

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
&  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 5814/Del/2016  
Assessment Year: 2008-09**

Doosan Power Systems India P. Ltd. 16 <sup>th</sup> Floor, DLF Square Building, Jakranda Marg, DLF Phase-III, Gurgaon. <b>PAN No. AACCD2754M</b>	vs	DCIT Circle 7(1) New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Assessee by</b>	<b>Shri K.M. Gupta, Adv.</b>
<b>Revenue by</b>	<b>Ms. Ashima Neb, Sr. DR</b>

<b>Date of Hearing</b>	<b>23.05.2019</b>
<b>Date of Pronouncement</b>	<b>23.05.2019</b>

**ORDER**

**PER SHRI N.K. BILLAIYA, A.M.**

This appeal by the assessee is preferred against the order of the CIT(A)-37, New Delhi dated 08.09.2016 pertaining to AY 2008-09. The grievance of the assessee reads as under:

- 1. "That on the facts and in the circumstances of the case and in law, the orders passed by Ld. Deputy Commissioner of Income-tax, Circle 7(1), New Delhi under section 154/143(3) of the Income-tax Act, 1961 and the order passed by the Ld. CIT(Appeals)-37, New Delhi were bad in law and are liable to be quashed.*
- 2. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred by failing to appreciate*

*that claiming deduction u/s 10A of the Act before setting off the brought forward loss is a debatable issue and, therefore, cannot be construed as a mistake apparent from record.*

- 3. That the order passed by the Ld. CIT(A) is without justification and invalid as the Ld. CIT(A) has erred in upholding the order of the Ld. AO, passed u/s 154 of the Act, on different ground which is not the subject matter of appeal before him and passed the impugned order in complete violation of the principles of natural justice.*
- 4. On merit, the Ld. AO/CIT(A) has erred in setting off of brought forward losses of earlier years with the profit of the undertaking for the year under consideration without appreciating the change in provisions of section 10A(6) of the Act brought about by Finance Act, 2003 w.e.f. April 1, 2001.*

*That the above-mentioned grounds are independent and without prejudice to each other.*

*That the Appellant prays that it may be allowed to add, amend, alter or delete the above grounds of appeal before or during the course of hearing.”*

2. The roots of the grievance lie in the assessment order framed u/s 154 of the Act. In this case, the assessee had claimed deduction u/s 10A of the Act and the deduction was set off against the brought forward losses. The Assessing Officer was of the opinion that the brought forward losses should be set off before claiming deduction u/s 10A while computing income of the assessee. Accordingly, the assessment order dated 15.10.2012 was rectified.

3. The assessee agitated the matter before CIT(A) but without any success. A perusal of the order of the CIT(A) shows that he has simply extracted the order of the Tribunal in ITA Nos. 104 &

105/Del/2011 dated 27.02.2015 and dismissed the appeal of the assessee.

4. Before us, the Counsel for the assessee submitted that the decision of the Tribunal in the case of Tecnovate E-solutions Pvt. Ltd., which was relied upon by the CIT(A) has been reversed by the Hon'ble High Court of Delhi.

5. Since the decision, which was the basis for the dismissal of the appeal by the CIT(A) has been reversed by the Hon'ble High Court of Delhi. We are of the considered view that in the interest of justice, the CIT(A) should now decide the appeal of the assessee afresh after giving a reasonable opportunity of being heard to the assessee. The appeal is restored to the file of the CIT(A) accordingly.

6. In the result, the appeal is treated as allowed for statistical purpose.

Order pronounced in the open Court.

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Dated: 23/05/2019

\*Kavita Arora

Sd/-  
**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	23.05.2019
Date on which the typed draft is placed before the dictating Member	23.05.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	23.05.2019
Date on which the fair order is placed before the Dictating Member for pronouncement	23.05.2019
Date on which the fair order comes back to the Sr. PS/PS	23.05.2019
Date on which the final order is uploaded on the website of ITAT	23.05.2019
Date on which the file goes to the Bench Clerk	23.05.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	