which is used only for the implementation of the scheme and not utilized for any other purposes. The Ld. AR drew our attention to the Govt. of India, Ministry of Textiles letter no. 6/12/2009 dated 15.03.2010 subject reads "Release of funds to Jute Corporation of India (JCI), Kolkata, for the implementation of the schemes of Mini Mission-III of Jute Technology Mission (JTM) for the year 2009-10 for General States" and contended that the amount given for the grant-in-aid given from the Govt. can only be utilized for that purpose and not for any other purposes. And the Ld. AR drew our attention to clause vi) which reads as under:

"vi) the JCI is not permitted to divert the grant-in-aid received from Govt. or to entrust the execution of the scheme for which the grant is made to another institution as such diversion of grant-in-aid, though for utilization on the same or similar object amount to mis-utilisation of the grant. In case where after having

received the grant-in-aid from the Govt. the grantee institution itself is not in a position to execute or to complete the assignments, it would be required to refund forthwith to the Govt. the entire amount of grant-in-aid received by it together with penal interest, as applicable."

16. However, we note that assessee has received Rs.9,09,00,000/- (Rupees nine crore nine lakhs only) as the final installment under plan fund to the assessee and according to assessee, when the fund was unutilized it was temporarily put in bank which yielded interest income and in turn was utilized for implementation of the scheme for which it was given to assessee i.e. Mini Mission-III of JTM and not diverted to any other purpose which assessee could not do, since diversion of funds was prohibited and the accounts of the assessee was subject to audit by CAG and the audited accounts are placed in Parliament, so it should be allowed. We note that the Ld. CIT(A) has decided the issue based on the atio as laid down by the Hon'ble Supreme Court in Tutikorin Alkali Chemi als & Fertilizers Ltd. (1997) 222 ITR 172 (SC). We note that the assessee shows such fund in liability side of Balance Sheet by adding with fund and expenditure of project as well as balance in Cash & Bank in Asset side. The interest income of Rs.66,67,569/-, generated by the fund during the year was credited to fund account as per norms. According to assessee, the interest income from short fixed deposit of project fund was utilized to recoup the deficit in project budget on capital account due to cost over run over time and if there is any surplus same to be refunded back to Government of India, So according to assessee, the interest income cannot be taxed in its hand.

17. We note from a perusal of the letter dt. March, 15, 2010, which is in relation to release of funds to Jute Corporation of India (JCI), Kolkata, for the implementation of the schemes of Mini Mission-III of the Jute Technology Mission (JTM) for the year 2009-2010, lays down few stipulations and conditions the assessee/JCI should follow. We note that one of the stipulation is that the Funds shall be kept in a separate Bank Account. Detail account of each payment made shall be kept together with document vouchers, etc., as evidence of actual expenditure. We note the that account of JCI would be subject to audit by Comptroller and Auditor-

General of India in accordance with the provision of Comptroller and Auditor Generals duties (Power and Conditions of the Services) Act, 1971. We note that the JCI is not permitted to divert the grant-in-aid received from Govt. or to entrust the execution of the scheme for which the grant is made to another institution as such diversion of grant-in-aid, though for utilization on the same or similar object amount to mis-utilisation of the grant. In case where after having received the grant-in-aid from the Govt. the grantee institution itself is not in a position to execute or to complete the assignments, it would be required to refund forthwith to the Govt., the entire amount of grant-in-aid received by it together with penal interest, as applicable. However, we note from the papers submitted before us that the assessee though had shown the grant received as well as interes earned together, but the total disbursement is less compared to the grant which is evident from a perusal of financials submitted before us which is reproduced as under:

A. Grant received from GOI for up gradation of the Jute Technology:

(Upto 31st March, 2011)
(Rs.)

	GRANT NAME	Amount Receiv d	Interest Earned	Disbursement	Balance Outstanding
a	Jute quality Improvement (Retting Technology)	40 00,000 (40,00,000)	20,67,557 (18,23,190)	20,06,235 (20,05,585)	40,61,322 (38,17,605)
b	Development of Manual/Power Driven Ribboner Ma hine	34,00,000 (34,00,000)	37,17,776 (32,97,143)	4,47,735 (4,47,735)	66,70,041 (62,49,408)
c	Bio Techn logical Retting	9,00,000 (9,00,000)	-	7,82,695 (7,82,695)	1,17,305 (1,17,305)
d	Jute Technology Mission (JTM)	60,05,00,000 (45,95,00,000)	1,91,84,048	30,49,71,109 (21,19,39,231)	31,47,12.858 (26,07,42,248)
e	In ernational Jute Study Group (USG)	4,11,400 (4,11,400)	14,048 (14,048)	3,37,359 (3,37,359)	88,089 (88,089)

