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

INCOME TAX APPEAL NO. 1682 OF 2016

Pr. Commissioner of Income Tax-19 .. Appellant

v/s.

Ashok Mehta .. Respondent

Mr. Ashok Kotangle I/b Padma Divakar for the appellant
Mr. Sashi Tulsiyan I/b P.C. Tripathi for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 4th FEBRUARY, 2019

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 9th December, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2007-08.

2. The Revenue urges the following substantial question of law for our consideration :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting the addition of Rs.6,84,60,000/- made as undisclosed investment u/s 69 of the Act ?*

3. The Assessing Officer reopened the assessment for A.Y. 2007-08. This consequent to information obtained during the course of search operation conducted in the case of Bharat Shah Group, which was engaged in real estate business. In the course of raid, certain loose papers were found which related to the sale transactions of flats. The respondent assessee is an individual who declared a total income of Rs.29,920/- in its return of income for Assessment Year 2007-08. The Assessing Officer during the course of reassessment proceedings on the basis of loose papers obtained from Bharat Shah Group, inferred that the assessee had paid cash of Rs.6.84 crores to purchase flats. This investment was concluded from undisclosed income. Thus, adding the same as undisclosed income under Section 69 of the Act in the assessment order dated 20th March, 2013 passed under Section 143(3) r/w Section 147 of the Act.

4. Being aggrieved, the respondent assessee filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By order dated 28th February, 2014 the CIT(A) on the factual examination of the evidence before him came to the conclusion that loose sheet of papers relied upon by the Assessing Officer did not have any signature nor contain

name of the assessee nor did it mention the rate at which the flat was sold. Further, the builder as well as the respondent assessee had denied that any payments were made and / or received in cash in purchase of the flat. Thus, it held that no reliance can be placed on such documents to conclude that the respondent had made payments in cash and to tax the same as his undisclosed income. Therefore, allowing the appeal of the respondent.

5. On further appeal by the Revenue, the Tribunal on examination of the record *inter alia* came to the same figure as recorded by the CIT(A). Thus, dismissed the Revenue's appeal.

6. We find that the two authorities have concurrently come to a finding of fact that loose papers does not have any signature of any person nor did it contain name of the respondent. We note that the loose document is a dumb document as it does not give any particulars of the persons involved in the alleged transaction. Thus, it is not open to the Assessing Officer to draw inferences from the document by interpreting the words “Sh” to mean cash payment and “Q” to mean cheque payment without any evidence on record. The CIT(A) as well as the Tribunal have concurrently rendered a finding of fact, which is not

shown to be perverse in any manner. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

7. Accordingly, the appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**