IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.176 OF 2014

The Commissioner of Income Tax-11,
Mumbai .. Appellant

v/s.

Dr. Avinash C. Tiwari .. Respondent

Mr. Charanjeet Chanderpal a/w Ms. Madhuri Gaikwad for the appellant
Mr. Ajaykumar R. Singh for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 29th AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 19th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

2. Mr. Chanderpal, learned Counsel appearing for the appellant Revenue urges only the following question of law for our consideration :-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the Assessing Officer was not justified in making addition of Rs.4,22,30,000/- on the basis of the

transactions mentioned in the seized document Page No.165 when the transactions were specific and speaking ?

3. The respondent assessee is a Doctor by profession. On 5th October, 2007, a search and seizure operation was carried out in the premises of Mr. Haren Choksi and Mr. Harshil Choksi (Choksi's). In the search operation carried on Choksi's, certain loose papers and documents were seized. One such document was a loose paper No.165 (the document) wherein certain transactions were noted pertaining to investment in Avis Motors (P) Ltd. of Rs.1.22 crores in cheque and Rs.3 crores in cash aggregating to Rs.4.22 crores. During the assessment proceedings, the Assessing Officer confronted the respondent assessee with the document. This on his *prima facie* view that the amount indicated in the document seized from Choksi's was an investment made by him in Avis Motors Pvt. Ltd. The basis for the aforesaid presumption was that the respondent assessee's wife and son are the Directors of M/s. Avis Motors Pvt. Ltd. The respondent assessee in response, pointed out that these papers were not prepared by him, did not belong to him and none of the statements contained in the document was accepted by him. Notwithstanding the above stand of the respondent assessee, the Assessing Officer proceeded to rely upon

the document to conclude that it indicated investment made by the respondent assessee in Avis motors Pvt. Ltd. and brought it to tax as unexplained investment under Section 69B of the Act.

4. Being aggrieved, the respondent assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. On examination of the facts, the CIT(A) concludes that the document seized at Choksi's premises did not contain signatures of the respondent assessee nor that of the respondent assesse's wife and son. Moreover, the respondent assessee denied the entries in the document being relied upon to conclude that it was an investment made by the respondent assessee. *De-hors* the aforesaid, the CIT(A) in his order dated 3rd September, 2010 also records the fact that at the highest the reading of the document would only indicate that Rs. 4.22 crores is to be contributed and cannot led to the conclusion that an amount of Rs.4.22 crores had in fact been invested by the respondent assessee in M/s. Avis Motors Pvt. Ltd. as alleged by the Revenue. The reliance by the Assessing Officer on the statement of Mrs. Kailash Tiwari (Wife of respondent) that amount of Rs.1.54 crores as shown in the document as paid to her by Mr. Bhupendra, could not lead to the conclusion that a sum of Rs.4.22 crores has been invested by the respondent assessee in

M/s. Avis Motors Pvt. Ltd. Thus, a finding of fact was rendered in the order dated 3rd September, 2010 of the CIT(A) that no investments on the basis of the document was made by M/s. Avis Motors Pvt. Ltd. Thus, the addition of Rs.4.22 crores as unexplained investment made by the Assessing Officer was deleted.

5. Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. The Tribunal on consideration of the facts records the following undisputed facts.

> *"(a) The search and seizure operations were conducted on strangers;*
>
> *(b) The paper relied upon by the AO was found from the premises searched;*
>
> *(c) No mention of any statement having recorded, either of the assessee or the assessee's son and wife.*
>
> *(d) Avis Motor, Kailash Tiwari and Anand Tiwari have accepted the investments made by them in their assessments.*
>
> *(e) Assessee name does not appear anywhere in the balance sheet of Avis Motor, as pointed out by the DR and relied upon by him."*

On the basis of the aforesaid facts, it notes that the Assessing Officer in the impugned order has not dealt with the objections of the respondent assessee as recorded hereinabove and the addition of Rs. 4.22 crores have been made without any supporting evidence. This is particularly so as the document did not support the inference of any investment of Rs.4.22 crores being made by the respondent assessee. Further, the reliance on the statement of respondent assessee's wife of receiving Rs.1.24 crores from one Mr. Bhupendra would not in any manner support the allegation that the respondent assessee had made an investment of Rs.4.22 crores in Avis Motors Pvt. Ltd. On these facts, the Tribunal dismissed the Revenue's appeal upholding the order of the CIT(A).

6. The Revenue's grievance before us is that Sections 64 and 65 of the Act had to be invoked and the amount of Rs.4.22 crores had to be brought to tax in the hands of respondent assessee.

7. We are unable to understand the grievance of the Revenue before us. This was not the case of the Revenue at any time right upto the Tribunal. This is also not a ground taken in the memo of appeal. Therefore, this issue does not arise from the impugned order of the Tribunal. Therefore, we see no reason to examine the respondent assessee's grievance about applicability of Sections 64 and 65 of the Act in the present proceedings.

8. We find that both the CIT(A) as well as the Tribunal have on the basis of the evidence before it, rendered a finding that the document does not indicate that the amount of Rs.4.22 crores has been invested by the respondent assessee in M/s. Avis Motors Pvt. Ltd. This is more particularly so as the entire case of the Revenue is on the document which is found in possession of a third party, indicating certain amounts payable by the respondent assessee, when the same has been denied by the respondent assessee at all times. This denial on the part of the respondent assessee of the document has not been addressed to by the Revenue.

9. In the above view, as the two Authorities have rendered concurrent finding of fact which is not shown to be perverse and / or arbitrary, the question as formulated does not give rise to any substantial question of law. Thus, not entertained.

10. The Appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**