

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 18/GTY/2025
Assessment Year: 2021-22

I.T.A. No. 19/GTY/2025
Assessment Year: 2021-22

I.T.A. No. 20/GTY/2025
Assessment Year: 2022-23

Nagahat Tea Estate Private Limited,

52/1, 10th Floor, Unit 10A,
Shakespeare Sarani, Kolkata - 700001
[PAN: AAACB9306R]

.....**Appellant**
vs.

Income Tax Officer, Ward 1,

Income Tax Office Tarajan,
Jorhat, Assam - 785001

..... **Respondent**

Appearances by:

Assessee represented by : Mahabir Bagaria, FCA
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 04.11.2025
Date of pronouncing the order : 17.11.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. These are a batch of 3 appeals arising from first appellate orders u/s 250 of the Income Tax Act, 1961 (hereafter “the Act”), passed by Ld. Additional/Joint Commissioner of Income Tax, Faridabad (hereafter “the Ld. Addl/JCIT(A)”) as under:

(i) ITA No. 18/Gty/2025 (AY 2020-21) vide order dated 26.12.2024;

- (ii) ITA No. 19/Gty/2025 (AY 2021-22) vide order dated 26.12.2024; and
(iii) ITA No. 20/Gty/2025 (AY 2022-23) vide order dated 26.12.2024.

All these 3 cases are being taken up for adjudication together since the issues are common.

1.1 In all of these 3 cases the grievance arises from the action u/s 143(1) of the Act by Ld. AO, CPC in denying the claim u/s 80IE of the Act for the reason that Form 10CCB was filed beyond the time allowed under section 80IE of the Act read with Rule 18BBB of IT Rules. Additionally, in ITAs 19 & 20/Gty/2025 there is a second issue of denial of a claim u/s 36(1)(va) of the Act and not considering the amounts therein for deduction u/s 80IE of the Act, ostensibly in violation of the terms of CBDT's Circular No. 37 of 2016 dated 02.11.2016.

1.2 The assessee carried these matters to the Ld. Addl./JCIT(A) for all the three years, but could not succeed on the reasoning that the filing of Form 10CB within the stipulated time was a condition precedent to claiming the benefit of deduction u/s 80IE of the Act. Incidentally, for AYs 2021-22 and 2022-23, the Ld. Addl./JCIT(A) did not specifically adjudicate on the ground of appeals pertaining to the addition made u/s 36(1)(va) of the Act.

1.3 For the sake of convenience ITA No. 19/Gty/2025 for AY 2021-22 is being taken as the lead case since this year involves both the issues: denial of claim u/s 80IE of the Act and the addition u/s 36(1)(va) of the Act. Incidentally, for AY 2020-21 there is only the issue of denial of claim u/s 80IE of the Act. The grounds of appeal for AY 2021-22 [ITA No. 19/Gty/2025] are extracted for illustration and reference:

"1. On the facts and in the circumstances of the case and in law, the order of the Ld. ADDL/JCIT (A) FARIDABAD, NFAC, is erroneous in disallowing the deduction

Rs 5,46,15,477/-claimed u/s 801E & Rs 3,84,594/- u/s 36(1) (va) based on various grounds of appeal raised by the appellant before her.

2. That the Ld. ADDL/JCIT (A) FARIDABAD, NFAC, wrongly interpreted and applied the provisions of section 119(2)(b) for denying condonation of delay in filing form 10CCB without first considering the proviso (b) to section 119(1).

3. That the Ld. ADDL/JCIT (A) FARIDABAD, NFAC summarily rejected the appeal mechanically without going through the various case laws/ judgments of Apex Court/High Court ITAT submitted in the grounds of appeal before her. Therefore, severe manifest error occurred in her impugned order under present appeals.

4. That the order of the Ld. ADDL/JCIT (A) FARIDABAD, NFAC is against the principles of natural justice because no personal hearing was afforded to the appellant prior to passing the impugned order.

5. That the delay in filing form 10CCB is only directory not mandatory as per various judgement of the Apex Court/ High Court/ ITAT.

6. That while processing the impugned intimation u/s 143(1)(a)} section 143(1)(a)(v) of the Act specifically provides that the deduction u/s 80-1E of the Act can be disallowed only if the return of income is furnished beyond the due date specified in Section 139(1) of the Act. However, the appellant filed its return of income on 07.02 2022 well within the due date/extended due date specified u/s 139(1).

7. That the CPC while processing the impugned intimation u/s 143(1) and disallowing the deduction of Rs 5,46,15,477/- claimed u/s 801E & Rs 3,84,594/- u/s 36(1) (va) therein, never treated the appellant's return as defective u/s 139(9).

8. That for disallowing impugned deduction of Rs. 5,46, 15,477/-u/s 80-IE & Rs 3,84,594/-u/s 36(1) (va) of the Act, in the instant case, adjustments had been made to the total income of the appellant vide DIN-CPC/2122/A8/312535198 dated 13-11-2022 (received manually on 17.11.2022), without the issuance of any intimation of such adjustments to the appellant as per proviso to section 143(1)(a). The appellant came to know the intimation order only when it noticed the demand which was responded vide response acknowledgement no, vide acknowledgement No FOS002167331000 dated 20.03.2023

9. Disallowance of Rs 3,84,594/- u/s 36(1) (va) is against the CBDT Circular No. 37 of 2016 dated 02.11.2016.

10. That appellant reiterates all the grounds of appeal agitated before the Ld. ADDL/JCIT (A) FARIDABAD, NFAC.

11. The appellant craves leave to add, alter, amend or vary from the above grounds of appeal on or before the time of hearing.”

2. Before us, the Ld. AR vehemently argued, with the help of written submissions and detailed paper books, that the Ld. AO, CPC had erred in denying claim u/s 80IE of the Act firstly, by not giving any intimation about the adjustments proposed by the Ld. AO as a result of which, it was

argued that the Ld. AO's action of upward adjustments was thus vitiated since he had violated the clear directive under the provisos first and second to section 143(1)(a) of the Act, which specifically direct that not only will an intimation be given to an assessee about the proposed adjustments, but as per the second proviso, such response from the assessee will be duly considered before making any adjustment to the returned income. It was the Ld. AR's submission that due to this factor alone the Ld. AO's orders deserved to be struck down. Regarding the denial of claim u/s 80IE of the Act, the Ld. AR pointed out portions from the detailed written submissions as under:

"It is further worth mentioning here that till date CBDT has not notified a proper Form 10CCB for filling up relevant information and conditions for claiming deduction u/s 801E (2) of the Act. Further, the provisions of sections 801A (5) and 801A (7) to 801A(12) are made applicable to eligible undertaking u/s 801E vide Section 801E (6):

Section 801A(7) states that "the deduction 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 for which the deduction is claimed have been audited by accountant, as defined in the explanation below sub-section (2) of section 288 (Chartered Accountant-emphasis added 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 [Form 10CCB-emphasis added] duly signed and verified by such accountant"

The present manual Form 10CCB as per Rule 188BB contains information to be provided for claiming exemption u/s 80-1(7)/80-1A(7)/80-18/80-IC only and there is no mention of section 80-IE.

v. Therefore, the Appellant's CA used to file form 10CCB online without there being provision for filling up relevant information as per Section 801E Moreover, going through the Income Tax Rules, 1962, the manual Form 10CCB is still not amended suitably to reflect/capture information and data prescribed to be filled in for an undertaking eligible for deduction u/s 801E (refer page 220-225 of Paper Book A.Y. 2020-21).

This online filing of Form 10CCB created confusion in the minds of the Assessing Authorities which is evident from the Notice DIN No-ITBA/AST/F/142(1)/2020-21/1030196443(1) dated 29.01.2021 (Refer Page-46-49 Paper Book A.Y. 2020-21) during the faceless assessment proceedings at National Faceless Assessment Centre for A.Y. 2018-19 as to under which section, the Appellant is claiming deduction and it was alleged therein that the appellant was claiming deduction wrongly. To which the Appellant filed a consolidated reply dated 23.02.2021.

3. In the above factual background, the appellant used exemption/deduction

benefits of its impugned new undertaking u/s 801E by e-filing its Returns of Income within due dates or extended due dates u/s 139(1) along with audit Report u/s 44AB in prescribed Form 3CA-3CD, Form 29B and Form 10CCB online up to A.Y. 2019-20.

4. Under prevailing facts and circumstances, The appellant was also advised vide letter dated 08.02.2021 to file suitably amended manual Form 10CCB for accommodation of particulars of deduction u/s 801E data on or before the final assessment proceedings for avoiding confusion in the minds of Assessing Officers due to online furnishing of Form 10CCB which did not contain relevant information for claiming deduction u/s 801E, based on the faceless assessment notice dated 29.01.2021. On receipt of the advice of the tax experts dated 08.02.2021, the Appellant stopped furnishing Form 10CCB online from A.Y. 2020-21 onwards within the prescribed/ specified due date and used to e-file only the followings within due date/ specified date

i. The return of income claiming deduction u/s 801E.

ii. Audit report u/s 44AB in Form 3CA-3CD mentioning 801E deduction at item No.33 and

iii. Audit report in Form 29B.”

Regarding the disallowance u/s 36(1)(va) of the Act, the Ld. AR averred that CBDT's Circular No. 37 of 2016 dated 02.11.2016 directs that any enhancement on account of sections 32 to 43 of the Act should be considered as part of income for considering any deduction u/s 801E (actually any deduction under Chapter VIA) of the Act. It was pointed out that this aspect was actually not adjudicated specifically by the Ld. Addl/JCIT(A) for AYs 2021-22 and 2022-23.

2.1 The Ld. DR, on the other hand, relied on the findings given in these impugned orders. He stated that for an assessee to claim any benefit u/s 801E of the Act it was required to file Form 10CCB within the stipulated time and not beyond.

3. We have carefully considered the rival submissions and have gone through the documents before us. We have also gone through the case laws relied upon by the Ld. AR. Right at the outset, it deserves to be mentioned that not giving an opportunity before making any adjustment,

as per the first and second provisos to section 143(1)(a) of the Act, itself would make the Ld. AO's order legally untenable, since the principle of natural justice is not only a matter of inference here but a necessary pre-condition to making any adjustments u/s 143(1)(a) of the Act. On this ground alone the assessee deserves to succeed. However, we find that even on the substantive issue of claim of deduction u/s 80IE of the Act, the case of the G.M. Knitting Industries, reported in 376 ITR 456 (SC) comes to the rescue of the assessee as the proposition that filing Form 10CCB within a stipulated date is not mandatory, but directory only. Accordingly, the G.M. Knitting case (supra) affirms this particular principle from the case of CIT Vs. AKS Alloys (P) Ltd. reported in 18 taxmann.com 25 (Mad). The relevant portion from this case law deserves to be extracted:

"5. In so far as it relates to the substantial question of law (1) is concerned, namely, whether the filing of audit report in Form 10CCB is mandatory, it is well settled by a number of judicial precedents that before the assessment is completed, the declaration could be filed. In fact, the said issue came to be decided by the Karnataka High Court in the case in CIT v. ACE Multitaxes Systems (P.) LTD. [2009] 317 ITR 207 (Kar.), wherein it was held that when a relief is sought for under Section 801B of the Act, there is no obligation on the part of the assessee to file return accompanied by the audit report, thereby, holding that the same is not mandatory. Therefore, it is clear that before the assessment is completed if such report is filed, no fault could be found against the assessee. That was also the view of the Delhi High Court in the case in CIT v. Contimeters Electricals (P.) Ltd. [2009] 317 ITR 249/ 178 Taxman 422 (Delhi), wherein the Delhi High Court, by following the judgements of the Madras High Court in CIT v. A.N. Arunachalam [1994] 208 ITR 481/ 75 Taxman 529 and in CIT v. Jayant Patel [2001] 248 ITR 199/ 117 Taxman 707 (Mad.) held that the filing of audit report along with the return was not mandatory but directory and that if the audit report was filed at any time before the framing of the assessment, the requirement of the provisions of the Act should be held to have been met.

6. That is also the consistent view of the other High Courts, including the High Court of Bombay in CIT v. Shivanand Electronics [1994] 209 ITR 63/ 75 Taxman 93 (Bom.), apart from Gujarat High Court in Zenith Processing Mills v. CIT [1996] 219 ITR 721 (Guj.) and Punjab and Haryana High Court in CIT v. Mahalaxmi Rice Factory [2007] 294 ITR 631/ 163 Taxman 565 (Punj. & Har).

7. The Calcutta High Court in the case in the CIT v. Berger Paints (India) Ltd. [2002] 254 ITR 503/[2003] 126Taxman 435 (Cal.) has also concurred with the said view which was followed by the Tribunal in this case."

Thus, it is clear that the assessee is covered by these case laws and

deduction u/s 80IE of the Act cannot be denied to him on the ground of delayed filing of Form 10CCB. Even otherwise, the assessee cannot be expected to do the impossible in terms of figuring out how to be fully compliant for any claim under u/s 80IE of the Act when there is some confusion about the modality of such filing, as has been averred by the Ld. AR (supra). For all these reasons, as discussed above, the assessee succeeds on this issue.

3.1 Regarding the issue of adjustment under section 36(1)(va) of the Act, it is clear that the clarificatory Circular No. 37/2016 (supra) leaves no room for any doubt that any adjustment therein needs to be considered as part of the quantum of income for computing relief u/s 80IE of the Act. The assessee, accordingly, succeeds on this ground also (pertaining to AYs 2021-22 and 2022-23).

4. In result, the appeals for all the three years are allowed on the substantive issues of claim of deduction u/s 80IE of the Act and considering of addition u/s 36(1)(va) of the Act for the purposes of deduction u/s 80IE of the Act.

Order pronounced on 17.11.2025

Sd/-
[Manomohan Das]
Judicial Member

Sd/-
[Sanjay Awasthi]
Accountant Member

Dated: 17.11.2025

AK, Sr. PS

Copy of the order forwarded to:

1. The Appellant
2. The Respondent
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches