

INCOME TAX APPELLATE TRIBUNAL: GAUHATI BENCH : GUWAHATI

In Virtual hearing

BEFORE SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

AND

SHRI SANJAY AWASTHI, HON'BLE ACCOUNTANT MEMBER

ITA No. 164 / GTY / 2024

AY: 2017-18

Shivam Pipe Industries Block-C, Dhanuka Complex S.J. Road, Athgaon Guwahati-781001 (Assam) PAN: ABQFS5413G	The ITO, Ward-2 (2), Guwahati
(Appellant)	(Respondent)

Assessee By:	S.P. Bhati, FCA
Department By:	Shri Kaushik Ray, JCIT
Date of Hearing:	28-07-2025
Date of Pronouncement:	03.09.2025

ORDER

PER MANOMOHAN DAS, JM

The assessee filed this appeal against the order of the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the "CIT(A)" dated 31.07.2024 passed under Section 250 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and pertains to the Assessment Year 2017-18.

2. The brief facts of the case are that, the assessee is a partnership firm and engaged in manufacture of articles and things in NER. The assessee filed its original return of income u/s 139(1) for the AY 2017-18 on 26.10.2017 declaring total income at Rs. Nil. During the year under consideration, the

assessee has shown income from business or profession of Rs. 41,39,786/- Rs. 97,721/- u/s 37 of the Act and Rs. 8,03,614/- from income from other sources. The case was selected for scrutiny through CASS to examine the issue on "Investments / advances / loans and Reduction in profit due to ICDS". Notices were issued to the assessee. The assessee, in response replied the same by filing necessary documents. Meanwhile, a rectification order was passed u/s 154 against the assessment order passed u/s 143(3) as there was mistake apparent from the record in allowing set off of business income of AY 2014-15 with brought forward business loss of AY 2013-14 and subsequent years. Due to this rectification, there was cascading effect of business loss and depreciation in the FY 2016-17 pertaining to AY 2017-18. Accordingly, there was no set off of depreciation available in AY 2017-18 as the brought forward unabsorbed depreciation were already been adjusted with earlier years' income. This has resulted in assessee's income of Rs. 41,39,786/- under the head business or profession. During the assessment proceedings, the assessee requested to give deduction u/s 80IE of the Act, being the assessee is engaged in manufacture of eligible articles and things in NER. Subsequently, the AO completed the assessment u/s 143(3) on 24.12.2019 by assessing at Rs. 41,39,786/- under the head business or Profession as the assessee did not claim the deduction in its return of income filed u/s 139 and failed to submit the Form 10CCB report along with the return

3. Being aggrieved, the assessee filed 1st appeal before the learned CIT(A). The Id. CIT(A) vide order dated 31.07.2024 dismissed the appeal of the assessee.

4. Being aggrieved, the assessee filed the present appeal before the Tribunal.

5. We observe that, the Id. CIT(A) dismissed the appeal of the assessee by observing that, the assessee did not furnish audit report and Form 10CCB along with the return of income. The observations of the Id. CIT(A) are as under:

"4.3. The matter has been examined and it is observed that the appellant did not claimed deduction u/s 80IE of the Act while filing its return of income u/s 139(1) of the Act for AY 2017-18 and also did not file Form 10CCB along with the return. However, the appellant filed Form 10CCB before the AO during the assessment proceedings and requested to allow the deduction u/s 80IE of the Act. It is seen that the appellant had tried to

claim the deduction u/s 80IE when the rectification order dated 26.09.18 reduced the carry forward business loss to nil. So, this is the fresh claim of the deduction before the AO during the assessment proceedings. This matter needs to be taken up in light of the provisions made in the Income Tax Act, 1961. It is seen that sec 80IE(6) prescribes that the provisions of the contained in sub-section (5) and sub-section (7) to (12) of sec 80IA shall apply to the eligible undertaking under this section. On perusal of sec 80IA(7) of the Act, it is seen that the conditions are prescribed in the section which states that the deduction shall not be admissible unless the accounts of the undertaking for the previous year for which the deduction is claimed have been audited by the accountant and the appellant furnishes such audit report in Form 10CCB along with its return of income. In the instant case, the appellant has not claimed the deduction in its ITR and has also not furnished Form 10CCB along with ITR. In fact, the claim of deduction u/s 80IE as well as Form 10CCB has been filed by the appellant during the assessment proceedings and through any return. Therefore, it is considered that the appellant has not complied with the provisions of the Act”.

6. The assessee has raised an additional ground which could not raised before the lower authorities due to over sight. The additional ground is as under:

“ For that under the facts & circumstances of the case, learned A.O. as well as CIT(Appeals) are not justified in not granting deduction u/s 80IE of the I.T. Act, 1961 on the ground that in the return of income filed u/s 139(1) on 26-10-2017 no deduction has been claimed even after knowing fully that it was an impossible task on the part of the Appellant as rectification for A.Y. 2014-15 was done on 26.09.2018”.

7. The Ld. AR submitted the reasons for not claiming the deduction while filing of the ITR u/s 139(1) of the Act. There was no profit eligible for claiming the deduction at that time. The assessee became eligible for claiming of the deduction u/s 80IE after passing of the rectification order u/s 154 of the Act which was nearly after 11 months from the time of filing of the return of income. On the other hand, the Ld. DR relies on the order of the Id. CIT(A).

8. We observe that, there was difficulty for the assessee for claiming of the deduction u/s 80IE of the Act at the time of filing of the return of income. Therefore, no claim was made in the return of income. The assessee became

eligible for claiming of the deduction only after passing of the rectification order u/s 154 of the Act which was made after 11 months after filing of the return of income. We further observe that, the purpose of the Income Tax Act, 1961 is calculation of tax correctly and paid the same by the assessee to the Revenue. Similarly, if any deduction is allowable to an assessee, the same cannot be denied without considering the genuine difficulties of an assessee.

9. In the instant case, the assessee brought to the notice of the assessee as to why he had not claimed the deduction at the time of filing of the ITR. Similarly, it was also brought to the notice of the authorities, why the deduction has been claimed. In our view, the case of the assessee ought to be considered keeping in mind the difficulties as brought to our notice also. Since, the case of the assessee is slightly different than any other case, the non-furnishing of audit report, Form 10CCB along with the return of income, the justice demands to consider this aspect in favour of the assessee. The Id. CIT(A) have referred certain case laws in support of his observations. The assessee also referred certain case laws in support of his claims.

10. In CIT v. Panama Chemical Works [2000] 245 ITR 684 (MP); CIT v. Trehan Enterprises 168 CTR (J&K) 274: 108 Taxman 189 (J&K) it has been held that if the audit report is not filed along with the return of income but it is made available to the AO before completion of the assessment, the benefit cannot be denied. Thus, we have considered the case of the assessee as certain exceptional elements are there about the non-claiming of the benefit at the time of filing of the ITR and claiming of the deduction thereafter for the ends of justice. Accordingly, we set aside the order of the Id. CIT(A) dated 31.07.2024 and allowed the appeal of the assessee. We direct the Revenue to allow the claim of the assessee. Thus, we decide the appeal of the assessee in his favour.

11. In the result, the appeals of the assessee is allowed.

12. Order pronounced in the open court on this 3rd day of September, 2025.

Sd/-
(Sanjay Awasthi)
Accountant Member

Date: 03 .09 .2025

Sd/-
(Manomohan Das)
Judicial Member

Copy forwarded to:-

1. Shivam Pipe Industries, Block-C, Dhanuka Complex, S.J. Road, Athgaon, Guwahati-781001 (Assam)
2. The ITO, Ward -2 (2), Guwahati
3. The Pr. CIT
4. The CIT(A)
5. The DR
6. Guard file

By Order

Assistant Registrar
ITAT, Guwahati / Kolkata