

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE
SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No. 7838/Del/2018
Asstt. Year – 2011-12

Sh. Binu Nanu, A-204, Sarita Vihar, New Delhi – 110 044. (Appellant)	Vs.	Deputy Commissioner of Income Tax, Central Circle-8, New Delhi. (Respondent)
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Assessee by:	Shri S.K. Tulsyan, Advocate Ms. Nisha Racch, AR
Department by :	Shri Sanjay Goel, CIT(DR)
Date of Hearing	17/03/2020
Date of pronouncement	12/06/2020

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 26.11.2018 passed by the Ld. Commissioner of Income Tax (Appeals)- XXV, New Delhi {CIT (A)} for assessment year 2011-12.

2.0 Brief facts of the case are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter called

'the Act') was conducted at the business/residential premises of the assessee on 19.10.2010. The assessee belongs to G.L. Litmus Events Private Limited group of cases. The return of income was filed declaring an income of Rs. 31,96,810/- on 29.10.2012. The income declared by the assessee included income from salary from M/s. Meroform India Pvt. Ltd. in which he was a director and also income from other sources.

2.1 As per the assessment order, during the course of search at the residential premises of the assessee at F-18, Sector 40, Noida, Uttar Pradesh, certain incriminating documents were found and seized. As per the Assessing Officer (AO), page 69 of Annexure A-I of the seized documents was an email sent by the assessee to Mr. Oliver Ferraton. This email allegedly discussed illegal gratification paid in respect of the contract for overlays awarded by the OC, CWG and DDA. Page 68 of the annexure allegedly contained working in respect of the *modus operandi* discussed in the e-mail at page 69. As per the AO, the assessee had booked bogus purchases and consultancy expenses to reduce the tax liability for the purpose of paying illegal gratifications to the officials of OC, CWG and DDA. As per the AO, the contents of this document were corroborated by the

details entered in diary marked as Annexure A-2 seized from the same premises. As per the AO, during the course of assessment proceedings, the statement of the assessee was recorded under oath and the assessee was asked to explain these documents but the assessee failed to explain the same. As per the AO, in the statement, the assessee had admitted that the company M/s. G.L. Litmus Events Pvt. Ltd., in which he was a Director, had got the contracts from OC, CWG and DDA relating to the Common Wealth Games approximately of the amounts mentioned in the documents. The AO recorded a finding that it was evident that the seized documents belonged to the company M/s. G.L. Litmus Events Pvt. Ltd. The AO further noted that the assessment proceedings in the case of this company were pending and were getting barred by limitation on 31.3.2014 and since the assessee was a Director in the company and further since the said documents were found in the possession of the assessee, in view of provisions of section 292C of the Act, it was to be presumed that these documents belonged to the assessee. Accordingly, the AO proceeded to add an amount of Rs. 35,85,00,000/- to the income of the assessee on a protective basis.

2.2 Aggrieved, the assessee approached the Ld. First Appellate Authority. The Ld. AR raised numerous grounds before the Ld. CIT (A) but the sum and substance of the assessee's challenge to the assessment order was that protective assessment could not have been made in the assessee's case. However, the Ld. CIT (A) dismissed the assessee's appeal by holding that although the alleged pay outs were by the company and the related tax liability was to fall on the company and not on the personal tax computation of the directors, all the same, as per provisions of section 179 of the Act, the liability can always be fastened on the director of the company and since the assessee was a director of this company, the action of the AO in carrying out the protective addition was in accordance with law. The Ld. CIT (A) also directed the AO not to carry out any coercive action for recovering of tax dues against the assessee till such time the substantive appeal in the case of the company is decided finally.

2.3 Now the assessee is before this Tribunal challenging the order of the Ld. CIT (A) and has raised following grounds of appeal :-

“1. That the Ld. CIT(A) grossly erred in having upheld the addition of Rs. 35,85,00,000/- made by the Ld. AO in the hands of the Appellant on protective basis.

a. That the Ld. CIT(A) having held in clear terms in his Appellate Order that the additions made in the hands of the Company clearly showed that the payouts were by the Company and that the related tax liability should accordingly fall on the company, grossly erred in having upheld the addition made by the Ld. AO on the basis of the seized documents in the hands of the Appellant on protective basis.

2. That the Ld. CIT(A) grossly erred in holding that the protective addition of Rs. 35,85,00,000/- in the hands of the Appellant was in line with the provisions of section 179 of the Income Tax Act, 1961.

a. That the Ld. CIT(A) grossly erred in interpreting the said section 179 of the Act which fastens liability on directors for recovery/payment of tax due from a private company and does not fasten the liability of the tax due itself on the directors.

b. That the Ld. CIT(A) grossly erred in interpreting that the section 179 of the Act allows the assessability of the tax due from a company in the hands of its directors,.

3. That, as the order of the Ld. CIT(A) suffering from illegality and being devoid of any merit, the same should be quashed and your appellant be given such relief(s) as prayed for.”

3.0 At the outset, the Ld. AR submitted that the substantive addition in the hands of the company i.e. M/s. G L Litmus Events Pvt. Ltd. was deleted by the this Tribunal in ITA No. 2502/Del/2015 vide order dated 01/07/2019 wherein it had been observed that it was apparent that the charges against the

company of paying illegal gratification and its consequent addition u/s 69 of the Act was without any evidence of incurring such expenses. It was further submitted by the Ld. AR that even in the assessment order of the assessee, the AO had observed that the seized documents belonged/pertained to the company M/s. G.L. Litmus Events Pvt. Ltd but even then the AO had proceeded to make protective addition in the hands of the assessee which was incorrect in law. It was further argued by the Ld. AR that moreover, even the Ld. CIT (A) had given a finding that the pay outs were made by the company and the related tax liability was to fall on the company but even then the Ld. CIT (A) had referred to the provisions of section 179 of the Act to hold that the protective addition was in accordance with law. It was submitted that the Ld. CIT (A) reliance on the provisions of section 179 was legally incorrect in as much as the provisions of section 179 were applicable to companies which were in liquidation whereas in the case of company M/s. G.L. Litmus Events Pvt. Ltd it was not so.

3.1 The Ld. AR also made a reference to the Arbitration Award vide dated 14.5.2018 which was passed in the case of the company G.L. Litmus Events Pvt. Ltd by the Arbitral Tribunal

wherein after a detailed examination and cross examination of the various allegations, witnesses and evidences, the Arbitral Tribunal had held that the subject transaction with CWG was *bona fide* and was not influenced by any extraneous consideration. The Ld. AR also submitted that a perusal of paragraphs 60 to 62 of the said Award of the Arbitral Tribunal would show that the Arbitral Tribunal had negated the accusations of fraud, corrupt practices, collusion and cartelization levelled against the company M/s. G.L. Litmus Events Pvt. Ltd. The Ld. AR further submitted that against this award, a petition was filed before the Hon'ble High Court of Delhi by the Union of India, Department of Sports, Ministry of Youth Affairs & Sports and the Hon'ble Delhi High Court, vide order dated 30.9.2019 in OMP (COMM) 0390/2018, had upheld the Arbitration Award.

3.2 The Ld. AR submitted that based on the award of the Arbitral Tribunal, it would emerge that there has been a clear finding that there is absolutely no evidence of illegal gratification allegedly paid by the company M/s. G.L. Litmus Events Pvt. Ltd. and based on this arbitral award, the ITAT had deleted the substantive addition in the hands of the company M/s. G.L.

Litmus Events Pvt. Ltd. It was further submitted that the substantive addition having been deleted in the hands of the company, the liability of the assessee in the capacity of the Director of the Company also stood absolved and, thus, the protective addition was also liable to be deleted.

3.3 The Ld. AR further submitted that Ld. CIT (A), in the impugned order, has nowhere confirmed the protective addition on the ground that the impugned amount was paid by the assessee and the only reason for confirming the addition was that assessee was a Director in the Company. It was submitted that it was the duty of the Ld. First Appellate Authority to determine as to who was the owner of the income in question and this issue could not have been left undecided by the Ld. CIT (A). It was submitted that on facts, it was apparent that the seized documents belonged to the company and not to the assessee and since the substantive addition which had been made in the hands of the company now stood deleted, the protective addition in the hands of the assessee also had no feet to stand on. The Ld. AR also placed reliance on numerous precedents in support of his contention that the Ld. CIT (A) was unjustified in confirming the protective assessment made in the hands of the assessee.

4.0 In response, the Ld. CIT (DR) submitted that it is undisputed that the seized documents were found at the premises of the assessee and, therefore, the AO was perfectly justified in holding that the documents belonged to the assessee and, therefore, the protective assessment made by the AO was perfectly in order. It was further submitted by the Ld. CIT (DR) that the Ld. CIT (A) had no occasion to know the outcome of the appeal in the case of the company M/s. G.L. Litmus Events Pvt. Ltd as the company's case was not before Ld. CIT (A) but before the Ld. Disputes Resolution Panel (DRP). It was also submitted that the protective assessment in the case of the assessee was made on 12.3.2013 whereas the substantive addition in the hands of the company M/s. G.L. Litmus Events Pvt. Ltd. was much later on 25.2.2015 and, thus, the AO at that point of time was absolutely correct in making the protective addition.

4.1 The Ld. CIT (DR) also referred to the order of the ITAT passed in the case of M/s. G.L. Litmus Events Pvt. Ltd. and the observations contained in Para 42 wherein it had been noted by the ITAT that as per the loose sheets seized which contained an e-mail, the E-mail ID was 'binu@meroformindia.com' which was, thus, in the personal name of the assessee and, therefore, this

was a clear pointer that the assessee was involved in the alleged transaction of illegal gratification.

4.2 The Ld. CIT (DR) submitted that, although, the substantive addition in the hands of the company M/s. G.L. Litmus Events Pvt. Ltd has been deleted by the ITAT, this matter should be restored to the file of the AO to examine the issue afresh.

5.0 We have heard the rival submissions and have also perused the material on record. The question before us for our consideration and adjudication is whether the impugned addition of Rs. 35,85,00,000/- made by the AO in the hands of the assessee on protective basis is legally sustainable or not. It is undisputed that the substantive addition in the hands of the company i.e. M/s. G.L. Litmus Events Pvt. Ltd. has already been deleted by the coordinate bench of this Tribunal in ITA No. 2502/Del/2015 vide order dated 01.07.2009. While deleting the substantive addition in the hands of the company, the Tribunal had observed in Para 45 of the said order as under:

“45. Thus from all of the above, it is clear that the Arbitration Tribunal has clearly negated the accusations of fraud, corrupt practices, collusion and cartelization levelled against the Appellant Company (Claimant). Also it is to be

seen that from the award above, it is derived that the said accusation against the Appellant was purely and solely based on the Shunglu Committee Report, FIR ledged by the CBI based on which the search was conducted on the Appellant Company and pursuant to which in the assessment above addition was made. In view of above facts and without commenting on any other report or investigation, it is apparent that charges against the assessee of paying illegal gratification and its consequent addition u/s 69 of the Income Tax Act is without any evidence of incurring such expenses. Thus ground no. 2 of the appeal is allowed.”

5.1 Thus, the substantive addition in the hands of the company M/s. G.L. Litmus Events Pvt. Ltd having been deleted as above and it being held that no illegal gratification was paid by the company or by any person on behalf of the company, let us analyse the protective addition made by the AO in the present case. A perusal of the assessment order would show that the AO has admitted in the body of the order itself that the seized documents pertained to the company M/s. G.L. Litmus Events Pvt. Ltd. and not to the assessee who was a Director in this company. The sole reason for the AO to have proceeded to make the protective addition in the hands of the assessee was, as per the assessment order, *“the assessment proceedings getting time barred by limitation making it necessary to make the protective addition to protect the interest of the revenue.”*

5.2 The Ld. CIT (A) in Para (vii) page 42 of his order has also clearly held that the alleged pay outs were made by the company and that the related tax liability shall fall on the company and not on the personal tax computations of the Directors. Thus, a plain reading of the order of the Ld. CIT (A) would show that there is a clear finding by the Ld. CIT (A) that the impugned protective addition was not at all called for in the hands of the assessee and that the addition was being confirmed on protective basis only u/s 179 of the Act laying down that in the event of substantive addition being confirmed in the case of the company, then for the purposes of recovery of the tax liability, the assessee in the capacity of the Director of the company, could be called upon to pay that said tax liability. It is our considered opinion that since the substantive addition has been deleted in the hands of the company, the liability u/s 179 of the Act on the assessee, in the capacity of the Director of the company also stands absolved. A perusal of the order of the Ld. CIT (A) would further show that he has nowhere confirmed the protective addition on the ground that the said amount was paid by the assessee. Rather, the Ld. CIT (A) has clearly mentioned that the impugned amount related to the company and the

protective addition was solely u/s 179 of the Act in the sole event of liability being fastened upon the company and its subsequent non recovery from the company. From this angle, the protective addition u/s 179 stands nullified as the substantive addition stands deleted in the hands of the company.

5.3 It is also worth mentioning that the ITAT, while deleting the substantive addition in the hands of the company, has relied upon the Arbitration Award dated 14.5.2018 which was pronounced in the case of company M/s. G.L. Litmus Events Pvt. Ltd. wherein the Arbitral Tribunal had negated the accusations of fraud, corrupt practices, collusion, etc against the company and had also held that the accusations were purely and solely based on the Shunglu Committee Report, the CAG Report and the FIR lodged by the CBI which remained unsubstantiated and unproven. It is also to be highlighted that petition against this Arbitral Award before the Hon'ble High Court of Delhi was also dismissed and the Hon'ble Delhi High Court upheld the arbitration award vide order No. OMP (COMM) 0390/2018 dated 30.9.2019.

5.4 Therefore, on an overall view of the fact of the case, it is our considered opinion that the protective addition in the

hands of the assessee does not have any feet to stand on. Since the protective addition was upheld by the Ld. CIT (A) solely for the purposes of section 179 of the Act and since the substantive addition has been deleted, the basis for protective addition also goes. Therefore, for the reasons stated above we quash the protective addition in the hands of the assessee.

6.0 In the final result the appeal of the assessee stands allowed.

Order pronounced on 12th June, 2020.

**sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 12/06/2020

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi