

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.1374/Del/2019, A.Y. 2015-16

ITO, Ward-15(3) New Delhi	Vs.	M/s. Logix Buildtech Private Limited, 85, Ground Floor, World Trade Centre Barakhamba Road, New Delhi- 110001
(APPELLANT)		(RESPONDENT)

Assessee by	None
Revenue by	Shri Jeetender Chand, Sr. DR

Date of hearing:	19.09.2022
Date of Pronouncement:	19.09.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Revenue against order dated 26.11.2018 passed in appeal no. Del/CIT(A)-5/0257/2017-18 for assessment year 2015-16 by Commissioner of Income Tax (Appeals)-5, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 29.12.2017 u/s 143(3) of the

Income Tax Act, 1961 (hereinafter referred to as 'the Act') passed by ITO, Ward-15(3), Delhi.

2. The facts in brief are assessee company is engaged in the activities of real estate business. A survey operation u/s 133A was conducted by investigation wing, Gurgaon on 29.05.2014. The case of assessee was taken up for limited scrutiny. The company submitted that the year under consideration, no construction has been started and the all the expenses have been booked under work in progress, being capitalized. Assessee has shown lease rent Rs. 4,11,31,849/- and interest to Noida Authority Rs. 31,94,27,498/-. When details of interest paid by the assessee were inquired u/s 133(6) from Noida Authority it was found that normal interest @ 11%, Rs. 9,71,44,878/- had become due and Rs. 2,78,01,838/- @ 3% per month being penal interest was payable. Accordingly, a notice u/s 142(1) of the Act was issued to the assessee to show cause why penal interest may not be disallowed. The Ld. AO observed that assessee had made only book entries though no actual payment of interest has been made. Further, Ld. AO observed that only Rs. 17,45,55,175/- interest expense for the year under consideration has accrued and as assessee was maintaining accounts on mercantile basis, expenses were not admissible. Further, Rs. 2,78,01,838/- was a penal interest, so Ld AO disallowed the same.

3. Ld. CIT(A) observed that the interest although penal in nature is not out of any offence or any prohibition under law but relates to delay in payment of lease amount. Also interest has been capitalized as work in progress, therefore, deleted the disallowances and directed the same to be capitalized under the project expenses.

4. The Revenue is in appeal raising following grounds :-

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law in deleting the disallowance of

Rs. 2,78,01,838/- on account of Penal Interest to New Okhla Industrial Development Authority and in directing the AO not to reduce the said amount and allow it to be capitalized under project expenses.

2. *The appellant craves to be allowed to add any fresh ground(s) of appeal and/ or delete or amend any of the ground(s) of appeal.”*

5. Heard and perused the record.

6. At the time of hearing, non-appeared for the assessee and the record shows earlier on 16.06.2022 also non-appeared. The notices issued for today have been received back with the report of addressee having left the premises. No other address is available. No more notice is justified. Arguments of Id. DR were heard who supported the observations and findings of Ld. AO and submitted that Ld. CIT(A) had fallen in error make in the deletion while the AO had rightly concluded that since expenses have not been claimed during the year under consideration but has only been capitalized under the head project expenses, penal interest cannot be disallowed.

7. Giving thoughtful consideration to the matter on record the Bench is of considered opinion that the penal interest arises out of default in payment of installment / lease rent as per the schedule agreed and the normal interest along with penal interest compounded half yearly was agreed to be paid on the default amount and for the default period as an exception, otherwise the ordinary outcome of default was a cancellation of allotment. Thus, the Id. CIT(A) was correct in observations that this interest is not payable on account of any offences or any prohibition in law or any infraction of law but relates to delay in payment of the lease amount as per the agreement.

8. Further, the Bench is of considered view that the once the assessee has capitalized all the expenses in regard to work in progress, no distinction can be

made between ordinary interest and penal interest for the purpose of capitalization. Thus, there is no merit in the grounds raised by revenue.

9. The appeal of revenue is dismissed.

Order pronounced in the open court on 19th September, 2022.

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

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 19.09.2022

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI