

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1010/DEL/2021
[Assessment Year: 2010-11]**

Hardeep Singh Bedi,
C-4/4, Vasant Vihar,
New Delhi.
PAN- AEEP6057Q

APPELLANT

Vs ACIT Special Range-9,
New Delhi.

RESPONDENT

Assessee represented by

Sh. R S Ahuja, Ld. CA &
Sh. Pushpdeep Singh, Ld. Adv

Department represented by

Sh. Mohd. Gayassudin Ansari,
Ld. CIT DR

Date of hearing

27-02-2023

Date of pronouncement

27.02.2023

ORDER

PER N.K. CHOUDHRY, JM:

This appeal has been preferred by the assessee against the order dated 30.09.2019, impugned herein, passed by the Ld. Commissioner of Income tax (Appeals)-31, New Delhi, (in short "Ld. Commissioner") u/s 250 of the Income Tax Act, 1961 (in short "the Act"), pertaining to the assessment year 2010-11.

2. At the outset we observe that in the instant case, the impugned order was passed on 30.09.2019, which allegedly and not refuted by the Revenue, was received by the Assessee on 17-03-2021 and the appeal under consideration was filed on 5.08.2021 and consequently delay of 101 days has been occurred in filing of this appeal under consideration. The Hon'ble Apex Court in the case of **Re-Cognizance** for extension of limitation Suo Motu writ petition (C) no. 3 of 2020, by taking into consideration Covid-19 period, was pleased to extend the limitation period expired during 15.3.2020 to 28.2.2022. Consequently, the delay is condoned.

3. Coming to the merits of the case. In this case, search & seizure operations were carried on M/s Tulip Group in the year 2009, wherein the assessee was the Chairman of Tulip Telecom Limited. Consequently, the assessee by filing its return of income on dated 1.10.2010, declared an income of Rs. 3,29,97,045/-, which was completed on 27.12.2011.

3.1 Later on, by noticing the information available on ITBA Portal, to the effects that the Assessee had paid the amounts of Rs. 72,87,790/- and Rs. 12,90,231/- qua credit cards bills, issued by American Express Banking Corporation and Standard Chartered Bank respectively and since the Assessee failed to explain the source of said bills, the case of the Assessee was reopened by the AO, by issuing notice u/s 148 of the Act.

3.1 The Assessee was confronted with the above information and further asked to explain the source of payment of Rs. 85,78,021/- [72,87,790/- + 12,90,231/- (supra)]. The assessee by filing its written replies dated 6.11.2017 and 9.11.2017 claimed that M/s Tulip Telecom Limited had a turnover exceeding Rs. 2000 crores p.a. and the assessee being the Chairman of the said Company had used these credit cards for the furtherance of the business operation of the said company. These expenditures were funded/paid to banks, from the resources of the company i.e. M/s Tulip Telecom Limited. Search and seizure operations had been carried out on the assessee and M/s Tulip Telecom Limited on 24.9.2009 for the A.Y. 2010-11 as well and there is no documents seized to indicate that the assessee had any bank accounts other than those shown from where payments for credit cards should have been made. Further, M/s Tulip Telecom Limited is under winding up along with other concerns of the same group company and the Hon'ble Delhi High Court has passed an order in this regard and the official liquidator has been appointed, who has taken over all the assets and liabilities of the company and the assessee did not have any access to the books of account and vouchers. Therefore, the assessee/ directors of the company found handicapped/difficult to provide your office the relevant details and evidences in respect of credit cards payments and other relevant records of A.Y. 2010-11 in regards to assessee as well as in regard the Head Company.

3.2 The AO though considered the reply of the Assessee, however, declined to accept the same on the reason, when the information was confronted, the Assessee has taken the plea that the payments were accounted for by the company i.e. M/s Tulip Telecom Limited. So the above payments remained unexplained. Hence, the sum of Rs. 85,78,021/- is added to the income of the assessee.

4. The learned Commissioner, on appeal, affirmed the said addition because before him as well, the assessee had failed to furnish the relevant documents and the confirmation or clarification from M/s Tulip Telecom Limited in order to prove that the payments have actually been made by the Company.

5. The Assessee by filing an application for placing additional evidence on record, the bank statements of Bank of India, of Tulip Telecom Limited, showing payments to Standard Chartered Bank and American Express Banking Corporation for the credit cards uses claimed that Tulip Telecom Limited was under liquidation and was being monitored by the Official Liquidator, therefore, it was requested to the learned ACIT to get the information qua usage of credit cards and payments through Bank of India to Standard Chartered Bank and American Express Banking Corporation, by using its power u/s 131 and 133(6) of the Act. However, the AO instead of exercising the said powers, made the addition of Rs. 85,78,021/- on account of unexplained

payments on the ground, since no documentary evidence has been filed by the Assessee qua credit cards payments. Some-how the Assessee now making diligent efforts, able to get the bank statements of Tulip Telecom Limited in Bank of India, who had made payments to Standard Chartered Bank and American Express Banking Corporation towards credit cards bills. As Bank Statements sought are crucial and essential for proper adjudication of the issue involved, the same may be allowed to be placed on record and may be taken into consideration for adjudication of controversy.

6. On the contrary the Ld. DR refuted the claim of the Assessee and supported the orders passed by the authorities below.

7. We have given thoughtful consideration to the peculiar facts and circumstances of the case. It is undisputed fact that M/s Tulip Telecom Limited in which the assessee was Chairman and Managing Director, was under liquidation and all the documents and details were within the possession and control of the Official Liquidator and, therefore, it can not be ruled out that the Assessee on the said reason failed to produce the relevant documents in support of its claim qua credit cards payments. However, by making sincere efforts, now the Assessee gathered the information and the bank statements from Bank of India qua account in the name of M/s Tulip Telecom Limited and therefore claimed that certain payments by the said bank to Standard Chartered Bank and American Express Banking Corporation

have been made directly and in discharge of credit card bills. In our considered view non-filing of the documents by the Assessee was not a deliberate act but in fact it was a bona fide reason, because of the search and seizure operation in the group cases of M/s Tulip Telecom Limited and appointment of the Official Liquidator in the case of M/s Tulip Telecom Limited. We are also in concurrence with the contention of the Assessee that the documents/Bank statements are very much essential and crucial for proper and effective adjudication of the issue in hand as it pertains to payments qua credit cards on the basis of which addition in hand was made.

Therefore, considering the peculiar facts and circumstances, we are inclined to direct the AO to take into account the bank statements of Bank of India, referred to above and to decide the issue in respect of credit cards payments afresh, suffice to say by affording reasonable opportunity of being heard to the assessee.

The Assessee is also directed to file certified bank statements and to substantiate its case before the AO and to appear as and when would be required by the AO.

We order accordingly.

8. In the result, appeal filed by the Assessee stands allowed for statistical purposes.

Order pronounced in open court on 27.02.2023_____.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

| | |
|---|------------|
| Draft dictated | 01.03.2023 |
| Draft placed before author | 01.03.2023 |
| Approved Draft comes to the Sr. PS/PS | |
| Order signed and pronounced on | |
| File comes to P.S. | |
| File sent to the Bench Clerk | |
| Date on which file goes to the AR | |
| Date on which file goes to the Head Clerk | |
| Date of dispatch of Order | |
| Date of uploading on the website | |