

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H" DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
&  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A. No.8994/DEL/2019  
Assessment Year 2014-15

M/s. Tupelo Constructions Pvt. Ltd., 875, Sector-17B, Gurgaon.	Vs.	JCIT (OSD), Circle-25(2), New Delhi.
TAN/PAN: AAECT3335J		
(Appellant)		(Respondent)

Appellant by:	Shri Manoj Kumar, AR		
Respondent by:	Shri Pradeep Gautam, Sr.D.R		
Date of hearing:	20	10	2022
Date of pronouncement:	03	11	2022

**ORDER**

**PER SHAMIM YAHYA, A.M.**

This appeal by the Assessee is directed against the order of the Commissioner of Income Tax (Appeals)-IX, Delhi ('CIT(A)' in short) dated 31.10.2019 pertaining to Assessment Year 2014-15.

2. Grounds of appeal read as under:

*"1. That the Honorable CIT(A)-9 has erred in law and on facts in sustaining the penalty of Rs.8,12,254/- out of total penalty of Rs.88,25,040/- on untenable and illegal grounds. Hence, the penalty as such may be deleted."*

3. The assessee has raised an additional ground submitting that penalty is also not sustainable inasmuch as relevant limb in the penalty notice was not marked.

4. Brief facts of the case leading to the levy of penalty in this case are as under.

4.1 During the year under consideration, the Assessing Officer has disallowed the sum of Rs.3,92,89,856/- being interest paid to bank on the ground that it is not for the purpose of assessee's own business.

5. Against the above order of the Assessing Officer, the assessee appealed before the Id. CIT(A) who sustained the addition. Thereafter, the assessee appealed before the ITAT. The ITAT in its order considerably reduced the addition by directing as under:

*“5.2 In such circumstances, in our considered opinion, the Assessing Officer ought to have restricted the computation of disallowance to the extent of Rs.2.72 crores being the difference between the interest free funds available of Rs.12 crores and investment in OCDs of Rs.14.72 crores. The Assessing Officer is accordingly directed to re-compute the disallowance of interest on the differential amount of 2.72 crores.”*

6. The Assessing Officer has made a levy of penalty on the entire amount of disallowance of Rs.3,92,89,856/-. The penalty imposed was Rs.88,25,040/-. The Id. CIT(A) gave relief to the assessee to the extent of deduction granted by the ITAT in the quantum proceedings but he upheld the penalty in principal. The concluding part of the Id. CIT(A) order reads as under:

*“5.13 Now, coming on to Ground No.2 of the appellant, I find merit in this contention, since the Hon'ble ITAT has clearly directed the disallowance of interest to be computed on Rs.2.72*

*crores, which, as per appellant's submission, works out to be Rs.26,28,655/-. Therefore, in this regards, the Assessing Officer is directed to recomputed the amount of addition consequential to the advances of Rs.2.72 crores, as has been upheld by the Hon'ble Tribunal, and to levy a penalty on such disallowance."*

7. Against this order, the assessee has filed appeal before the ITAT.

8. We have heard the parties and perused the records available on record. Upon careful consideration, we note that the ground raised by the assessee is regarding the sustenance of penalty of Rs.8,12,254/- out of the penalty of Rs.88,25,040/-. As regards the additional ground, the assessee has challenged that the relevant limb of the notice has not been marked to specify the charge. We note that the assessee has submitted the copy of said notice in the paper book. We note that in the said notice it is not specified as to whether the penalty is to be levied for concealment of income or furnishing of inaccurate particulars of income. However, the Id. DR in this regard pleaded that whether relevant limb in the notice has been duly marked or not is a factual matter. Therefore, the issue may be remitted to the file of the Assessing Officer to verify and act as per law. We find considerable cogency in the submission. The assessee has appealed against the penalty of Rs.8,12,254/- which remained after the ITAT order in quantum proceedings. The additional ground raised by the assessee is a legal issue. Hence, we permit the additional ground to be raised and as requested by the Id. DR, we remit the issue to the file of the Assessing Officer. The Assessing Officer shall factually verify whether the Assessing Officer has specified the relevant limb in

the penalty notice or not. In case the relevant limb was not specified, the penalty will be liable to be deleted.

9. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

**Order pronounced in the open Court on 03/11/2022.**

**Sd/-**

**[ANUBHAV SHARMA]  
JUDICIAL MEMBER**

DATED: **03/11/2022**

*prabhat*

**Sd/-**

**[SHAMIM YAHYA]  
ACCOUNTANT MEMBER**