18. We note that as per the stipulation, given by the Ministry of Textile, Govt. of India to the Pay & Accounts Officer, Ministry of Textiles, Udyog Bhavan, New Delhi dated March 15, 2010, the assessee was directed to keep the funds granted to it in a separate bank account and since the assessee has claimed that its idle funds used to be deposited for short duration in fixed deposits to earn interest, which is ploughed back to the fund, so in the process enrich the funds itself, means

the interest yielded from the fund would be deposited back into the specific bank account earmarked for it as stipulated by the Govt. of India, Ministry of Textile vide said letter dt. March 15, 2010; and if that is what happens to the interest income from the fund [grant-in-aid], then when the disbursement of the fund to the beneficiary would take place, the cash trail should be evident from the separate bank account of JCI to beneficiary's bank account or in case of non-utilisation, the surplus amount including the interest yielded from the grant-in-aid/fund would be refunded back to the Government of India as contended by the assessee. These facts/details, need to be verified, as to whether the assessee had, in fact, kept the said grant-in-aid/fund in separate bank account and the amount of interest earned from fixed deposit of the same is also ploughed back into the separate bank account and thereafter, disbursed to the beneficiaries or refunded to Govt. as a matter of fact. If assessee is able to prove that the grant in aid received from Govt. was in fact deposited in separate bank account and the interest yielded from the same was also deposited back in to the separate bank account and disbursed to the beneficiary then the interest income cannot be termed as 'income' of the assessee, since there would be diversion of income by overriding title/ch rge. In similar case, in ITA Nos. 150 & 386/K/2018 A.Y 2012-13 in the case of W.B State Electricity Distribution Co. Ltd.:- the Tribunal has upheld the assessee's contention that interest yielded from grain-in-aid was not the income of the assessee, since there was diversion of income by overriding charge. For unders anding the principle, the same is reproduced herein below:-

> *"7. Now we shall take up the assessee's appeal being ITA No. 150/Kol/2018. Although as many as six grounds are raised by the assessee in this appeal, the common solitary issue involved therein relates to the addition of Rs.21,48,33,731/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of interest on Fixed Deposits made by the assessee out of capital subsidy received from the Government of India under Rajiv Gandhi Gramin Vidyutikaran Yojana (in short RGGVY).*
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> *8. The assessee in the present case is a Company, which is engaged in the business of distribution of electricity. The return of income for the year under consideration was filed by it on 29.09.2012 declaring total income at 'NIL'. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has earned interest of Rs.21,48,33,731/- on the Bank Term Deposits kept with Punjab National Bank and UCO Bank and even though credit for the tax deducted at source amounting to Rs.2,14,83,373/- from the said interest was claimed by the*

assessee, the interest earned was not offered as income. In this regard, it was explained by the assessee that the Government of India had sanctioned a Project under Rajiv Gandhi Gramin Vidyutikaran Yojana for the construction of capital asset in the rural areas of West Bengal. It was submitted that the Government of India had allotted funds for the said Project and as per the terms and conditions of the Scheme, the said funds were to be utilized exclusively for the Project. It was further stipulated that the unutilized funds were to be kept temporarily in Bank Fixed Deposits and interest earned on the said deposits was to be credited to Rajiv Gandhi Gramin Vidyutikaran Yojana Project. It was contended that the said interest thus was in the nature of funds received by the assessee from the Government of India under the Scheme to be utilized for the Project work and the same, therefore, constituted a capital receipt, which was not chargeable to tax. This stand of the assessee was not found acceptable "by the Assessing Officer. According to him, the assessee in order to avail the claim of TDS was required to offer the corresponding income for taxation and since the assessee had failed to do so, he brought to tax the interest amounting to Rs.21,48,33,731/- in the hands of the assessee in the assessment completed under section 143(3) vide an order dated 30.03.2015.

9. The addition made by the Assessing Officer amounting t Rs 21,48,33,731/- on account of interest was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), the following submission was made by he assessee in writing in support of its case on this issue:-

"60. For construction of capital asset required for electrification in the rural areas, Government of India sancti ned a project called Rajiv Gandhi GraminVidyutikaranYojana (RGGVY). This is plan scheme of the Government of India.

