

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DEHRADUN BENCH "DB", DEHRADUN**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER
(Through Video Conferencing)**

ITA No.6710/DEL/2017
Assessment Year: 2014-15

M/s. Solar Turbines International Company (Singapore Branch of solar Turbines International Company, USA), M/s. Deloitte Haskins & Sells Deloitte Centre, Anchorage II, #100/2, Richmond Road, Bangalore -560025	Vs.	DCIT, International Taxation, Cirrcle-2, Dehradun
PAN: AAJCS3585J		
(Appellant)		(Respondent)

Assessee by	None
Department by	Sh. A.S. Rana, Sr. DR

Date of hearing	16.01.2026
Date of pronouncement	30.03.2026

ORDER

PER SATBEER SINGH GODARA, JM:

This assessee's appeal for assessment year 2014-15, arises against the Commissioner of Income Tax (Appeals)-2 [in short, the "CIT(A)"], Noida's order dated 14.06.2017 passed in case No. 129/CIT(A)-2/2016-17, involving proceedings under section

143(3)/144C(3)(b) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

Case called twice. None appears at the assessee's behest. It is accordingly proceeded *ex-parte*.

2. This assessee's appeal raises the following substantive grounds:

1. Non-rectification of mistake apparent on record

a) The learned Commissioner of Income-tax (Appeals) [CIT(A)] erred in holding that when an issue is decided by passing a speaking order, such order cannot be modified.

b) The learned CIT(A) erred in holding that the Appellant had not indicated any mistake apparent from record in the order dated 14 June 2017 despite the fact that the learned CIT(A) was apprised of the erroneous levy of surcharge and education cess on rates considered as per Double Taxation Avoidance Agreement ('DTAA') vide the rectification application.

c) The learned CIT(A) erred in not appreciating that when a specific provision of the Income-tax Act, 1961 ('the Act') is not applied while passing an order, it constitutes a mistake apparent on record.

d) The learned CIT(A) therefore erred in concluding that the Appellant is seeking modification of the order in the garb of rectification without appreciating that provisions of section 90(2) of the Act providing for application of beneficial rate of tax as per DTAA had not been applied and hence constituted mistake apparent on record.

c) The learned CIT(A) erred in not upholding justice by adjudicating on merits of the rectification application.

2 Erroneous levy of surcharge and education cess

a) The learned CIT(A) erred in upholding the levy of surcharge and education cess on income from troubleshooting services which is chargeable to tax at special rate of 15% as per India-USA Double Taxation Avoidance Agreement ('DTAA').

b) The learned CIT(A) erred in not appreciating that as per para 1(b)(i) of Article 2 of India-USA DTAA, tax has been defined to cover income tax including any surcharge thereon.

c) The learned CIT(A) erred in not considering circular 728 dated 30 October 1995 which provides for application of rates as per DTAA or the relevant Finance Act whichever is beneficial to the assessee.

d) The learned CIT(A) erred in not following the binding decision of the jurisdictional Honourable Income-tax Appellate Tribunal, Delhi in the case of OSRAM India Pvt. Ltd v. DCIT, CPC-TDS [ITA 4052/Del./2015]

The Appellant craves leave to add, alter, amend or delete any or all the grounds of appeal on or before the date of hearing.”

3. We next notice with the able assistance coming from the Revenue side that the assessee/appellant is aggrieved against the learned CIT(A)'s order dated 30th August, 2017 rejecting its section 154 rectification as devoid of merits. There does not appear to be much a dispute between the parties that; be it the Assessing Officer's assessment dated 13.02.2017 framed by the DCIT (International Taxation), Circle-2, Dehradun or the CIT(A)'s first round order dated 14.06.2017, had rejected the assessee's stand seeking to claim exemption from levy of surcharge and education cess as per Article 2(1)(b)(i) of the Indian – USA Double Taxation Avoidance Agreement “DTAA” hereinafter. And that the assessee thus preferred its section 154 rectification before the CIT(A) after his aforesaid former lower appellate order that he had failed to examine the entire issue appropriately as per law. Learned CIT(A)'s

impugned order dated 30.08.2017, on the other hand, has declined the same for the precise reason that such a reappraisal in the garb of modification/rectification; as the case may be, could not be allowed.

This is what leaves the assessee aggrieved.

4. We deem it appropriate at this stage to clarify here that the assessee's Form 36 filed in the instant appeal in column (2) categorically states that the relevant proceedings herein are under section 154 r.w.s. 250(6) of the Act. There is further no denial to the fact that the learned CIT(A)'s detailed discussion; whilst dealing with its second substantive ground; in para 5.13 at page 9 onwards, in the former order dated 14.06.2017, had duly rejected its contention that India - USA DTAA in Article 2(b)(i) & (ii) stipulated non-exemption from claiming surcharge and education cess in question. We thus find merit in the Revenue's vehement contentions that the CIT(A)'s impugned rectification order has rightly rejected the assessee's application to the very effect going by T. S. Balaram, ITO v Volkart Bros (1971) 82 ITR 40 (SC). And that the

hon'ble jurisdictional high court in (2008) 216 CTR 86 (Uttaranchal) CIT Vs. Arthusa Offshore Co. has decided the very issue of surcharge and education cess "applicability" under the India -USA DTAA against the assessee and in the department's favour as well. We thus see no merit in the assessee's sole substantive grounds raised which fails in very terms with a rider that it shall indeed be at liberty to institute afresh appeal against the CIT(A)'s above former order; as per law, if so advised.

5. This assessee's appeal is dismissed.

Order pronounced in the open court on 30th March, 2026

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 30th March, 2026.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi