

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES 'E', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member  
&**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 406/Del/2017 : Asstt. Year : 2012-13**

DCIT, Circle-16(1), New Delhi	Vs	M/s Mahagun Real Estate Pvt. Ltd., B-66, 1 <sup>st</sup> Floor, Vivek Vihar, New Delhi-110095
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAFCM4203R</b>		

**Assessee by : Sh. Soubhagya Agarwal, Adv.  
Revenue by : Ms. Rinku Singh, Sr. DR**

**Date of Hearing: 08.07.2019**

**Date of Pronouncement: 09.07.2019**

**ORDER**

**Per B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the Revenue against the order of the Ld. CIT(A)-6, Delhi dated 07.11.2016.

**2. The Revenue has raised the following grounds:**

*"1. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance of Rs.52,89,427/- u/s 14 A r.w. R 8D of the Income Tax Act 1961 (the Act) without considering legislative intend of introducing section 14A by the Finance Act 2001 as clarified by the CBDT Circular No. 5/2014 dated 10.02.2014?"*

*2. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance of Rs.52,89,427/- u/s 14A of the Act by ignoring legislative intend of section 14A that disallowance u/s 14A of the Act is not dependent upon earning of exempt income as explained vide CBDT Circular No. 5/2014 dated 10.02.2014?"*

*3. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the disallowance of Rs. 52,89,427/- u/s 14 A of the Act without considering legal principle that allowability or disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT Vs Rajendra Prasad Moody (1978) 115ITR 519?"*

*4. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in not upholding the disallowance u/s 14A r.w. R 8D of the Income Tax Act 1961 amounting to Rs. 52,89,427/- without considering ratio*

*decidendi as upheld in cases of CIT vs Walfort Share and Stock Brokers P Limited (2010) 326 ITR 1 (SC) and Maxopp Investment Vs CIT [2012] 347 ITR 272 (Delhi) on application of provisions of section 14 A of the Act?"*

3. According to Circular No. 03/2018 dated 11/07/2018, the CBDT in supersession of earlier instructions has directed that department's appeals before ITAT shall not be filed in cases where the tax effect does not exceed the monetary limit of Rs. 20 lacs. The tax will not include any interest thereon. It is further clarified that if in the case of an assessee, disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of disputed issues exceeds the monetary limit so specified.

4. Admittedly, in the departmental appeal, the tax effect is less than Rs. 20 lacs, therefore, departmental appeal is not maintainable. The Ld. DR could not bring to our notice any exceptions mentioned in the said Circular.

5. In the result, the appeal of the Revenue is dismissed.

(Order pronounced in the open Court on 09.07.2019)

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 09/07/2019**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**