

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रकेश मिश्र, लेखा सदस्य
के समक्ष
Before

SRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 133/GTY/2024
Assessment Year: 2021-22

Income Tax Officer, Ward-1, Digboi <i>(Appellant)</i>	Vs.	Arunachal Tea Company <i>(Respondent)</i>
PAN: AAWFA8791L		

C.O. No.: 2/GTY/2024
Assessment Year: 2021-22

Arunachal Tea Company <i>(Appellant)</i>	Vs.	Income Tax Officer, Ward-1, Digboi <i>(Respondent)</i>
PAN: AAWFA8791L		

Appearances:

Department represented by : Soumendu Sekhar Das, JCIT.

Assessee represented by : Sashi Goel, AR.

Date of concluding the hearing : December 30th, 2024

Date of pronouncing the order : January 29th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Ld. Addl/JCIT(A)-Aurangabad [hereinafter referred to as "the Ld. CIT(A)"]



passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2021-22 dated 28.03.2024, which has been passed against the intimation order u/s 143(1) of the Act, dated 02.11.2022.

2. The Revenue has taken the following grounds of appeal:

“1. On the facts and circumstances of the case, the Ld.CIT(A) NFAC has erred in deleting the disallowance of Rs. 52,80,843/-u/s 80-IE of the Income Tax Act, 1961 made on account of failure to furnish form no. 10CCB before the date specified in section 44AB of the IT Act 1961.

2. On the facts and circumstances of the case, the Ld.CIT(A) NFAC has erred in observing that the Form 10CCB was filed on 05/02/2022. As per records, the Form 10CCB was filed on 01/09/2022.

3. On the facts and circumstances of the case, the Ld.CIT(A) NFAC has erred in not considering the amendment of section 80-IE w.e.f 01.04.2020 which had made the filing of audit report within the due date referred to in section 44AB mandatory and not directory.

4. On the facts and circumstances of the case, the Ld.CIT(A) NFAC has erred in deleting the disallowance made u/s 80-IE of the Income Tax Act, 1961 when as per sub-section 6 of section 80IE of IT Act 1961 read with sub-section 7 of section 80-IA, it is mandatory to furnish form 10CCB before the specified date which is 15/02/2022 in the instant case.

5. On the facts and circumstances of the case, the Hon'ble ITAT, Guwahati Bench is requested to entertain this appeal though the tax effect is below the prescribed monetary limit prescribed in the CBDT circular no.17/2019 dated 8/8/2019 read with CBDT circular no.3 of 2018 dated 11/7/2018 as amended vide CBDT letter F.No. 279/Misc.142/2007-ITJ/(Pt) dated 20/8/2018 as the instant case falls in the exceptions provided in clause (a) of Para 10 of with CBDT circular no. 3 of 2018 dated 11/7/2018 as amended vide CBDT letter F.No. 279/Misc.142/2007-ITJ/(Pt) dated 20/8/2018. The relevant para of clause (a) of Para 10 of CBDT circular No.3 of 2018 dated 11/07/2018 as amended vide CBDT letter F.No.279/Misc. 142/2007-ITJ/(Pt) dated 20/08/2018 is reproduced as follows:

"10. Adverse judgement relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge or



6. The appellant prays that the order of Ld.CIT(A) on the grounds be set aside and that the order of AO, CPC, Bengaluru be restored.

7. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2.1 it is observed that the appeal is delayed and an application for condonation of delay has been filed by the Ld. AO which is as under:

Sub: Prayer for condonation of delay with respect to filing appeal before the Hon'ble ITAT, Gauhati bench in case of Arunachal Tea Company (PAN: AAWFA8791L) for the AY 2021-22

Respected sir/ madam,

Kindly refer to the subject mentioned above.

In this regard, it is stated that the order u/s 250 was passed by the CIT(A) in the case of Arunachal Tea Company (PAN: AAWFA8791L) for the AY 2021-22 on 28/03/2024. The office of the ITO, Ward-I, Digboi has been under the additional charge of Shri Vipul Kumar, Income Tax Officer, Ward-I, Duliajan from 21/03/2024 to 03/06/2024 as the undersigned, Shri Biswajit Majumdar, who has been holding the charge of the ITO, Ward-I, Digboi was assigned election duty and relieved of the charge of Ward-I, Digboi. It is also stated that the Shri Vipul Kumar has also been assigned election duty apart from the charges of Ward-I, Duliajan and Ward-I, Digboi. Further, one more staff of Ward-I, Digboi was deputed for election duty. Due to these reasons, there has been a delay of 11 (eleven) days in filing the appeal before the Hon'ble ITAT. The date of limitation for filing the appeal in this case is 27/05/2024.

Further, it is stated that the generator set at Ward-I, Digboi is currently out of order and there has been electricity issues in this area recently due to heavy rainfall and falling of trees at various places. Therefore, due to these electricity issues and the election duties of officers in charge of the Ward-I, Digboi, there has been a delay in filing the appeal which is being prayed to be condoned.

Thus, in view of the facts and circumstances stated above, it is seen that there has been a delay of eleven days, as on today (07/06/2024), from the date of limitation for filing the appeal before the Hon'ble ITAT. The details regarding this are summarized below:

- (i) Date on which the order u/s 250 by the CIT(A) was passed : 28/03/2024*
- (ii) Date of submission of appeal scrutiny report from this office : 14/05/2024*
- (iii) Date of limitation for filing appeal before the Hon'ble ITAT : 27/05/2024*



Therefore, it is requested of your good office to condone the delay due to the technical issues and election duties of the officers-in-charge which has already been mentioned above and allow us to file the appeal before the Hon'ble ITAT. This is submitted for your kind information and necessary consideration.”

2.2 Considering the reasons mentioned, which are found to be sufficient, the delay is condoned and the appeal is admitted for adjudication.

3. On the other hand, the assessee has also filed cross objections vide CO No. 02/GTY/2024 (in ITA No. 133/GTY/2024) which are in the nature of arguments on the grounds of appeal raised by the revenue and are as under:

“Memorandum of Cross Objection before the Honourable Members, ITAT, Guwahati

Ground No. 1

On the facts and circumstances of the case, the Ld. CIT(A) NFAC has erred in deleting the disallowance of Rs. 52,80,843/-u/s 80-IE of the Income Tax Act, 1961 made on account of failure to furnish form no. 10CCB before the date specified in section 44AB of the IT Act 1961

Objection for consideration of Honourable Members:

Most humbly it is being submitted that Ld. ITO, Ward-1, Digboi could not appreciate that no form has been prescribed under Income-tax Law for claiming deduction u/s 80-IE of the Income-Tax Act, 1961. For understanding the provisions in its letter and spirit, we should read section 80-IE(6) and 80-IA(7) of Income-tax Act, 1961 and Rule-18BBB of Income-tax Rules. Section 80-IE(6) makes reference to section 80-IA(7) for claiming deduction u/s 80-IE. Section 80-IA(7) is reproduced before your honour for easy understanding:

“(7) The deduction under sub-section (1) from profits and gains derived from an undertaking shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant, as defined in the Explanation below sub-section (2) of section 288, before the specified date referred to in section 44AB and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant.”



The key word is “in the prescribed form”. Rule 18BBB of Income Tax Rule, 1957 prescribes Form 10CCB for claiming deduction u/s 80-I, 80-IA or 80-IB or Section 80-IC. Nowhere, section 80-IE has been mentioned in Rule 18BBB.

Rule 18BBB is reproduced as below:

“Rule-18BBB, Income-tax Rules

[Form of audit report for claiming deduction under section 80-I or 80-IA or [80-IB or section 80-IC].

18BBB. (1) The report of the audit of the accounts of an assessee, which is required to be furnished under sub-section (7) of section 80-IA or sub-section (7) of section 80-I, except in the cases of multiplex theatres as defined in sub-section (7A) of section 80-IB or convention centres as defined in sub-section (7B) of section 80-IB [or hospitals in rural areas as defined in sub-section (11B) of section 80-IB], shall be in Form No. 10CCB.

(2) A separate report is to be furnished by each undertaking or enterprise of the assessee claiming deduction under section 80-I or 80-IA or 80-IB [or 80-IC] and shall be accompanied by the Profit and Loss Account and Balance Sheet of the undertaking or enterprise as if the undertaking or the enterprise were a distinct entity.

(3) In the case of an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining an infrastructure facility, the form shall be accompanied by a copy of the agreement of the enterprise with the Central Government or the State Government or the local authority for carrying on the business of developing or operating and maintaining or developing, operating and maintaining the infrastructure facility.

(4) In any other case, the form shall be accompanied by a copy of the agreement, approval or permission, as the case may be, to carry on the activity signed or issued by the Central Government or the State Government or the local authority for carrying on the eligible business.]”

Your petitioner hereby tries to analyse Rule 18BBB of Income-tax Rules 1962 in its letter and spirit.

