IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

Before: Shri Rajpal Yadav, Judicial Member and Shri Amarjit Singh, Accountant Member

[Conducted through E-Court at Ahmedabad]

ITA Nos. 65 & 66/Rjt/2016
Assessment Year 2007-08 & 2008-09

Shri Tejkumar M. Gugar(HUF), DBZ-2, Gandhidham PAN: AABHT5545G (Appellant)	Vs	The ITO, Ward-2, Gandhidham (Respondent)

ITA No. 67/Rjt/2016
Assessment Year 2008-09

Shri Tarun Tejkumar Gugar(HUF), DBZ-2, Gandhidham PAN: AABHT5545G (Appellant)	Vs	The ITO, Ward-2, Gandhidham (Respondent)

Revenue by: Shri P.S. Bhalla, Sr. D.R.
Assessee by: Written Submission

Date of hearing : 11-09-2019
Date of pronouncement : 23-09-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

Two appeals of the assessee in the name of Shri Tejkumar M. Dugar HUF and other appeal of the assessee in the case of Shri Tarun Tejkumar Dugar HUF are filed against the decision of ld. CIT(A) in confirming the order of assessing officer on similar issues pertaining to rejecting the claim u/s. 10(38) of the act and confirming the order passed by the assessing officer u/s. 144 r.w.s. 147 of the act. Since the common issues on similar facts are involved in all the three appeals filed by the assessees, therefore, for the sake of convenience, all these are adjudicated together by taking the facts of ITA No. 65/Ahd/52016 as lead case and its finding will be applicable to the other two cases.

2. The fact in brief is that assessee has filed return of income on 31st Jan, 2008 declaring total income of Rs. 1,43,404/- . The return of income was processed u/s. 143(1) of the act. Subsequently, notice u/s. 148 of the act was issued on 25th March, 2013. During the course of assessment, the assessing officer stated that the search action was carried out in the case of Maha Sagar Group in Mumbai. During the course of search action, statement of its key person Shri Mukesh Chokshi was recorded in which he has admitted that he and his group were engaged in fraudulent dealing activities and in giving accommodation entries in order to enable the clients to declare speculation profit/loss, short term capital gain, long term capital profit/loss on account of commodity trading, introduce share application money. Mr. Chokshi has admitted that he was only involved in giving accommodation entries. The assessee was also identified by Shri Mukesh Choksi as one of such beneficiaries. Therefore, assessee was issued show cause to explain genuineness of purchase and sale of shares of Talent Infoways Ltd which

was one of the group company of Mr. Mukesh Choksi. In the show cause notice, it was stated that no sufficient cash on hand was available with the assessee at the time of purchase of 4300 shares at Rs. 6,889/- of Talent Infoways Ltd. on 20th April, 2006. During the course of search action, he had in his statement dated 16th Jan, 2013 identified 82 beneficiaries including the name of assessee certified that there was no actual sale of shares and the assessee was given only accommodation entry. During the course of assessment , the assessee has produced the copy of bill of the share broker. However, the assessing officer on further verification has found that the broker mentioned that shares were purchased through NSE under settlement 2006069 dated 17th April, 2006. However, the assessing officer found that the company namely Talent Infoways Ltd. was neither listed presently nor was ever listed with the NSE. The assessing officer also noticed that the status of Talent Infoways Ltd. was not traceable on trading list of exchange and the assessing officer had made further inquiry from the NSE u/s. 133(6) of the act and it was reported by the NSE that aforesaid company was not and never listed with them for any transaction. The assessing officer has further noticed that settlement no. given by the assessee was not genuine. In the light of the above facts and circumstances, the assessing officer observed that purchase of share of Talent Infoways Ltd. for Rs. 6989 was merely an accommodation entry, therefore, the same was added to the total income of the assessee.

3. The assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us, nobody has attended from the side of the assessee. However, the assessee has filed written submission. After taking into consideration the written submission of the assessee and after hearing ld. departmental representative it is noticed that the assessing officer has made addition of Rs. 6989 by treating the transaction of purchase of share of Talent Infoways Ltd. as mere accommodation entry. During the course of assessment, the assessing officer has made verification from Mumbai Stock Exchange and National Stock Exchange Ltd. Mumbai to verify the genuineness of purchase of shares of 4300 of Talent Infoways Ltd. As per the report/information received from the exchange it has been categorically established that the aforesaid company was not and never listed with them for transaction and it was also reported that the settlement no. given in the document produced by assessee was not genuine. Considering the above material fact, we do not find any substance in the appeal of the assessee and it is clearly established from the verification made by the assessing officer that the claim of the assessee was not genuine. Regarding other grounds of appeal of the assessee that assessing officer has passed order u/s. 144 r.w.s. 147, in this regard, we have noticed that assessing officer has incorporated all the details and submission made by the assessee. Therefore, we do not find any merit in this ground of appeal. Accordingly, the appeal of the assessee is dismissed. Similarly on identical facts and issues the other appeals of the assessee vide ITA No. 66/Rjt/2016 except grounds of appeal no. 4 and 5 which is being adjudicated separately and the appeal ITA No. 67/Rjt/2016 of Shri Tarun Tejkumar Duger (HUF) are also dismissed.

Grounds of appeal no. 4 & 5 vide ITA No. 66/Rjt/2016

5. The assessing officer had made addition of Rs. 2,325/-. The assessing officer has noticed that the assessee was having total cash balance to the amount of Rs. 24,675/- whereas the assessee had made total cash payment to the amount of Rs. 27,000/-. Since the assessee could not explain the discrepancy of excess cash payment of Rs. 2,325/-, the assessing officer added it to the total income of the assessee. The ld. CIT(A) has sustained this addition for negative cash balance. On perusal of the material on record, we do not find any substance in the claim of the assessee stating that cash of Rs. 15000/- had been erroneously recorded on 31st March, 2007 which was actually received on 31-10-2007. The assessee could not disprove the infirmity in the finding of ld. CIT(A) with any relevant supporting material therefore this ground of appeal of the assessee stands dismissed.

Ground No. 5

6. During the course of assessment, the assessing officer noticed that assessee had received cash credit of Rs. 10,000/- from Shri Arun Duger but the same was not shown in the cash account, therefore, the assessing officer had added the same into the total income of the assessee. The ld. CIT(A) has dismissed the appeal of the assessee.

7. On perusal of the material on record and hearing the ld. departmental representative, it is noticed that assessee had explained that because of mistake the accountant had not shown the cash credit in the cash account and there was no unaccounted money received. In this regard, we have noticed that the assessing officer acknowledged in his finding that Shri Arun Duger

confirmed that he had provided cash credit to the amount of Rs. 10,000/- to the assessee. The assessing officer has accepted the source of cash credit and the assessing officer had also included the amount of Rs. 10,000/- as cash in hand of the assessee while adjudicating negative cash balance of Rs. 2325/- as para 5 of the assessment order. In the light of the above facts and circumstances, we find merit in this ground of appeal of the assessee, therefore, this ground of appeal of the assessee is allowed.

8. In the result, appeal ITA 65/Rjt/2016 and 67/Rjt/2016 are dismissed and appeal ITA 66/Rjt/2016 is partly allowed.

Order pronounced in the open court on 23-09-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 23/09/2019

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot