

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.5522/Del/2017
(ASSESSMENT YEAR 2012-13)**

Add. CIT, Special Range-5, New Delhi	Vs.	M/s J C Decaux Advertising India (P) Ltd. 231, Okhla Industrial Estate, Phase-III, New Delhi-110 020 PAN -AABCJ 6312Q
(Appellant)		(Respondent)

Appellant By	Ms. Anima, Sr. DR
Respondent by	Sh. K.M. Gupta, Adv.
Date of Hearing	12.07.2021
Date of Pronouncement	12.07.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the Department against order dated 20.06.2017 passed by the Learned Commissioner of Income Tax (Appeals)-36, New Delhi {CIT(A)} for Assessment Year 2012-13. The sole issue under challenge is deletion of penalty of

Rs.87,94,892/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called 'the Act').

2.0 The brief facts of the case are that the assessee is engaged in the business of 'out-of-home' advertisement consisting of street furniture (such as advertising on bus shelters, public utilities, lots, cycle stands, auto stands etc.) billboards and transportation (such as advertising in airports, railway stations, metros, bus stands, vehicles etc.). The assessee company had capitalized expenditure incurred on Bus Queue Shelters (BQS) in its books of accounts and had claimed depreciation thereon. However, for Income Tax purposes such expenditure was claimed as Revenue expenditure u/s 37 of the Income Tax Act, 1961 in the return of income. The Assessing Officer completed the assessment after making disallowance on account of expenditure on construction of BQS as capital expenditure. In Assessment Years 2007-08 and 2008-09 also the Assessing officer had made similar additions on account of such expenditure of construction of BQS which was confirmed by the Ld. CIT(A). Although the assessee company had filed appeals against such additions before this Tribunal (ITAT), the

company chose not to press the grounds before the ITAT. Subsequently, the Assessing Officer imposed penalty u/s 271(1)(c) of the Act on such quantum addition. The assessee challenged the imposition of penalty before the Ld. CIT(A) in Assessment Years 2007-08 and 2008-09 and the Ld. CIT(A) deleted the penalties imposed. It is further seen that the Department's appeals before the ITAT against the order of the Ld. CIT(A) deleting the penalty in Assessment Year 2007-08 and 2008-09 in ITA Nos. 5275/Del/2016 and ITA No.5276/Del/2016 respectively vide order dated 14.01.2020 were dismissed by the Co-ordinate Bench of this Tribunal by upholding the order of the Ld. CIT(A). The Ld. Authorized Representative (AR) while referring to the said order of the Tribunal has placed reliance on the same and has submitted that on identical facts, the penalty in the impugned year has been deleted by the Ld. CIT(A). Per contra, the Ld. Sr. Departmental Representative (DR) has fairly accepted that the issue was covered in favour of the assessee by the order of the Tribunal.

3.0 Having heard both the parties and after having gone through the order of the Tribunal, if we note that identical issue had arisen before this Tribunal in Assessment Year 2007-08 and 2008-09 in assessee's own case in ITA No.5275/Del/2016 and 5376/Del/2014 respectively and the Department's appeals against the deletion of the penalty imposed in these two years to Assessment Years were dismissed by this Tribunal vide order dated 14.01.2020. The relevant facts and the observations of the Coordinate Bench of the Tribunal are contained in paragraphs 3,4,5,6 and 7 of the said order and the same are being reproduced herein under for a ready reference:

"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(l)(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(l)(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(l)(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(l)(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.”

3.1 In the present year under appeal, the Ld. Sr. DR has fairly accepted that the facts in Assessment Years 2007-08 and 2008-09 were identical. Accordingly, we uphold the order of the Ld. CIT(A) and dismiss the appeal of the Department.

4.0 In the final result, the appeal of the Department stands dismissed.

Above decision was announced on conclusion of Virtual Hearing on 12th July, 2021.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 12/07/2021
PK/Ps

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI