

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI BENCH 'B',
NEW DELHI

BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 2009/DEL/2016
Assessment Year: 2012-13

Vega Investment & Leasing Co.
Pvt Ltd.
K - 39, Connaught Place
New Delhi

Vs.

The D.C.I.T
Circle - 26 (1),
New Delhi

PAN No. : AAACV 2264 Q

(APPELLANT)

(RESPONDENT)

Appellant by : Shri Vinod Kumar Bindal, CA
Ms. Rinky Sharma, ITP.

Respondent by : Ms. Ashima Neb, Sr. DR

Date of hearing: 19/02/2019

Date of Pronouncement: 20/02/2019

ORDER

PER N. K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 9, New Delhi dated 29.02.2016 pertaining to A.Y 2012-13.

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in confirming the disallowance of Rs. 1,03,740/- made u/s 14A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] r.w.r 8D of the Rules.

3. Briefly stated, the facts of the case are that the assessee filed return of income electronically, on 26.09.2012, which was selected for scrutiny assessment. During the course of scrutiny assessment proceedings, the assessee was asked to submit as to why the expenses in respect of investment may not be disallowed u/s 14A of the Act r.w.r 8D of the Rules. The Assessing Officer, accordingly, computed the disallowance at Rs. 1,03,740/- without recording any satisfaction in respect of suo moto disallowance made by the assessee amounting to Rs. 25,308/-.

4. The assessee carried the matter before the ld. CIT(A) but without any success.

5. Before us, the ld. counsel for the assessee stated that without recording any satisfaction and without considering the suo moto disallowance made by the Assessing Officer, the Assessing Officer has

computed the disallowance u/s 14A r.w.r 8D which is against the ratio laid down by the Hon'ble Supreme Court in the case of Maxopp Investment Ltd 91 Taxmann.com 154..

6. Per contra, the ld. DR pointed out that the assessee himself has agreed for disallowance, therefore, the contentions of the assessee are baseless.

7. We have heard the rival submissions and have given thoughtful consideration to the orders of the authorities below. Exhibit 16, which is computation of income of the assessee, clearly shows that while computing its taxable income, the assessee has made disallowance of Rs. 25,308/-. The assessment order is completely silent on such suo moto disallowance made by the assessee. Moreover, the Assessing Officer has nowhere recorded his satisfaction whether the suo moto disallowance made by the assessee is not sufficient.

8. Hon'ble Supreme Court in the case of Maxopp Investment [supra] has laid down the following ratio:

"41. Having regard to the language of Section 14A(2) of the Act, read with Rule 8D of the Rules, we also make it clear that before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, suo moto disallowance under Section 14A was not correct. It will be in those cases where the assessee in his return has himself apportioned but the AO was not accenting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect. Further, while recording such a satisfaction, nature of loan taken by the assessee for purchasing the shares/making the investment in shares is to be examined by the AO."

9. In the light of the ratio laid down by the Hon'ble Supreme Court [supra] we are of the considered opinion that the disallowance made by the Assessing Officer is without recording satisfaction and deserves to be deleted. We, accordingly, direct the Assessing Officer to delete the impugned disallowance.

10. In the result, the appeal of the assessee in ITA No. 2009/DEL/2016 is allowed.

Order pronounced in the open court on 20.02.2019.

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Sd/-

**(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

Date: 20.02.2019

VL/

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	11.01.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	