

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'SMC', KOLKATA  
(Before Shri P. M. Jagtap, Hon'ble A.M.)**

**ITA No. 371/Kol/2016 : Asstt. Year : 2004-2005**

Kalyan Sarkar PAN: ALAPS 0183K (APPELLANT)	Vs	ITO, Ward-54(4), Kolkata (RESPONDENT)
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**Appellant by : Shri Subhash Agarwal, Advocate  
Respondent by : Md. Ghayas Uddin, JCIT, Sr.DR**

<b>Date of Hearing : 12.05.2016</b>	<b>Date of Pronouncement : 15/06/2016</b>
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**ORDER**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income-Tax (Appeals)-21, Kolkata dated 05.02.2016 for the assessment year 2004-05.

2. The relevant facts of the case giving rise to this appeal are that the assessee is an individual who is carrying on profession as a legal practitioner, mainly handling the service matters. The return of income for the year under consideration was filed by him on 11.01.2005 disclosing income of Rs.1,51,780/-. The said return was selected by the AO for scrutiny and in the assessment completed under section 143(3) vide order dated 29.11.2006, the total income of the assessee was determined at Rs.7,91,292/- after making the various additions.

3. Against the said order passed by the AO under section 143(3), an appeal was preferred by the assessee before the Id. CIT(A) and after

considering the submissions made by the assessee and the material available on record, the Id. CIT(A), found no merit in the appeal of the assessee and dismissed the same, thereby confirming all the additions made by the AO to the total income of the assessee.

4. Aggrieved by the order of the Id. CIT(A), the assessee has preferred this appeal before the Tribunal on the following grounds.

*“1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in not adjudicating the ground relating to the estimated disallowance of Rs.10,076/- made by the AO under the head electricity expenses, telephone expenses and car expenses.*

*2. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.40,000/- made by the AO on account of gift received by the assessee from his mother by wrongly treating the same as unexplained cash credit u/s. 68 of the Act.*

*3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.1,52,000/- made by the AO on account of loan received by the assessee by wrongly treating the same as unexplained cash credit U/s.68 of the Act.*

*4. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.67,500/- made by the AO on account of advance received by the assessee from the clients.*

*5. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.49,800/- made by the AO on account of alleged low drawings.*

*6. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs.3,03,433/- made by the AO on account of alleged 'unexplained investment for purchase of land.*

7. *That the appellant craves leave to add, alter or delete all or any of the grounds of appeal."*

5. I have heard the arguments of both the sides and also perused the material available on record. At the time of hearing, the Id. Counsel for the assessee has not pressed ground nos.1 and 4 raised by the assessee in this appeal, the same are accordingly dismissed as not pressed.

6. As regards the issue raised in ground no.2 relating to the addition of Rs.40,000/- on account of unexplained gift, it is observed that the gift of Rs.40,000/- stated to be received by the assessee from his mother was treated by the AO as unexplained since the capacity of the donor to give such gift could not be established by the assessee. On appeal, the Id. CIT(A) upheld the action of the AO on this issue after having found that the claim of the assessee that the amount of Rs.40,000/- in cash had been given by his mother out of her past savings and Streedhan money was not supported by any evidence. At the time of hearing before us, the Id. Counsel for the assessee has invited our attention to the letters issued by the mother of the assessee confirming the gifts as placed at page nos.10 and 11 of the paper book in support of the assessee's case on this issue. A perusal of the same however shows that the mother of the assessee was not having any independent source of income and she was fully dependent for her maintenance on her four sons including the assessee. The said lady thus has no capacity to give the gift to the assessee and in the absence of any satisfactory explanation offered by her about immediate source from which the amount in question was claimed to be given to the assessee in cash, I find myself in agreement with the authorities below that the amount of gift claimed to be received by the assessee from his mother

is not satisfactorily explained by the assessee. I, therefore confirm the addition made on this issue and dismiss ground no.2.

7. As regards the issue raised in ground no.3 relating to the addition of Rs.1,52,000/- on account of loans stated to be received by the assessee by treating the same as unexplained cash credits under section 68, it is observed that a total amount of Rs.1,88,000/- was shown to be received by the assessee as loans from 11 creditors. During the course of assessment proceedings, the said loans were examined by the AO by conducting enquiries by issuing notices under section 133(6) and summons under section 131. These enquiries conducted by the AO revealed that notices could not be served to two creditors at the addresses given while two other creditors categorically denied of having given any loans to the assessee. When these adverse findings of the enquiry conducted by him were confronted by the AO to the assessee, the latter could not offer any satisfactory explanation. The AO, therefore treated loans received from nine out of 11 creditors as unexplained and the amount of loans received from them aggregating to Rs.1,52,000/- was added by him to the total income of the assessee as unexplained cash credits under section 68. On appeal, the Id. CIT(A) confirmed the addition made by the AO on this issue after taking into consideration all the facts and circumstances of the case as brought out by the AO.

