

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C" MUMBAI  
BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1516/MUM/2020  
(Assessment Year: 2009-10)**

Income Tax Officer-9(2)(3)  
Room No. 669A, 6<sup>th</sup> Floor,  
Aayakar Bhavan ,M.K. Road,  
Mumbai – 400 020

M/s Creative Awards & Rewards  
Vs. Pvt. Ltd., 1/B, Dashmesh Colony,  
Four Bungalow Road, Andheri  
West, Mumbai – 400 058.

**PAN No. AAACC9859N**

**(Revenue)**

**(Assessee)**

Assessee by	:	Shri Keshav Bhujle, A.R
Revenue by	:	Shri R.A Dhyani, D.R
Date of Hearing	:	28/10/2021
Date of pronouncement	:	29/10/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-16, Mumbai dated 27.04.2018, which in turn arises from the penalty imposed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 23.03.2018. The revenue has assailed the impugned order on the following effective grounds of appeal before us:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty u/s 271(1)(c) to the tune of Rs. 1,78,640/- without appreciating the fact that the Ld. CIT(A) has upheld the quantum addition on account of bogus purchases?
2. Whether on the facts and in the circumstances of the case and in law , the Ld. CIT(A) is justified in not appreciating the fact that the case falls within the purview of Section 271(1)(c) of the I.T Act, 1961?
3. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.”

2. Briefly stated, the assessee company which is engaged in the business of trading of awards, trophies, gift articles & novelties had e-filed its return of income for A.Y 2009-10 on 30.09.2009, declaring a total income of Rs.9,69,710/-. Subsequently, on the basis of information received from the DGIT(Inv.), Mumbai, that the assessee as a beneficiary had obtained accommodation bills of purchases, its case was reopened under Sec. 147 of the Act. In compliance to the notice issued under

Sec. 148 of the Act, the assessee requested that its original return of income may be treated as a return filed in response thereto.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed to have made purchases from the following six tainted parties:

Sr. No.	TIN No. of the Hawala Party	Hawala Biller Name	Amount
1.	27660591188V	M/s Saileela Trading Pvt. Ltd.	Rs. 10,93,490/-
2.	27810614822V	M/s Blue Moon Trading Pvt. Ltd.	Rs. 1,88,769/-
3.	27710551730V	M/s M.R Corporation	Rs. 29,546/-
4.	27580551753V	M/s Sun Enterprises	Rs. 16,80,234/-
5.	27430616389V	M/s Navpad Exports Pvt. Ltd.	Rs. 12,87,667/-
6.	27650549144V	M/s Mahavir Enterprises	Rs. 3,45,200/-
		Total	Rs. 46,24,906/-

As the assessee failed to substantiate the genuineness and veracity of the aforesaid purchase transactions, therefore, the A.O vide his order passed under Sec. 143(3) r.w.s 147, dated 27.03.2015 disallowed 12.5% of the value of the impugned purchases and made a consequential addition of Rs. 5,78,113/-. Also the A.O while culminating the assessment initiated penalty proceedings under Sec. 271(1)(c) of the Act.

4. On appeal, the CIT(A), vide his order dated 19.01.2017 not finding favour with the contentions of the assessee upheld the addition made by the A.O and dismissed the appeal.

5. After the culmination of the assessment proceedings, the A.O vide his notices issued under Sec. 274 r.w.s 271(1)(c), dated 27.03.2015 r.w 16.02.2018 called upon the assessee to explain as to why penalty under the aforesaid statutory provision may not be imposed on it for furnishing of inaccurate particulars of income relating to claim of non-genuine purchases. In reply, the assessee tried to impress upon the A.O that no penalty under Sec. 271(1)(c) was liable to be imposed in its case. However, the A.O not finding favour with the claim of the assessee imposed a penalty of Rs.1,78,640/- for furnishing of inaccurate particulars of income within the meaning of Sec. 271(1)(c) of the Act r.w. 'Explanation 1'.

6. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c), vide his order dated 31.08.2016 before the CIT(A). After deliberating on the facts of the case in the backdrop of the contentions advanced by the assessee the CIT(A) found favour with the claim of the assessee and vacated the penalty imposed by the A.O.

7. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the appeal filed by the revenue was not maintainable as per CBDT Circular No. 17/2019, dated 08.08.2019, as the tax effect therein involved was substantially lower than that contemplated in the aforesaid circular.

