

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 5275/Del/2016 (A.Y 2007-08)

And

I.T.A. No. 5276/DEL/2016 (A.Y 2008-09)

DCIT, Circle – 13(1), C.R. Building, New Delhi (APPELLANT)	Vs	J. C. Decaux Advertising (India) Pvt. Ltd., 231, Okhla Industrial Estate, Phase-III, New Delhi (PAN : AABCJ 6312 Q) (RESPONDENT)
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Appellant by	Shri J. K. Mishra, CIT-D.R.
Respondent by	Shri K. M. Gupta, Adv.

Date of Hearing	08.01.2020
Date of Pronouncement	14.01.2020

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the Revenue against the order of the Commissioner of Income Tax [Appeals]-5, Delhi dated 31.08.2016 for Assessment Years 2007-08 & 2008-09

2. The Grounds of appeal are as under:-

ITA No.5275/Del/2016 :

1. *That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the penalty of Rs. 6,18,20,680/-, imposed u/s 271(1) (c) of the Income Tax Act, 1961.*
2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the expenditure incurred on*

construction of Bus Queue Shelter is actually capital in nature and penalty levied u/s 271(1)(c) was levied on the same and is warranted.

3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty imposed u/s 271(1)(c), not appreciating the fact that the claim of the assessee in relation to expenditure incurred on construction of Bus Queue Shelter is of capital nature. The assessee too did not press the ground before the Hon'ble ITAT, which tantamount to concealment or furnishing of inaccurate particulars of income U/s 271(1)(c) of the Income Tax Act, 1961.*
4. *That the grounds of appeal are without prejudice to each other.*
5. *That the appellant craves leave to add, alter, amend or forego any grounds(s) of the appeal raised above at the time of the hearing."*

ITA No.5276/Del/2016 :

1. *That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in deleting the penalty of Rs. 6,10,24,618/-, imposed u/s 271(1) (c) of the Income Tax Act,1961.*
 2. *That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating that the expenditure incurred on construction of Bus Queue Shelter is actually capital in nature and penalty levied u/s 271(1)(c) was levied on the same and is warranted.*
 3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty imposed u/s 271(1)(c), not appreciating the fact that the claim of the assessee in relation to expenditure incurred on construction of Bus Queue Shelter is of capital nature. The assessee too did not press the ground before the Hon'ble ITAT, which tantamount to concealment or furnishing of inaccurate particulars of income U/s 271(1)(c) of the Income Tax Act, 1961.*
 4. *That the grounds of appeal are without prejudice to each other.*
 5. *That the appellant craves leave to add, alter, amend or forego any grounds(s) of the appeal raised above at the time of the hearing."*
3. The assessee is engaged in the business of providing 'out-of-home' advertising solutions and specializes in street furniture and bill boards at public place, such as airports, railway stations, bus stands, metros, public

utilities etc. For the A.Y. 2007-08, the assessee filed the return of income on 14.11.2007 declaring total income of Rs.8,88,191/-. The assessee filed revised return on 31.03.2009 declaring loss of Rs.21,45,65,137/- after claiming an expenditure of Rs.18,36,62,148/- spent on account of construction of Bus-Queue-Shelters (BQS) as revenue expenditure u/s 37 of the Act. In so far as the A.Y. 2008-09 was concerned, the assessee filed return of income on 30.09.2008 declaring total income of Rs.6,26,438/- and current year business losses of Rs.15,53,72,072/-. The Assessee filed revised return on 21.09.2009 declaring loss of Rs.16,31,76,231/- after claiming an expenditure of Rs.17,95,36,978/- spent on account of construction of Bus-Queue-Shelter as revenue expenditure u/s 37 of the Act. Assessment was completed u/s 143(3) of the Act for A.Y. 2007-08 determining an income of Rs.8,88,191/- on 21.12.2009 as against the returned loss of Rs.21,46,55,082/- after making a disallowance of Rs.3,17,91,180/- on account of pre-commencement expenditure and disallowing the expenditure incurred on construction of BQS for and on behalf of NDMC of Rs.18,36,62,148/- as capital expenditure as well as pre-commencement expenditure. Assessment for A.Y. 2008-09 was completed vide order dated 27.12.2010 after making disallowance of the expenditure incurred on construction of BQS for and on behalf of NDMC and MMRDA of Rs.17,95,36,978/- as capital expenditure. The loss was recomputed for A.Y. 2008-09 at Rs.7,04,15,666/- as against declared loss of Rs.16,31,76,231/-. Following the completion of the assessments and the orders of the CIT(A) & ITAT, the Assessing Officer proceeded to levy the penalties u/s 271(1)(c) of the Act, 1961. The Assessing Officer observed that the Act of the Assessee was a deliberate Act to furnish inaccurate particulars of income which levy to rebate the income, therefore, the Assessing Officer levied penalty u/s 271(1)(c) of the Act.

4. Being aggrieved by the penalty order, the assessee filed an appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee in both the assessment year.

5. The Ld. DR submitted that the Ld. CIT (A) erred in deleting the penalty of Rs. 6,18,20,680/-, imposed u/s 271(1) (c) of the Income Tax Act,1961 and not appreciating that the expenditure incurred on construction of Bus Queue Shelter is actually capital in nature and penalty levied u/s 271(1)(c) was levied on the same and is warranted. The Ld. DR further submitted that the assessee too did not press the ground before the Tribunal in quantum which tantamount to concealment or furnishing of inaccurate particulars of income U/s 271(1)(c) of the Income Tax Act, 1961.

6. The Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant materials available on record. The CIT(A) has given a reasoned and detailed order as to why the penalty cannot be levied u/s 271(1)(c) as there is a deference of opinion on the issue of expenditure incurred on BQS whether it is capital or revenue. There is no case of the revenue that the assessee filed inaccurate particulars of income or concealed the income, as all the details in the original return as well as in the revised return was placed before the Assessing Officer. Merely changing the stand as to how the trade income/expenditure as to be taken as capital or revenue, does not amount to furnishing of inaccurate of particulars or concealment of income. Therefore, the CIT(A) was right in deleting the penalty. There is no need to interfere with the findings of the CIT(A). The facts are identical in A.Y. 2008-09 as well. Therefore, both the appeals of the revenue are dismissed.

8. In result, appeals of the revenue are dismissed.

Order pronounced in the Open Court on 14th day of January, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 14/01/2020
*Priti Yadav, Sr. PS **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	10.01.2020
Date on which the typed draft is placed before the dictating Member	13.01.2020
Date on which the typed draft is placed before the Other Member	14.01.2020
Date on which the approved draft comes to the Sr. PS/PS	14.01.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	14.01.2020
Date on which the fair order comes back to the Sr. PS/PS	14.01.2020
Date on which the final order is uploaded on the website of ITAT	14.01.2020
Date on which the file goes to the Bench Clerk	14.01.2020
Date on which the file goes to the Head Clerk	