61. The said scheme was initiated Wholly and exclusively for development of Rural Electricity Infrastructure and Household Electrification. The main emphasis under the scheme was given to effect electricity connection to all rural household belonging to Below Poverty Line (BPL).

62. Rural Electrification Corporation Limited (RECL) is acting as Nodal agency of the project. State owned power utilities and Central Public Sector Undertakings (CPSUs) are acting as implementing agencies of the RGGW Project.

63. Funding of the project is done by Government of India through the Nodal agency RECL.

64. The entire fund of the project was available to the implementing agencies from Government of India through Rural Electrification Corporation Limited (REEL).

65. 90% of the cost of the project is available to the implementing agencies as Capital Subsidy.

66. Balance 10% of the project cost is available to the implementing agencies as loan. from RECL.

67. As per the terms arid conditions of the scheme, funds provided by the Central Government are required to be utilized wholly and exclusively for the projects; and

unutilized funds are to be kept in Bank fixed deposits. This fact is evident from the copy of letter dated 25th September, 2008 addressed by the Government of India, Ministry of Power, New Delhi to the Pay & Accounts Officer, New Delhi. A copy of the said letter was duly filed before the Assessing Officer in course of impugned assessment proceedings for the year under appeal.

68. It may be noted that originally it was clearly stipulated that the interest earned on fixed deposits, as aforesaid would be used for the project by way of adjustment against the last instalment of capital subsidy to be received from the Government of India. However, subsequently in May, 2014, Government of India decided that interest earned by the Project Implementing Agency (PIA) on deposit of unutilized funds would be remitted back to the designated account of the Government of India. This fact is also corroborated from the letter dated 21st May, 2014 addressed by Mr. K.K. Mishra, Deputy Secretary (RE), Government of India, Ministry of Power, New Delhi to the Chairman and Managing Director of the appellant assessee company, which letter is also on the records of the Assessing Officer.

69. In the facts and circumstances of the instant cas , the appellant assessee company states and respectfully submits that the interes of Rs 21 48,33,731/- is not the real income of the appellant assessee company ince it is diverted at the very inception by overriding title in favour of the Government of India. Accordingly, no portion of the said sum of interest of Rs.21,48,33,731/- can be lawfully included in the total income of the appellant assessee company. Reliance in this connection is placed on the decision of the Hon'ble Calcutta jur sdictional High Court in CIT - vs.- A. Tosh & Sons Pvt. Limited (1987) 166 ITR 867(Cal), which decision has already been accepted by the CBDT; and no appeal there against was ever preferred before the Hon'ble Supreme Court of India".

10. The Id. CIT(Appeals) did not find merit in the submissions made on behalf of the assessee and proceeded to c nfirm the addition made by the Assessing Officer on account of interest for the following reasons given in his impugned order:-

"I have considered the material before me. It is observed that there is no dispute on the fact he appellant company was maintaining its accounts on mercantile basis, and the impugned interest income of Rs.21,48,33,731/- had arisen and accrued to the appellant for the relevant financial year ending 31.03.2012. The appe lant has mainly argued that the interest income was not taxable being capital r ceip s in its hands and alternatively was not real income on account of diversion of income at source. It is not in dispute that the appellant company had invested the amount of gran t received by it in fixed deposits with commercial banks, on which interest income of Rs.21,48,33,731/- was received/accrued during the previous year relevant to the AY 2012-13 under consideration. In the appellant's case, no material was placed on record by the appellant that there was any surrender of the impugned interest income to the Central Government or the sanctioning authority by the company.

The appellant has stated that as per the terms and conditions of the RGGVY scheme, funds provided by the Central Government are required to be utilized wholly and exclusively for the projects; and u n utilize d funds are to be kept in Bank fixed deposits. The AO in this regard observed that as per terms and conditions of the scheme funds are to be utilized exclusively for the projects and temporary unutilized funds are to be kept in bank fixed deposits. It is also observed

that the assessee is found to have been depositing the amount of sanctioned for a project called Rajib Gandhi GraminVidyutYayona (RGGVy) by the Central Govt as fixed deposits in commercial banks i.e PNB & SB! and enjoying Interest Income thereon and has not bothered to pay amount of interest to the Central Government or the sanctioning authority, except making a provision in its books of account towards liability for payment: of interest to the Central Government. The Central or state Government have .also not bothered to treat the interest accrued/ received by the appellant company on the amount of grants invested in fixed deposit with commercial bank as its in com e. Once the corpus of capital is sanctioned to the appellant company as grants and interest is earned on surplus funds, on day-to- day basis, then the Central Government has no control over the corpus of the assessee company. The Government order dated25.09.2008, contains general direction for being carried out by the recipients of the grants for their utilization. It does not specifically regulate the working of the assessee company. Similar is the position with regard to the Government order dated 21.5.2014. The amount of interest does not partake the characteristic of grant-in- aid as this am unt has not 'been sanctioned by the Central Government as grant-in-aid nor there is any decision or order of the Government to consider the amount in question as grant in-aid given to the assessee company. It is pertinent to that in a case of iversion of income by overriding title the person in whose favour the income is to be diverted should be aware about the exact amount of such income wh ch it has earned. In the present case there is no material brought on record to establish that the Central Government was at any point of time aware about the interest income received / accrued by the assessee company ov r which it can lay any claim. These Government Orders appear to have been issued just to take out the interest income earned by the assessee from the taxation under the Income Tax Act.

On the issue of diversion of income, the factors to be considered were enunciated by the Hon 'ble Apex Court in the case of MotiLalChhadamiLal v. Commissioner of Income-tax in [1991] 56 TAXMAN 4A (Se), wherein it was held that,

"Obligations, no doubt there are in every case, but it is the nature of the obligation which is the dec sive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied".

The appellant has stated that as per the terms and conditions of the RGGV scheme, funds provided by the Central Government are required to be utilized wholly and exclusively for the projects and unutilized funds are to be kept in Bank Fixed Deposits. It is also observed that the assessee is found to have been depositing the amount of sanctioned for a project called RajibGandhi GraminVidyutYayona (RGGVY) by the Central Govt. as fixed deposits in commercial banks i. e PNB & SBI and enjoying interest income thereon and has not bothered to pay amount of interest to the Central Government or the sanctioning authority, except making a provision in its books of account towards liability for payment of interest to the Central Government. The Central or state Government have also not treated the

Interest accrued/ received by the appellant company on the account of grants invested in fixed deposit with commercial bank as its income during the relevant period under consideration. Once the funds are sanctioned to the appellant company as grants on day-to-day basis then the sanctioning authority/ Central Government has no control over the capital/funds of the assessee company. The Government order dated 25.09.2008, contains general direction for being carried out by the recipients of the grants for their utilization. It does not specifically regulate the working of the assessee company. The A/R has also relied upon the Government order dated 21.5.2014, which is found to have been passed after the end of the relevant financial year nor does it have retrospective effect on the interest already received by the appellant company. Hence, the amount of interest income in question does not partake the characteristic of grant-in-aid as this amount has not been sanctioned by the Central Government as grant-in-aid nor there is any decision or order of the Government to consider the amount in question as grant-in-aid given to the assessee company. It is pertinent to that in a case of diversion of income by overriding title, the person in whose favour the income is to be diverted should be aware about the exact amount of such income which it has earned. In the present case, the obligation to divert the income has admittedly arisen after the interest income has reached the assessee and not before and would thus comprise application of the said interest income after it w s received by the appellant company. The said Government Orders appear to have been issued just to take out the interest income earned by the assessee from the taxa on under the Income Tax Act.

The A/R has relied upon the ratio of decision of the Calcutta High Court in CIT v. A. Tosh & Sons Pvt. Ltd. (1987) 166 ITR 867 (Cal), which is found to be distinguishable as the facts of the said case are found to be distinct from the facts and circumstances of the appellant's case wherein the interest earned on fixed deposit made out of surplus left-with the assessee out of the taxes and rebate raised on behalf of foreign buyers and paid to the Government was held as not taxable in its hands. However, in the appellant's case, the interest income has not been paid to the Central Government by the appellant company. Thus, the ratio of the said decision is foun to be not applicable to the appellant's case.

In the case of CIT -vs.- Sunil J. Kinariwala (2003) 259 ITR 10, the Apex Court, after referring to the decisions of the Privy Council in the case of Raja Bejoy Singh Dudhuria -vs. - CIT (1933) 1 ITR 135 (PC) and P.C. Mullick -vs.- CIT (1938) 6 ITR 206 (PC); of the Apex Court in the case of Sitaldas Tirathdas (supra), K.A. Ramachar -vs.- CIT (1961) 42 ITR 25 (SC); Motilal Chhadami Laljain (supra); CIT -Vs. Baagyalakshmi & Co. (1965) 55 ITR 660 (SC) and Murlidhar Himatsingka v. CIT (1966) 6.2-ITR 323 (SC), has held that if a third person becomes entitled to receive an amount under an obligation of an assessee even before he could claim to receive it as his income, there would be a diversion of income by overriding title, but when after receipt of the income by the assessee, the same is passed on to a third person in discharge of the obligation of the assessee, it will be a case of application of income by the assessee and not of diversion of income by overriding title.

The principle which emerges from these decisions is that if a third person becomes entitled to receive an amount under an obligation of an assessee even, before he could claim to receive it as his income, there would be a diversion of In com e by overriding title, but when after receipt of the income by the assessee, the same is passed on to a third person in discharge of the obligation of the assessee, it will be a

case of application of income by the assessee and not of diversion or income by overriding title.

Moreover, in the case of State Bank of Travancore, (1986) 158 ITR 102 (SC), the Hon'ble Supreme Court has laid down the following propositions:

"(1) It is the Income which has really accrued or arisen to the assessee that is taxable. Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation. (2) The concept of real income would apply where there has been a surrender of income which in theory may have accrued but: in the reality of the situation no income had resulted because the income did not really accrue. (3) Where a debt has become bad, deduction in compliance with the provisions of the Act should be claimed and allowed. (4) Where the Act applies, the concept of real income should not be so read as to defeat the provisions of the Act. (5) If there is any diversion of income at source under any statute or by overriding title, then there is no income to the assessee. (6) The conduct of the parties in treating the income in a particular manne is material evidence of the fact whether income has accrued or not. (7) Mere improbability of recovery, where the conduct of the assessee is unequivocal cannot be treated as evidence of the fact that income has not been resulted or accrued to the assessee. After debiting the debtors account and not reversing that entry but taking the interest merely in suspense account cannot be su h evidence to show that no real Income has accrued to the assessee or been treated as such by the assessee. (8) The concept of real income is certainly applicable in judging whether there has been income or not but, in every case, it must be applied with care and within well-recognized limits.

In the case of Kedarnath jute Mfg. Co. Ltd. (1971) 82 ITR 363 (Sc), the Hon'ble Apex Court has held that whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights; nor can the existence or absence of entries in his books of account be decisive or conclusive in the matter. In tile case of Kedarnath Jute Mfg. Co. Ltd. (supra) the Apex Court has held the provision of law relating thereto and not on the view which the assessee might take of his rights; nor can the exis ence r absence of entries in his books of account be decisive or conclusive m he matter.

Therefore, I am of the view that there is no overriding title in favour of the appellant company members because there was neither a prior statutory obligation nor an agreement with the Central Govt. or sanctioning authority for depositing their fund with the bank and for passing on the interest to them. The appellant has merely claimed that it was obliged to do so on account of letter from the Central Government to recipients of grants, which was found to be antecedent to the receipt of the Impugned interest income in the appellant's hands. Thus, this cannot be said to be equivalent to an overriding title. This view is supported by the decision of Hon 'ble Allahabad High Court in Addl. CIT -vs.- Rani Pritam Kumar (1980) 125 ITR 102 (All.), wherein it was held that for diversion of income at source through an overriding title, it is necessary that payment or diversion should be under some legal obligation which should be attached with the source of income. In other words, for such a payment there should be an overriding charge, which is exacted under any law for the time is exacted under any law for the time being in force, or by virtue of any Court's decree by an agreement, or by a voluntary settlement, or the

obligation should be such which can be enforced in a court of law. In the instant case, these facts are not present and hence it cannot be said that there was diversion at source through an overriding title. No charge has been created on the interest income in favour of the sanctioning authority either by an agreement, or by a Court's decree, or by operation of law or by a settlement. Hence, the ratio of the case laws cited by the appellant's A.R on this issue are found to be not applicable to the facts of the instant case.

In view of the above discussion, and applying the principles laid down by the Apex/High Courts in the aforesaid cases to the facts of the present case, it is found that no material has been placed on record by the appellant to indicate that there was any stipulation that the interest earned on such grant / aid if kept in fixed deposit in commercial bank would not accrue to the appellant but to the Central Government. Moreover, there is also no material on record to indicate that the interest income was transferred or passed on to a third person by the appellant company during the financial year, under an existing obligation. In fact, the orders Issued by the Central Government were for treating the amount of int rest after its receipt in the hands of the appellant ·company. In view thereof, I am of the opinion that the appellant's alternative claim of the theory f r al income is also not applicable to the facts of the present case inasmuch as the interest has accrued to the appellant which it had retained as income in its own hands, and the interest income has arisen from the fixed deposits are liable to be taxed as income in the hands of the appellant company as held by the Hon'ble Supreme Court in. the case of State Bank of Travancore, (supra). Therefore, it s held that the A.G was correct in treating the impugned amount of interest income Rs.21,48,33,731/- as revenue receipts in the hands of the appellant company, and addition thereof is confirmed. Thus, ground no. 5 & 6 are not al owed".

11. The Id. Counsel for the assessee invited our attention to the copy of letter dated 25.09.2008 issued by the Government of India, Ministry of Power while releasing the funds to Rural Electrification Corporation Limited (REC) under Rajiv Gandhi GraminVaidutikiranYojona (RGGVY) and pointed out that as per paragraph no. 5 of the said letter, REC and Implementing Agencies were required to keep the funds in interest bearing deposits of Nationalised Banks. only and the interest earned on such deposits was to be accounted for and used for cost of the Project by way of adjustment in the last instalment. He contended that the assessee- company thus had no right or title in the interest amount in question received during the year under c nsideration on the deposits made in the Banks out of funds received under Rajiv Gandhi GraminVidyutikaranYojana (RGGVY) and the question of treating the same as the income of the assessee does not arise at all. He contended that this position gets further fortified by the fact that the REC vide its letter dated 26.12.2012 asked all the Implementing Agencies including the assessee to remit the amount of such interest to the Government Account immediately. He invited our attention to the copy of the said letter placed at pages no. 65 to 66 of his paper book and also to the letters subsequently issued by REC dated 15.01.2013 and 23.08.2013 reminding the Implementing Agencies to remit back the amount of interest to the Government Account Immediately. He submitted that another letter dated 20.11.2013 was sent by the REC to the assessee (copy at page no. 70 of the paper book) asking the remittance of the interest amount and when the assessee still failed to remit the interest amount, a letter dated 02.05.2014 (copy at page no. 71 of the paper book) was received by the assessee from the Government of India, Ministry of Power informing that the non-remittance of interest was viewed seriously by the Ministry

and asking for the remittance of the interest amount within two weeks time. He submitted that the assessee finally paid the entire interest amount received upto 31st March, 2014 amounting to Rs. 7 3 .54 crores to the Government Account and informed REC about the same vide its letter dated 13.06.2014 (copy at page no. 73 of the paper book). The Id. Counsel for the assessee contended that this entire correspondence is sufficient to establish that the assessee never had any right or title in the interest and the interest amount in question was received by it on behalf of the Government of India, which was earlier liable to be adjusted against the last payment of capital subsidy and latter was liable to be remitted back to the Government Account, which was duly done by the assessee. He contended that the said interest thus was not in the nature of income earned by the assessee and as per the specific terms of the Government of India, it was diverted even at the inception by an overriding charge in favour of the Government of India. In support of this contention, he relied on the decision of the Hon'ble Calcutta High Court in the case of CIT -vs.- A. Tosh & Sons Pvt. Limited [166 ITR 867], wherein it was held that when it was clear under the agreements that the assessee would be entitled to receive the excise duty rebate and customs duty drawback only on the account of the foreign buyers and not on its own account and the assessee was also under an obligation under the agreements to remit the said amounts received to the foreign buyers. It, followed that the said amounts never reached the hands of the assesese as its own receipt or income and the assessee had r ceived the same. on behalf of its foreign buyers. It was held that the said amounts were never the real income of the assessee as they were diverted even at the inception by an overriding title in favour of the foreign buyers.

12. The Id. D.R., on the other hand submitted that the entire correspondence of the Ministry of Power, Government of India as well as REC relied upon by the Id. Counsel for the assessee in support of the assessee's case on this issue refers to the Implementing Agencies whereas the assessee-company is an Executing Agency. He pointed out from the said correspondence that there is a specific mention of Implementing Agency only and there is no reference whatsoever to the Executing Agency. He contended that the said correspondence, therefore, is not a relevant evidence for deciding the case of the assessee-company, which is an Executing Agency and he reliance of the Id. Counsel for the assessee on the same is clearly misplaced. He contended that the interest in question was not only accrued to the assessee but the same was also received by the assessee and that is why other agencies were remanding back the said interest amount. He strongly relied on the impugned order passed by the Id. CIT(Appeals) in support of the revenue's case that there was no diversion of interest income by overriding title as claimed on behalf of the assessee. He also relied on the Accounting Standard-12 dealing with accounting for government grants and contended that the interest amount in question not being held by the assessee-company as Trustee or Custodian was chargeable to tax as the income earned. He also relied on the decision of the Ahmedabad Bench of this Tribunal in the case of National Dairy Development Board -vs.- Additional CIT [114 TTJ 145] to contend that interest income has to accrue to somebody and since the same had accrued to the assessee-company in the present case, the addition made by the Assessing Officer on account of such interest was rightly confirmed by the Id CIT(Appeals).

13. In the rejoinder, the Id. Counsel for the assessee submitted that there is no difference between the Executing Agency and Implementing Agency as sought to be pointed out by the Id. D.R. He submitted that REC was the Nodal Agency and there

were various Implementing Agencies including the assessee-company. To support and substantiate this stand, he invited our attention to the letter dated 20.11.2013 issued by the REC (copy at page no. 70 of the paper book) and the letter dated 02.05.2014 issued by the Government of India, Ministry of Power (copy at page no. 71 of the paper book) and pointed out that the said letters were specifically addressed to the assessee giving the reference of the earlier correspondence, which is sufficient to show that the assessee-company was involved in the Project as Implementing Agency and the correspondence of REC and Government of India, Ministry of Power relied upon by him is a relevant evidence to decide the issue under consideration involved in the assessee's case.

14. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the Rural Electrification Programme was implemented by the Government of India, Ministry of Power through Rural Electrification Corporation Limited (in short REC) called Rajiv Gandhi GraminVidyutikaranYojana and for implementation of the same, various Implementing Agencies were appointed by the REC including the assessee-company. While releasing funds for the said Programme in the form of capital subsidy vide letter dated 25.09.2008, it was specifica ly stipulated by the Government of India, Ministry of Power that a separ te ac ount will be maintained in respect of the capital subsidy, the REC as well as all the Implementing Agencies will keep the funds in interest bearing deposits of Nationalised Banks till the payment are made to the Contracting Ag ncies. It was also stipulated that the interest earned on such deposits was to be accounted for and used for cost of the Project by way of adjustment in the last instalment. The interest so earned thus was received by REC as well as the Implementing Agencies including the assessee-company for and on behalf of the Government of India, Ministry of Power and since the same was to be used for c st of the Project by way of adjustment in the last instalment of capital subsidy the REC as well as all the Implementing Agencies including the assessee company never had any title or right in the interest so earned as they were under an obligation to use the amount of interest for cost of the Project by way of adjustment in the last instalment of capital subsidy receivable from the Government of India, Ministry of Power. It is thus not a case where the interest income was earned by the assessee-company and the same was applied to discharge any obligation after such income reached the assessee. On the other hand, the amount of interest in question, going by the nature of obligation as stipulated by the Government of India, Ministry of Power in the letter dated 25.09.2008 did not form part of the income of the assessee as the same was liable to be used for the cost of Project by way of adjustment in the last instalment of capital subsidy and the same thus was in the nature of capital receipt being capital subsidy received from the Government of India, Ministry of Power.

15. In the case of MotitalChhadamilal Jain -vs.- CIT [56 Taxman 4A(SC)(supra) relied upon by the Id. CIT(Appeals) in his impugned order, it was held by the Hon'ble Supreme Court while deciding the issue of diversion of income, the nature of the obligation is the decisive fact and where by the obligation, income is diverted before it reaches the hands of the assessee, the same is not chargeable to tax. As per the conditions stipulated by the Government of India, Ministry of Power, the interest amount in question received by the assessee was liable to be adjusted against the capital subsidy receivable under the programme and since the assessee-company was under an obligation to adjust the interest amount against the capital subsidy, there was an overriding charge, which was enforceable in law. This position gets

further fortified by the fact that the Government of India, Ministry of Power subsequently decided to recover the amount of interest in question earned by the REC as well as the Implementing Agencies including the assessee-company and the same was indeed" remitted back by the assessee-company finally to the Government of India, Ministry of Power.

16. At the time of hearing before us, the Id. D.R. has contended that the assessee-company was an Executing Agency and not the Implementing Agency. However, as rightly contended by the Id. Counsel for the assesese, there is no difference between the Implementing Agency and the Executing Agency and both of them are one and the same. Moreover the fact that the relevant correspondence meant for Implementing Agencies was addressed by the Ministry of Power, Government of India as well as REC specifically to the assessee-company clearly establishes that the assessee-company was an Implementing Agency and the interest in question received by it for and on behalf of the Government of India, Ministry of Power and subsequently remitted back was in the capacity as an Implementing Agency.

17. The Id. D.R. has relied on Accounting Standard 12 in support of the Revenue's case on the issue under consideration. A careful peru al of the said Accounting Standard, however, shows that the exact situation arising in the present case has not been specifically dealt with in the said Accounting Standard. Moreover, the said Accounting Standard deals with the accounting trea ment to be given to the Government rants and its disclosure in the final accounts. It is, therefore, not relevant to decide the issue relating to the taxability of the interest received by the assessee on the surplus funds temporarily a ailable on account of Government grants as involved in the present case.

18. The Id. D.R. has also relied on the decision of Ahmedabad Bench of this Tribunal in the case of National Da ry Development Board (supra) in support of the Revenue's case. It is observed that the assessee in the said case had earned interest on the deposits made out of funds received for different Projects. In the case of funds received for the first Project no details were submitted by the assessee either before the revenue authorities or e en before the Tribunal and in the absence of the said details, the Tribunal upheld the action of the revenue authorities in assessing the interest relatable t the said Project. As regards the funds received from the second project, there was no specific condition stipulated in the relevant letter about the accrual of interest and the Tribunal, therefore, found it fit to restore the matter to the file of the Assessing Officer to verify as to what would happened to the interest earned and whether it was actually refunded to the authority of the Government. As regards the funds received for the third Project, there as a letter issued by the concerned Government Department, wherein it as stipulated that the funds released by Government of India shall be kept in a separate account for the desired purpose and the amount of interest earned by the assessee was to be refunded to the Government of India. As per the said stipulation, interest was actually refunded by the assessee in the next year and keeping in view the same, it was held by the Tribunal that the interest might not have accrued to the assessee or otherwise it should not have refunded in the subsequent year. It was held that the interest belonged to Government of India and was diverted at source. In our opinion, this decision of the Ahmedabad Bench of this Tribunal in the case of National Dairy Development Board (supra) relied upon by the Id. D.R. actually supports the case of the assessee, inasmuch as, the assessee-company as per the letter dated 25.09.2008 issued by the Government of India, Ministry of Power while releasing the funds was under an obligation to adjust the interest amount in question against the capital

subsidy receivable from the Government and the said interest amount having been finally remitted back by it entirely to the Government of India, Ministry of Power, it cannot be said to have accruedto the assessee as income and it was a case of diversion of interest income at source.

19. It is observed that the decision of the Hon'ble Calcutta High Court in the case of CIT -vs.- A. Tosh & Sons Pvt. Limited (supra) relied upon by the Id. Counsel for the assessee also fully supports the case of the assessee. In the said case, the assessee had exported tea to foreign countries and under the agreements entered into with the foreign buyers, any refund or rebate of taxes and duties payable by the foreign buyers was liable to be remitted to them by the Id. CIT(Appeals). In these factsand circumstances of the case, it was held by the Ho nb l e Calcutta High Court that the amount of rebate and duty draw back was received by the assessee on behalf of its foreign buyers and since the foreign buyers were entitled to the same, the same were never the real income of the assessee and they were diverted even at the inception by an overriding title in favour of the foreign buyers.

20. Keeping in view all the facts of the case in the light of judicial pronouncement as discussed above, we are of the view that the addition made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of interest in question by treating the same as income of the assessee is not sustainab e. We accordingly delete the said addition and allow this appeal of the assessee.

19. From the aforesaid ratio of the case of West Bengal State Electricity Distribution Co. Ltd. (supra), and the discussion we had (supra), the AO is directed to examine whether the assessee's case falls in the ratio laid down by the Tribunal in the case of West Bengal State Electricity Distribution Co. Ltd. (supra) and if assessee's claim falls in the ratio decidendi, then it should be allowed or it should be added in the hands of the assessee as interest income. Therefore we set aside the impugned order of the ld CIT(A) and remand this issue back to the file of AO for de-novo assessment based on the discussion and direction given in para 18 & 19.

20. In the result, the appeal of assessee is allowed for statistical purpose

Order is pronounced in the open court on 10th January, 2020

Sd/-	Sd/-
(P.M. Jagtap)	(Aby. T. Varkey)
Vice-President	JudicialMember

Dated : 10th January, 2020

Jd. (Sr. P.S.)

Copy of the order forwarded to:

1. Appellant – The Jute Corporation of India Ltd., 15N, Nellie Sengupta Sarani, 7th floor, Kolkata-700 087.
2 Respondent – ITO, ward-1(3), Kolkata.
3. The CIT(A) - 1, Kolkata. (sent through e-mail)
4. CIT Kolkata
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar
ITAT, Kolkata