

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC"**  
**BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member**

**I.T.A. Nos.191&192/Kol/2020**  
Assessment Year: 2004-05&2005-06

**Mantosh Pramanik.....Appellant**  
**Chirimarsai, P.O-Midnapore,**  
**W.B - 721101**  
**[PAN: AJUPP2467K]**

**vs.**

**ITO, Ward-1(3), Midnapore.....Respondent**

**Appearances by:**

Shri Anil Kochar and Aryan Kochar, AR, appeared on behalf of the appellant.  
Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 30, 2022  
Date of pronouncing the order : May 30, 2022

**ORDER**

**Per Sanjay Garg, Judicial Member:**

Both the present appeals have been preferred by the assessee against the separate orders both dated 27.11.2019 of the Commissioner of Income Tax (Appeals)-11, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

**ITA No.191/Kol/2020**

2. The assessee in this appeal has taken the following grounds of appeal:

- 1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.*
- 2. For that the Ld. CIT (A) before whom the appellant had submitted full details about the investment of shares wrongly arrived at the conclusion that the appellant failed to substantiate the investment to the extent of Rs.3,81,475/-*
- 3. For that the Ld. CIT (A) who has examined the facts at length erred in analyzing the facts properly and accordingly the confirmation of the addition to the extent of Rs.3,81,475/- is totally wrong & uncalled for.*
- 4. For that the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.*

3. The brief facts of the case are that during survey action the Assessing Officer found that there were investments in shares by the assessee for which the assessee could not explain the source of income. He took the total investment in the share trading at Rs.16,25,051/- and added the same into the income of the assessee holding that the assessee has failed to explain the source of the aforesaid investment.

4. In appeal, the Id. CIT(A) considered the details of each and every investment made by the assessee and took into consideration the sale of shares made by the assessee and re-investment of the money received from sale of shares and calculated the unexplained investment at Rs.3,81,475/- and held that the assessee had failed to explain the source of funds to that extent. He, therefore, restricted the addition of Rs.3,81,475/- as against the addition of Rs.16,25,051/- made by the Assessing Officer.

5. Before this Tribunal, the Id. Counsel for the assessee has submitted that while calculating the peak value of the investment, the Id. CIT(A) has not taken into consideration the opening cash and bank balance of the assessee at Rs.3,15,103/-. He, therefore has submitted that the assessee may be given benefit of the opening balance.

6. However, the Id. DR invited our attention to para 6.7 onwards of the order of the Id. CIT(A), which for the sake of ready reference is reproduced as under:

*“6.7 From the above table it shall be noted that the peak value of investment of Rs.3,81,475/- was on 05/11/2003. In the circumstances heavy onus lay upon the appellant to substantiate that the appellant did possess sufficient own funds to the extent of Rs.3,81,475/- as on 05/11/2003 to justify his investment in shares.*

*From the cash flow statement furnished it is noted that the appellant has set out the following sources of funds (excluding sale proceeds of shares):*

*a) Opening Cash & Bank Balance -3,15,103/*

*b) IFCI Bond 15,135/-*

*c) KVP Maturity - 1,00,000/-*

*d) FD proceeds - 45,820*

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*e) Salary & Other Income - 81,342/-*

f) Loan taken against RD Rs.80,000/-

6.8 On the other hand the appellant has reflected the following application of funds (excluding purchases of shares):

a) Drawings - Rs.44,195/-

b) Loan repayment Rs.5,364/-

c) Stamp Duty Rs.603/-

d) Investment in RD Rs.1,09,200/-

e) Closing Cash and Bank Balance Rs.4,96,615/

6.9 If one considers the above source and application of funds cumulatively it shall be noted that the aggregate gross funds received by the appellant was Rs.6,37,850/- out of which the appellant had applied the funds towards recurring deposits, drawings and the balance lying with him as on 31.03.2004 being Rs.6,55,977/-. In the circumstances the cash flow statement (as prepared and submitted by the appellant) shows that the appellant did not have any surplus disclosed sources of monies during the relevant year to justify his peak Investment of Rs.3,81,475/- held in shares as on 05/11/2003. It is noted that the appellant has conveniently skirted and avoided explaining this aspect.

Instead the A/R has claimed the source of investment in shares to be the sale proceeds and simply netted off the value of purchases against value of sales in his fund flow statement. This action of the appellant is untenable in as much as the real question is explanation regarding the source of purchases of the shares. The proceeds on sale of shares is subsequent to purchase and hence the sale proceeds cannot qualify as the source of purchase of shares. As set out in the foregoing, the appellant's own disclosed sources during the year was insufficient to be utilized to purchase shares in as much as it was already utilized to invest in recurring deposits, drawings etc.

For the facts and the reasons discussed in the foregoing, I am therefore of the Considered view that the appellant was unable to substantiate the source of peak investment in shares of Rs.3,81,475/- and in that view of the matter addition to the extent of Rs.3,81,475 - out of Rs.13,16,116/- is upheld.

6.10 Overall therefore, out of the total addition of Rs.16,25,051/- made by the AO by way of unexplained investment, the addition to the extent of Rs.3,81,475/- stands confirmed and the remaining balance is deleted.”

7. A perusal of the above observation made by the Id. CIT(A) would reveal that the Id. CIT(A) duly considered the opening cash and bank balance of Rs.3,15,103/-, IFCI bond of Rs.15,135/-, KVP maturity value at Rs.1,00,000/-, FD proceeds of Rs.45,820/-, salary and other income of Rs.81,342/-, loan taken against RD of Rs.80,000/-. The Id. CIT(A) thereafter has also considered the application of funds during the year. The Id. CIT(A), thereafter, observed that the aggregate gross funds received by the assessee were

Rs.6,37,850/- out of which the assessee had applied the funds towards recurring deposits, drawings and the balance lying with him as on 31.03.2004 being Rs.6,55,977/- and thereafter the Id. CIT(A) concluded that the assessee did not have any surplus disclosed sources of money during the relevant year to justify his peak investment of Rs.3,81,475/- held in shares as on 05.11.2003. I find that the Id. CIT(A) has duly considered the entire facts and circumstances of the case and I do not find any infirmity to interfere the above order. There is no merit in the appeal of the assessee and the same is hereby dismissed.

**ITA No.192/Kol/2020**

8. The assessee in this appeal has taken the following grounds of appeal:

*“1. For that the orders passed by the lower authorities are arbitrary erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant*

*2. For that the Ld. CIT (A) before whom the appellant had submitted full details about the investment in shares wrongly arrived at the conclusion that the appellant failed to substantiate the investment of Rs.3,59,900/-.*

*3. For that the Ld. CIT (A) who has examined the facts at length erred in analyzing the facts properly and accordingly the confirmation of the addition of Rs.3,59,900/- is totally wrong & uncalled for.*

*4. For that the Ld. CIT (A) erred in holding that the appellant was unable to substantiate the source of deposit of Rs. 90,352/- in Bank and consequently confirming the addition made by the A.O*

*5. For that the Ld. CIT (A) ought to have appreciated the facts of the case properly and ought not to have confirmed the addition of Rs. 90,352/-.*

*6. For that the Ld. CIT (A) erred in upholding the action of the A.O. in computing the interest income of Rs. 1,21,387/- on alleged grounds.*

*7. For that the Ld. CIT (A) erred in treating the alleged difference of Rs.2,50,000/- towards purchase of land & building and treating the same as unexplained investment.*

*8. For that the Ld. CIT (A) erred in not properly appreciating the facts of the case and confirming the disallowance of Rs. 2,50,000/- as unexplained investment on alleged grounds.*

*9. For that the appellant craves leave to amend, alter, modify, substitute add to, abridge and/or rescind any or all of the above grounds.”*

9. The brief facts of the case are that the Assessing Officer noted that the assessee during the year has made investment of Rs.1260000/- with Tata Consultancy Services Ltd. and further the assessee also made investment on purchase of property amounting to Rs.942000/-. On being asked to explain, the assessee explained that out of Rs.1260000/-, an amount of Rs.756000/- was taken as loan from Centurian Bank and remaining amount of Rs.504000/- was out of cash deposited in the bank and further withdrawn. However, the Assessing Officer did not get satisfied from the above reply and added an amount of Rs.889565/- into the income of the assessee as investment from unexplained sources. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

10. Before this Tribunal, the assessee has furnished a reconciliation statement which for the sake of ready reference is reproduced as under:

A INVESTMENT WITH TATA CONSULTANCY SERVICES LTD		1260000
<b><u>SOURCE</u></b>		
LOAN FROM CENTURIAN BANK	756000	
CASH DEPOSITED	504000	<u>1260000</u>
		NIL
REFUND UPON ALLOTTMENT		1197950
REPAID LOAN AMOUNT TO BANK		<u>756000</u>
BALANCE		441950

CASH AND BANK ACCOUNT			
OPENING BALANCE	496615	DEPOSIT IN BANK	504000
(CIT ORDER FOR 04-05 PG 13)		PROPERTY PURCHASED	942000
REFUND FROM TCS	441950		
BANK INTEREST	<u>121387</u>		
	1059952		
DIFFERENCE	<u>386048</u>		1446000
	1446000		

	Rs.	Rs.
SALARY		39,694
<u>OTHER SOURCES</u>		
DIFFERENCE IN CASH	386048	
BANK INTEREST	121387	
COMMISSION	4630	<u>512065</u>
		5,51,759
LESS: 80C		12000
TOTAL INCOME		<u>539759</u>

11. The assessee from the above statement has explained that for the assessment year 2004-05, the Id. CIT(A) had duly considered the closing balance of Rs.496615/- which could be taken into consideration for the purpose of calculating the funds available with the assessee for the year under consideration. The Id. Counsel for the assessee has fairly admitted from the above chart that the bank interest paid by the assessee on the loan amount of Rs.121387/- and further difference out of investment amounting to Rs.386048/- has remained unexplained and that is required to be added.

The Id. DR has also brought to my notice that there is another commission income of Rs.4630/- that is required to be added, for which the Id. Counsel for the assessee has fairly admitted. In view of the above reconciliation statement furnished by the assessee and as per own admission of the assessee Rs.512065/- is the amount which was required to be added as investment from unexplained sources. The Id. DR has also fairly agreed to the same. In view of the admission of both the parties, the addition made by the Id. CIT(A) is restricted to Rs.512065/-. With the above observation, the appeal of the assessee stands partly allowed.

12. In the result, ITA No.191/Kol/2020 stands dismissed and ITA No.192/Kol/2020 stands partly allowed.

***Kolkata, the 30<sup>th</sup> May, 2022.***

Sd/-  
**[SanjayGarg]**  
**Judicial Member**

Dated: 30.05.2022.

*RS*

*Copy of the order forwarded to:*

1. Mantosh Pramanik
2. ITO, Ward-1(3), Midnapore
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

*//True copy//*

By order

Assistant Registrar, Kolkata Benches