8. Per contra, it was submitted by the Id. Departmental Representative (for short 'D.R') that as the addition of the alleged bogus purchases was based on the incriminating information that was received from the Sales Tax Department, Maharashtra, an external agency, thus, the present appeal filed by the revenue was covered by the Exception (e) of clause 10 of the CBDT Circular No. 3 of 2018 (as amended on 20.08.2018). Apart from that, it was submitted by the Id. D.R that as the assessee had furnished inaccurate particulars as regards the impugned purchases, therefore, the A.O had rightly imposed penalty under Sec. 271(1)(c) of the Act.

9. We have heard the Ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the CBDT Circulars that have been relied upon by them to drive home their respective contentions. Admittedly, the assessee had been saddled with a disallowance of the impugned bogus purchases of Rs. 5,78,113/- w.r.t the purchases which were claimed by it to have been made from the aforesaid tainted parties. As is discernible from the assessment order the aforesaid purchases were disallowed by the A.O, for the reason, that the assessee had failed to substantiate his claim of having made the impugned purchases from the aforementioned parties on the basis of irrefutable documentary evidence. Backed by the aforesaid addition the A.O had thereafter imposed penalty under Sec. 271(1)(c) r.w. 'Explanation 1' of Rs. 1,78,640/- on the assessee for furnishing of inaccurate particulars of income. As observed by us hereinabove the CIT(A) had vacated the penalty that was imposed by the A.O under Sec. 271(1)(c) of the Act.

10. Before us, as the assessee has assailed the very maintainability of the revenue's appeal, we, thus, shall first take up the validity of the said claim of the assessee. Admittedly, the quantum of penalty under dispute is Rs.1,78,640/- which is substantially below the threshold limit of Rs.50 lac as had been provided in the latest CBDT circular No. 17/2019, dated 08.08.2019, that contemplates the tax effect for filing of the appeals by the revenue. It is the claim of the Id. D.R that as the present appeal is covered by the exception carved out in clause 10(e) of the CBDT Circular No. 3 of 2018 (as amended on 20.08.2018) thus, the appeal filed by the revenue is maintainable. On the contrary, it is the claim of the Id. A.R that as the present appeal involves a tax effect below that contemplated by the CBDT in its

Circular No. 17/2019, dated 08.08.2019, therefore, the appeal of the revenue not being maintainable is thus liable to be dismissed on the said count itself.

11. Before advertng any further it would be relevant to cull out the exception carved out in clause 10(e) of the CBDT Circular No. 3/2018 (as amended on 20.08.2018), which reads as under:

“10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect: -

(a) to (d).....

(e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI / ED / DRI / SFIO / Directorate General of GST Intelligence (DGGI)”.

Admittedly, it is a settled position of law that quantum proceedings and penalty proceedings are independent and distinct proceedings and confirmation of an addition cannot on a standalone basis justify imposition/upholding of a penalty u/s 271(1)(c) of the Act. Adopting the same logic, we are of the considered view that unless a specific exception is provided in the circular w.r.t penalty also, it could by no means be construed that penalty is to be treated at par with the quantum additions. As is discernible from Clause 10(e) of the aforesaid CBDT Circular No. 3/2018 (as amended on 20.08.2018), the same applies only to additions which were based on information received from external sources. As noticed by us hereinabove, since the levy of penalty by no means could be construed as an addition within the meaning of Clause 10(e) of the aforesaid circular, therefore, we do not find any merit in the contentions advanced by the Id. D.R that the aforesaid exception carved out in the CBDT Circular No. 3/2018 (supra) would also take within its realm a penalty imposed under Sec. 271(1)(c) w.r.t the additions made by the A.O qua bogus purchases on the basis of information received from Sales Tax Department, i.e an external agency. Accordingly, finding favour with the claim of the Id. A.R that the appeal of the revenue is covered by the CBDT Circular No. 17/2019, dated 08.08.2019, the same, thus, in our considered view is not maintainable. Accordingly, we herein dismiss the appeal of the revenue, for the reason, that the tax effect therein involved is lower than that contemplated in the aforesaid CBDT Circular fixing the monetary limit of filing of appeals by the revenue before the Tribunal.

12. Resultantly, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29.10.2021

Sd/-

Rajesh Kumar  
(ACCOUNTANT MEMBER)

Sd/-

Ravish Sood  
(JUDICIAL MEMBER)

Mumbai, Date: 29.10.2021

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

BY ORDER,

Dy./Asst. Registrar  
ITAT, Mumbai.