8. At the time of hearing before us, the Id. Counsel for the assessee has contended that the amount in question being in the nature of trade advance, the provisions of section 68 are not applicable as held by the Hon'ble Bombay High Court in the case of CIT-vs- S.D.Investment and Trading Company 306 ITR 31. As rightly contended by the Id.DR, there

is nothing brought on record by the assessee to establish that the amount in question actually represented the trade advances. By assessee's own submissions, the amounts in question represented loans and the primary onus, therefore was on the assessee to establish the identity and capacity of the concerned creditors as well as the genuineness of the relevant transaction. As rightly contended by the Id. DR in this regard, the assessee has however failed to discharge this onus. Keeping in view the adverse findings of the enquiry conducted by the AO, which the assessee has failed to explain, I am of the view that the amount in question stated to be loans received by the assessee is rightly treated by the authorities below as unexplained cash credits which is liable to be added to the total income of the assessee under section 68. In that view of the matter, I confirm the addition made on this issue and dismiss ground no.3 of the assessee's appeal.

9. As regards the issue involved in ground no.5 relating to the addition of Rs.49,800/- made on account of low withdrawals, it is observed that the withdrawals for household and personal expenses during the year under consideration were shown by the assessee at Rs.36,000/-. After taking into consideration the size of the assessee's family, the cost of living etc., the personal and household expenses of the assessee were estimated by the AO at Rs.85,800/- and the difference amount of Rs.49,800/- was added by him to the total income of the assessee on account of low withdrawals. On appeal, the Id. CIT(A) confirmed the addition made by the AO on this issue after having found that the assessee could not make out any case to show anything wrong in the estimate made by the AO on account of his personal and household expenses. Although the Id. Counsel for the assessee at the time of hearing before me has submitted that the personal and

household expenses of the assessee were partly met out of the earnings of his wife from tuition, there is no evidence brought on record to support and substantiate the same. On the other hand, I find that the estimate of personal and household expenses of the assessee as made by the AO, after taking into consideration the family size of the assessee, cost of living etc., is quite fair and reasonable. I, therefore find no justifiable reason to interfere with the impugned order of the Id. CIT(A) confirming the addition made by the AO on account of low withdrawals and confirming the addition made on this issue, I dismiss ground no.5 of the assessee's appeal.

10. As regards the ground no.6 relating to the addition of Rs.3,03,433/- made on account of unexplained investment allegedly made by the assessee in purchase of land, it is observed that the investment made in purchase of land was shown by the assessee at Rs.2,99,000/-. On verification, it was found by the AO that the land at 192C, Picnic Garden Road, Kolkata was purchased by the assessee at Rs.5,98,000/- and further expenditure of Rs.48,020/- and Rs.6,613/- was incurred on stamp duty and registration, thereby making total investment in land at Rs.6,52,633/-. In this regard, the explanation offered by the assessee was that the land was purchased by him in joint name with wife and the investment made in the land to the extent of 50% was declared by him while the balance 50% was the investment made by his wife. The assessee, therefore was called upon by the AO to explain the source of balance investment in the hands of his wife and since the explanation offered by the assessee in this regard was found to be satisfactory by the AO only to the extent of Rs.50,000/-, the balance amount of Rs.3,03,433/- was added by him to the total income of the assessee as unexplained investment. On appeal, the Id. CIT(A)

confirmed the addition made by the AO on this issue on the ground that the assessee could not offer any satisfactory explanation as regards the source of investment of 50% in land in the hands of his wife.

11. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The stand taken by the assessee right from the beginning on this issue has been that the investment in land was made jointly by him with his wife and this position clearly evident from the relevant deed of conveyance (copy placed at page nos. 31 to 53 of the paper book) has not been disputed either by the AO or by the Id. CIT(A). As rightly contended by the Id. Counsel for the assessee by relying on section 45 of the Transfer of Property Act, 1882, 50% of the investment in land, therefore is to be presumed as having made by the wife of the assessee and if there is a failure to explain satisfactorily the source of the said investment in the hands of the wife, the addition on account of such unexplained investment is liable to be made in her hands who is an independent individual separately assessed to tax and not in the hands of the assessee. I, therefore delete the addition made by the AO and confirmed by the Id. CIT(A) on this issue and allow ground no.6 of the assessee's appeal.

12. In the result, the appeal of the assessee is partly allowed.

Order Pronounced in the Open Court on June 15, 2016.

**Sd/-**  
(P.M.Jagtap)  
ACCOUNTANT MEMBER

**Dated: 15/06/2016**

Talukdar/Sr.PS

**Copy of order forwarded to:**

- 1 Sri Kalyan Sarkar, Block-D, 6B, Tagore Park, Kolkata – 700 039
- 2 ITO, Ward-54(4), Kolkata
- 3 The CIT(A),
- 4 CIT,
- 5 D.R.

True Copy,

By order,

Asstt. Registrar, ITAT, Kolkata