The Rule has a heading-“[Form of audit report for claiming deduction under section 80-I or 80-IA or [80-IB or section 80-IC].” Nowhere in its heading itself, Rule envisages the person claiming deduction u/s 80-IE to file Form 10CCB because the heading confines it to section 80-I, 80-IA, 80-IB and 80-IC. Had the intention of the legislation was to make filing of Form 10CCB mandatory for Section 80-IE, it would have inserted section 80-IE in the heading itself.

Further your petitioner reproduces relevant portion of the sub rule-1 on which your honour is banking upon for disallowing deduction u/s 80-IE of Income Tax Act, 1961.



“18BBB. (1) The report of the audit of the accounts of an assessee, which is required to be furnished under sub-section (7) of section 80-IA or sub-section (7) of section 80-I, xxxxxxxxxxxx”

Reference of Section 80-IA(7) has been made in section 80-IE for claiming deduction u/s 80-IE but at the same time for claiming deduction u/s 80-IC, reference of section 80-IA(7) has been made but in Rule 18BBB, for claiming deduction u/s 80-IC, Form 10CCB has been prescribed but for claiming deduction u/s 80-IE, the rule nowhere makes reference of section 80-IE and thus Form 10CCB has not been prescribed in Rule 18BBB for claiming deduction u/s 80-IE.

Further, Sub-Rule 2 also talks about other sections except for section 80-IE. Conspicuous absence of reference of Section 80-IE makes it amply clear that Form 10CCB is not applicable for claiming deduction u/s 80-IE.

Further, your petitioner is attaching the prescribed Form 10CCB, it asks for the details regarding the eligible business under section 80-IA, 80-IB and 80-IC but nowhere it asks details for undertaking eligible for deduction u/s 80-IC. On the Income-tax Portal, the Form 10CCB has been modified without any authority of law to include in the dropdown menu section 80-IE in clause 7 which was not initially there in the Income-Tax Portal. Thus, requirement of filing Form 10CCB by way of inserting section 80-IE in Form 10CCB without following the proper procedure of law for amending the rules is against the spirit of the law and in the humble opinion of your petitioner, the Ld. ITO has misinterpreted the requirement of filing Form 10CCB for claiming deduction u/s 80-IE of Income-tax Act, 1961 and disallowing claim under section 80-IE of Income-tax Act, 1961 for not filing Form 10CCB would be against the spirit of the law.

Ground No. -2

On the facts and circumstances of the case, the Ld.CIT(A) NFAC has erred in observing that the Form 10CCB was filed on 05/02/2022. As per records, the Form 10CCB was filed on 01/09/2022.

Objection for consideration of Honourable Members:

Without prejudice to your petitioner's objection against Ground No.1, your petitioner very humbly submits that Form 10CCB was filed on 01/09/2022 not on 05/02/2022. But in humble opinion of your petitioner, filing of Form 10CCB is directory in nature, not mandatory. The substantial compliance of law was made by your petitioner by claiming the deduction u/s 80-IE in the **Return of Income**. Filing of Audit Report in 10CCB along with Return of Income is directory in nature for claiming Deduction u/s 80-IE and non-filing of it is only a procedural lapse which can be fixed before the assessment.

The similar issue came up before the Madhya Pradesh High Court in CIT Vs. Panama Chemicals Works 292 ITR 147 in the context of Sections 80-I(7), 80-IA(7), 80-IB and 80-IC where the Honourable High Court held that if the Form 10CCB



was filed before the completion of the assessment but not along with return of Income, the claim of the assessee u/s 80-I could not be denied. The relevant paragraph of the judgment of Honourable Madhya Pradesh High Court is reproduced as under:

“We are of the view that even if an assessee fails to file information in Form No. 10CCB along with the return, he cannot be divested of the benefit of s. 80-I. It is not a case where the form was filed after the assessment, but before it and, therefore, when the authorities assessed the income, the form was before the AO. Under these circumstances, we find that the approach of the CIT(A) and the Tribunal was proper. We, therefore, hold that in the facts and circumstances of the case, the Tribunal was justified in law in holding that the claim of the assessee under s. 80-I is justified even if he had not filed the audit report in Form No. 10CCB along with the return. We, therefore, answer the question against the Revenue and in favour of the assessee.”

The judgment of Honourable Madhya Pradesh High Court is attached herewith for the ready reference of your honour.

There are catena of judgment of various High Courts and Income Tax Appellate Tribunals on the same issue where it was decided that non filing of 10CCB along with Return of Income, the assessee could not be divested of the benefit of deduction u/s 80-I, 80-IA, 80-IB, 80-IC (Similar to Section 80-IE) if the same was filed before the completion of assessment.

In your petitioner’s case, before processing the return of income u/s 143(1) which is a summary assessment, your petitioner filed the form 10CCB electronically. In a very recent case pronounced by Honourable Delhi ITAT in ITA No. 8414/Del/2019, it was decided that filing of 10CCB before the processing of return u/s 143(1) although not within the due date, the deduction u/s 80-IC had been allowed. The Judgement of Delhi ITAT is attached herewith for your kind consideration.

Further, Honourable Supreme Court in 2015 in its Landmark Judgment in the case COMMISSIONER OF INCOME TAX vs. 1. G.M. KNITTING INDUSTRIES (P) LTD. & 2. Aks Alloys(P.) Ltd (2015) 376 ITR 456 (SC), held as follows:

“Assessee is entitled to deduction under s. 80-IB even though it has not filed the audit report in Form No. 10CCB along with the return but has filed the same before the completion of assessment.”

The full text of the judgment is attached herewith for your ready reference.



Therefore, it is humbly prayed before the Honourable Tribunal to consider our objection in view of the Honourable Apex Court's Landmark Judgment.

Ground No. 3

On the facts and circumstances of the case, the Ld.CIT(A) NFAC has erred in not considering the amendment of section 80-IE w.e.f 01.04.2020 which had made the filing of audit report within the due date referred to in section 44AB mandatory and not directory.

Objection for consideration of Honourable Members:

Section 80-IE makes reference to Section 80-IA(7) for claiming deduction u/s 80-IE. Section 80-IA(7) was not amended with effect from 01/04/2020. Thus, it is beyond the understanding of your petitioner how filing of report within the due date referred to in section 44AB has been mandatory w.e.f. 01/04/2020 and not directory.

Ground No. 4

On the facts and circumstances of the case, the Ld.CIT(A) NFAC has erred in deleting the disallowance made u/s 80-IE of the Income Tax Act, 1961 when as per sub-section 6 of section 80-IE of IT Act 1961 read with sub-section 7 of section 80-IA, it is mandatory to furnish form 10CCB before the specified date which is 15/02/2022 in the instant case.

Objection for consideration of Honourable Members:

Since the above grounds taken by the Ld. ITO is more or less similar to Ground 3, your petitioner's reply to Ground No. shall be considered for this ground as well.

Ground No. 5

On the facts and circumstances of the case, the Hon'ble ITAT, Guwahati Bench is requested to entertain this appeal though the tax effect is below the prescribed monetary limit prescribed in the CBDT circular no.17/2019 dated 8/8/2019 read with CBDT circular no.3 of 2018 dated 11/7/2018 as amended vide CBDT letter F.No. 279/Misc.142/2007-ITJ/(Pt) dated 20/8/2018 as the instant case falls in the exceptions provided in clause (a) of Para 10 of with CBDT circular no. 3 of 2018 dated 11/7/2018 as amended vide CBDT letter F.No. 279/Misc.142/2007-ITJ/(Pt) dated 20/8/2018.The relevant para of clause (a) of Para 10 of CBDT circular No.3 of 2018 dated 11/07/2018 as amended vide CBDT letter F.No.279/Misc.142/2007-ITJ/(Pt) dated 20/08/2018 is reproduced as follows:

"10. Adverse judgement relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:



(a) Where the constitutional validity of the provisions of an Act or Rule is under challenge or” **Objection for consideration of Honourable Members:**

The Ld. ITO, Ward-1 himself reproduced the relevant portion of the CBDT Circular wherein it is being clearly written that where the constitutional validity of the provisions of an Act or Rule is under challenge, then adverse judgment should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 of the Circular.

It is very humbly submitted that constitutional validity of the Section 80-IE, Rule 18BBB was never under challenge before Honourable Commissioner (Appeals). Therefore, the plea of the Ld. ITO, Ward-1 that monetary limit of Rs. Income-tax of Rs. 50.00 Lakhs would not come into play while filing the appeal by department is not the correct appreciation of the Circular. Therefore, it is humbly prayed before the Honourable members to reject the plea of the Ld. Appellant otherwise it would result in frustrating the objective of the CBDT to avoid the unnecessary litigation.

The Respondent prays before the Honourable Bench to maintain the status quo of the order of the Honourable Commissioner (Appeals) which has been passed in the true spirit of the law.”

3.1 The assessee has also filed an application for condonation of delay as under:

“Sub: Prayer for condonation of delay in filing Memorandum of Cross Objection.

Ref: Appeal No. ITA 133/GTY/2024.

Honourable Members,

With all humility we state:

1. A notice for personal hearing was received, scheduling the hearing for 06/11/2024. However, an adjournment petition was filed as our Authorized Representative was out of town on that date.

1. We would like to clarify that the Notice of Filing of Appeal by the ITO, Ward-1, Digboi was not received by us, and we were unaware of the filing of the appeal until first notice of personal hearing was received. We never received the appeal documents.

1. In light of the non-receipt of the appeal documents, we made a formal request to the ITO, Ward-1, Digboi, for the necessary appeal records. A copy of the letter requesting the documents is attached herewith.

1. The ITO, Ward-1, Digboi, provided the Grounds of Appeal via email dated 30/10/2024. A printout of the email is attached herewith for reference.

1. In view of non-receipt of the Appeal Documents, the Memorandum of Cross Objection could not be filed in time.



Therefore, it is being prayed before your honour to condone the delay in filing in Memorandum of Cross Objection, if any and accept our Memorandum of Objection.”

3.2. Considering the reasons mentioned in the application seeking condonation of delay along with the affidavit filed, the delay in filing the Cross objection is also condoned and the CO is also admitted for adjudication.

4. Brief facts of the case are that the assessee filed the return of income seeking deduction under section 80-IE of the Act, which was denied by the CPC as the required audit report on Form No. 10CCB was not filed along with the return of income, but was filed on 01.09.2022 before the return was processed on 02.11.2022. Aggrieved with the intimation u/s 143(1) of the Act, the assessee preferred an appeal before the Ld. CIT(A), who, vide order dated 28.03.2024, allowed the appeal. Aggrieved with the order of the Ld. CIT(A), the revenue has filed the appeal before the Tribunal.

5. Rival contentions were heard and the record and the submissions made have been examined. The Ld. AR at the outset raised objection to the maintainability of the appeal on account of low tax effect for which submissions were made vide the CO filed and an exception is carved out vide Ground No. 5 of the revenue's appeal. It was also emphasised in the course of the argument that the filing of the audit report was not mandatory but directive and, therefore, in view of the decision of the Hon'ble Apex Court relied upon by the assessee, the relief granted by the Ld. CIT(A) should be upheld.

6. We have heard the rival contentions and perused the material available on record. It is pertinent to note that the tax effect by virtue of relief given by the first appellate authority is less than Rs.60,00,000/-



as mentioned in Col. No. 10 of Form No. 36. The Ld. AR objected to the admission of the appeal as the tax effect is stated to be ₹6,81,311/- which is below ₹60,00,000/-. As per the CBDT's Instruction No. 9 of 2024 issued on 17th September, 2024, the CBDT has directed its subordinate authorities not to file appeal against the order of the ld. CIT(Appeals) before the Tribunal if the tax effect by virtue of relief given by the ld. CIT(Appeals) is less than Rs.60,00,000/-. Such order could only be challenged if it comes within the exceptions provided in the Instruction. Ld. Sr. DR could not rebut this fact nor could he demonstrate how the appeal was covered under the exception mentioned in Ground No. 5, which refers to the case where the constitutional validity of the provisions of an Act or Rule is under challenge. It could not be demonstrated how the constitutional validity of the provisions of section 80-IE was under challenge as the appeal has been filed against the order of the Ld. CIT(A) who has nowhere questioned the constitutional validity of any provision nor has given the relief on that basis. Therefore, this appeal is not maintainable on account of low tax effect.

7. On due consideration of the above facts and circumstances, we dismiss this appeal of the Revenue on account of low tax effect and also allow the cross objection filed by the assessee that the appeal is not maintainable on account of low tax effect and is not covered under any of the exceptions. We also refrain from deciding the merits of the case. However, in case on re-verification of the facts at the end of the Ld. AO, it emerges that the tax effect is more than the limit for filing the appeal or this case falls under any of the other exceptions provided in the instruction/circular, then the Revenue will be at liberty to file a Miscellaneous Application for recall of this order and revival of the



appeal. Such an application should be filed within the time limit provided in the Act.

8. In the result, the appeal of the Revenue is dismissed while the CO of the assessee is allowed.

9. Order pronounced on 29th January, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 29.01.2025

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Income Tax Officer, Ward-1, Digboi.**
- 2. Arunachal Tea Company, Margherita Bazar, Margherita, Dist.- Tinsukia, Assam, 786181.**
3. Addl/JCIT(A)-Aurangabad.
4. CIT-
5. CIT(DR), Guwahati Benches, Guwahati.
6. Guard File.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata