
(1980) 09 CAL CK 0010

In the Calcutta High Court

Case No : Income-tax Appeal No's. 9 and 10 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Madho Properties Ltd.

RESPONDENT

Date of Decision : 12-09-1980

Acts Referred:

Income Tax Act, 1961 — Section 269C, 269C(1), 269C(2), 269D

Citation : (1981) 131 ITR 380

Hon'ble Judges : Dipak Kumar Sen, J;C.K. Banerji, J

Bench : Division Bench

Advocate : Balai Pal and A.K. Sengupta, for the Appellant;R.C. Deb, D. Pal, R.N. Bajoria, R. Murarka, R.K. Chaudury and A.K. Dey, for the Respondent

Judgement

Dipak Kumar Sen, J.—The transaction involved in these appeals u/s 269H of the I.T. Act, 1961, is the transfer of premises No. 13, Gurusaday Road, Calcutta (hereinafter referred to as "the property"), comprising of 16"642 cottahs of land and a one storey structure, by M/s. Madho Properties Ltd. (hereinafter referred to as "the transferor") to M/s. Shree Co-operative Housing Society Ltd. (hereinafter referred to as " the transferee") under a deed of conveyance dated the 4th July, 1974, for a stated consideration of Rs. 14,50,000.

2. Earlier, M/s. Talbot & Co., Calcutta, had valued the property at about Rs. 14,22,000 and submitted a report dated the 27th September, 1973. The said valuers took into account the situation of the property, its land area, its frontage on the main road on its south abutting on an open Maidan. They also noted that the property was situated in a detached area requiring land to be left vacant in any proposed construction and that the existing structure would be demolished to utilise the land for multi-storeyed constructions. On the basis of the aforesaid they valued the land by what is known as the "belting method". The front belt value of the land up to a depth of 100 ft. was found to be Rs. 30,000 per cottah. The final computation was as follows :

I Belt 24.525 K : $24.525 \times 1 = 24.525$ units

II Belt 3.913 K : $3.913 \times \frac{3}{4} = 2.935$ units

II Belt 22.033 K : $22.033 \times \frac{2}{3} = 14.689$ units

II Belt 13.510 K : $13.510 \times (\frac{3}{4} \times \frac{2}{3}) = 6.755$ units

Recess

III Belt 0.671 K

: $0.671 \times ? = 0.335$ units

Total 64.652 K : 49.239 units

Less 5% for size 2.462 units

46.777 units

Co-efficient 46.777

$64.652 = 0.72$ units

3. The average land value was determined at Rs. 30,000x 0.72-21,600 per cottah which was rounded off to Rs. 22,000. The value of 16'642 cottahs was thus estimated at about Rs. 14,22,000.

4. On the above report, the offer of the transferee for the purchase of the property was accepted by the shareholders of the transferor and on the 29th September, 1973, the transferor applied u/s 230A of the I.T. Act, 1961, for a certificate required for the registration of the proposed conveyance. The ITO issued the certificate on the 29th March, 1974. On the 4th July, 1974, the deed of conveyance was executed and registered before the Registrar of Assurance.

5. The deed of conveyance recorded a payment of Rs. 1,00,000 on the 3rd July, 1974, and provided for the payment of 20% of the balance consideration on or before the expiry of 24 months from the date of the conveyance with interest at the rate of 7% per annum, and of the entire balance consideration on or before the expiry of 36 months from the date of the conveyance with the same interest by the transferee.

6. The IAC, Income Tax, Acquisition Range XII, Calcutta, the competent authority within the meaning of Chap. XX-A of the I.T. Act, 1961, thereafter, by his letter dated the 26th September, 1974, referred the transaction to the District Valuation Officer directing him to determine the value of the property on the date of the said transfer.

7. The District Valuation Officer submitted a report on the 20th November, 1973. He found on inspection that the property was situated in a high class residential locality having on its south a wide public road and the Ballygunge Maidan. He noted that there was great demand for such land for multi-storeyed buildings. He took into account the valuation of the front belt land in the property at Rs. 30,000 per cottah made by M/s. Talbot & Co. and noted that similar land in the

locality had been sold at prices between Rs. 25,000 to Rs. 30,000 per cottah. He held that the belting method for valuation of land had become obsolete. He also held that for multi-storeyed structures it was necessary to leave vacant land to comply with municipal rules and fire safety requirements and that space had to be provided for playground and parking of cars. He also noted that the consideration would be paid in instalments.

8. He calculated the value of the property as follows :

The land was valued at Rs. 19,39,560 at the rate of Rs. 30,000 per cottah and the structure, Rs. 5,000, aggregating Rs. 19,44,600.

9. On the 21st November, 1974, the Competent Authority decided to initiate proceedings for the acquisition of the property under Chap. XX-A of the Act and recorded his reasons for doing so u/s 269C thereof. Concurring with the Valuation Officer he held that the " belting method " was not as a rule a reliable method in valuing land on the authority of a decision of this court in Nityagopal Sen Poddar and Others Vs. Secy. of State, . He also took note of the contemporaneous transactions in property in the area. Taking into account the general appreciation in the value of land in Calcutta by 33 1/2% to 50% since 1972, he found that the value of the land in question would not be less than Rs. 30,000 per cottah even on the average. He came to the conclusion that the reasonable fair market value of the property on the date of the transfer would not be less than Rs. 19,44,600 and exceeded the apparent consideration by 34%. He recorded as follows :

"On the facts and circumstances certain legal consequences follow. u/s 269C(2) (a) it shall be conclusive proof that the consideration agreed to between the parties has not been truly stated in the instrument of transfer. Further, u/s 269C(2)(b), it shall be presumed, unless contrary is proved, that the consideration as agreed to between the parties has not been truly stated with such objects as mentioned in Clauses (a) and (b) of Section 269C(1).

I, as Competent Authority, Acquisition Range XII, Calcutta, have, therefore, reason to believe that the immovable property of fair market value of about Rs. 19,44,600 has been transferred for an apparent consideration of Rs. 14,50,000 only. That the consideration as agreed to between the parties mentioned earlier has not been truly stated to secure the ends stated in Clauses (a) and (b) of Section 269C(1). I, therefore, hereby initiate proceedings for the acquisition of the immovable property under Chapter XX-A of I.T. Act, 1961."

10. On the 28th November, 1974, the Competent Authority, issued notice u/s 269D(1) of the I.T. Act, 1961, inviting objections to the proposed acquisition. A copy of the said notice was forwarded on the same day for publication in the Gazette and copies thereof were served on the transferor and the transferee.

11. On the 8th January, 1975, the transferor through their solicitors submitted its objection in writing contending, inter alia, that none of the conditions precedent

and/or requirements for initiating acquisition proceedings had been satisfied or fulfilled. It was denied that the consideration for the impugned transaction was less than the fair market value of the property or that the agreed consideration for the said transfer had not been truly stated in the instrument of transfer.

12. By a letter dated the 29th November, 1975, the Competent Authority brought to the notice of the parties to the transaction, inter alia, that there had been a general appreciation in the value of land in Calcutta by 33 1/2% to 50% since 1972 and, therefore, the fair market value of the property could not be less than Rs. 30,000 per cottah even on an average rate. The following transactions in land in the area were cited as instances of such appreciation.

(a) Premises No. 9, Mayfair Road, Calcutta, containing 11 bighas, 1 cottah and 12 chattacks of land with an old structure covering 1,005 sq.ft. was sold for Rs. 4,55,000 and the transfer was registered on the 21st September, 1973. The value of the land worked out at Rs. 20,000 per cottah.

(b) Premises No. 10, Mayfair Road, Calcutta, containing 1 bigha, 4 cottahs, 3 chattacks and 9 sq.ft. of land with an old building covering 6,000 sq.ft. was sold for Rs. 7,26,000 and the transfer was registered on the 24th April, 1974. The value of the land worked out at Rs. 28,800 per cottah.

(c) Premises Nos. 11 and 13, Mayfair Road, Calcutta, containing 2 bighas, 2 cottahs and 11 chattacks of land were sold for Rs. 1,27,500 and the transfer was registered on the 26th April, 1974. The value of the land worked out at Rs. 28,800 per cottah.

(d) Premises No. 14, Mayfair Road, Calcutta, containing 24 cottahs of land with an old building covering 6,300 sq.ft. sold for Rs. 6,00,000 and the transfer was registered on the 2nd July, 1974. The value of the land worked out at Rs. 25,000 per cottah.

13. It was stated in this letter that the said properties at the Mayfair Road were to the east of Syed Amir Ali Avenue whereas the property in this case was situated at about the same distance to the west of the said avenue in a more aristocratic area.

14. By its letter dated the 18th December, 1978, to the Competent Authority the transferor disputed that the value of land in the area had increased by 33 1/2% to 50% since 1972.

15. Thereafter, on the 23rd March, 1976, the Commissioner of Income Tax, West Bengal II, addressed a notice to the transferor stating, inter alia, that he proposed to pass an order for the acquisition of the property. The transferor was asked to show cause why the said proposal should not be approved on or before the 30th March, 1976.

16. On the 29th March, 1976, the transferor and the transferee submitted a joint representation to the Commissioner contending that the objections raised in the

said letter dated the 18th December, 1975, had not been properly considered by the Competent Authority and that the latter had proceeded on the basis of mere suspicion and assumption. They also asked for a personal hearing which was granted on the 29th April, 1976.

17. On the 7th May, 1976, the Commissioner approved the proposed acquisition, pursuant where to the Competent Authority passed an order u/s 269F(6) of the said Act on the 9th May, 1976.

18. The Competent Authority noted the said recorded transactions in properties in Mayfair Road and held that between September, 1973, and July, 1974, there had been an increase in the value of the land by not less than 40%. Comparing recorded transactions he held that land in Mayfair Road was on an average 1/10 less than land in Gurusaday Road. Applying the same ratio, he held that in July, 1974, when the conveyance in respect of the property was registered, the average rate for the land could be taken even at Rs. 33,000 per cottah.

19. He noted further that the said recorded transactions in Mayfair Road were not disputed by the parties. It was only denied that there was a general appreciation of the value of land by 33 1/2% to 50%. It was also not disputed that the Gurusaday Road area was much better than the area in Mayfair Road. He found that if the average sale price of land in Mayfair Road in July, 1974, was about Rs. 30,000 per cottah there was no evidence that value of land in Gurusaday Road would be less than that.

20. The Competent Authority considered the application of the belting method by M/s. Talbot & Co. and held, inter alia, that on the basis of the length of the road frontage of the property, the depth of the first belt should have been held to be at least 175 ft. The recess land both in the first and in the second belt was also held to be artificial. For a high rise apartment building 50% of the available space had to be left open in any event for provision of garage, parking space and other amenities, and as such no part of the land could be regarded as having lesser usability or access than that of other parts and no part of the land could be considered to be recess land. The valuation by M/s. Talbot & Co. of the different belts could only apply to cases where land was parcelled out and sold in small plots. In the instant case, the big plot would have a further advantage in providing for a set-back as required by the rules of the Corporation. The selling rates as also the income-yielding rates of the front and the rear apartments in high rise buildings would not vary much. He also criticised the reduction of 5% allowed by M/s. Talbot & Co. on account of the size of the property and held that such a reduction was not justified as the belting method had been applied.

21. The site plan prepared by M/s. Talbot & Co. showed open passages both at the eastern and the western side of the property which the Competent Authority held would be of added advantage in the proposed constructions for complying with the fire regulations.

22. The Competent Authority also noted the provision in the conveyance for

payment of the agreed consideration in instalments as also the low rate of interest agreed for such delayed payment and held that the purchaser was in fact receiving a deferred value which meant that the apparent consideration on the date of transfer was much less than what was stated in the conveyance. As such, the fair market value of the property would exceed the apparent consideration thereof by a much higher percentage than that found by the District Valuation Officer.

23. On the aforesaid grounds, the Competent Authority recorded his satisfaction that the property whose fair market value exceeded Rs. 25,000 also exceeded the apparent consideration by more than 25%. He also held that the consideration for the transfer as agreed to between the parties had not been truly stated in the instrument of transfer with the object stated in Clauses (a) and (b) of Sub-section (1) of Section 269C. With the prior approval of the Commissioner of Income Tax, West Bengal II, he directed the property to be acquired by the Central Government under the provisions of Chapter XXV of the Act.

24. Being aggrieved by the decision of the Competent Authority both the transferor and the transferee preferred appeals to the Income Tax Appellate Tribunal u/s 269G of the Act. It was contended by the said parties in the appeals that the Competent Authority was not justified in rejecting the "belting method" of valuation of land on the ground that it was obsolete. In support of their contentions they cited a decision of the Supreme Court in Mathura Prasad Rajgharia and Others Vs. State of West Bengal, and submitted that in Nityagopal Sen Poddar and Others Vs. Secy. of State, , the Calcutta High Court had also recognised the belting method in valuing urban land. They also cited an article published in the journal of The Institution of Engineers, Vol. XLVI, July, 1966, at p. 642, where the method of valuing a plot of land by taking into account the "depth factor" had been discussed and it had been noted that the said method was followed as a rule in all advanced countries including the U.S.A. where construction of high buildings was very much in vogue.

25. Calculations were submitted to the Tribunal to show that if the road frontage as well as the average depth of the land at premises Nos. 11 and 12, Mayfair Road, Calcutta, were taken into account the price of the front foot length in the said properties as also of the land in dispute would work out to the same figure, viz., Rs. 5,500.

26. The attention of the Tribunal was drawn to the sale of premises No. 11, Gurusaday Road, on the 29th December, 1972, which consisted of 55 cottahs of land and was sold at the average price of Rs. 17,270 per cottah. Even if it was assumed that the said property consisted of 45 cottahs of land as was wrongly noted by the Competent Authority the average price still works out at Rs. 21,000 per cottah.

27. It was submitted that the other transactions in property noted and

considered by the Competent Authority were not comparable with the transaction in the instant case. In premises No. 9, Mayfair Road, the average price per cottah was much less than the average price in the instant case. In premises Nos. 10 and 14, Mayfair Road, the purchasers had utilised the existing buildings in the said properties for residence. As for premises Nos. 11 and 13, Mayfair Road, Calcutta, if the value of the land was calculated by adopting the depth factor it would be the same as that in the instant case. It was contended that neither the Valuation Officer nor the Competent Authority had found any fault in the various belts adopted by M/s. Talbot & Co. and as such the valuation arrived at thereby should not be disturbed.

28. It was also contended on behalf of the appellants that the Competent Authority was not justified in taking recourse to Sub-section (2) of Section 269C of the Act, drawing a presumption thereunder and thereby forming the belief that the instant transaction had been entered into with the objects mentioned in Sub-section (1) of the said section. In support of such contention, the appellants before the Tribunal cited a decision of this court in *Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and Others*, . They also cited and relied on an order of the Income Tax Appellate Tribunal, "D" Bench, Bombay, in Income Tax Appeals Nos. 231 to 235 of 1974-75 dated the 2nd December, 1974.

29. It was finally contended that the initiation of the acquisition proceedings in the instant case was ab initio bad and invalid inasmuch as the notice u/s 269D(1) of the Act, though issued on the 28th November, 1974, was in fact published in the Official Gazette on the 27th March, 1975. In support of this contention the appellants relied on a decision of the Allahabad High Court in *U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another*, .

30. It was contended on behalf of the revenue on the other hand that the decision of the Supreme Court in *Mathura Prasad Rajgharia and Others Vs. State of West Bengal*, , was based on a concession and, therefore, would not be binding on all cases. *Principles and Practice of Valuation* by John A. Parks, 4th edn., was also cited to show that the belting method was not an appropriate method in valuing the land in the instant case.

31. On the authority of *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, , it was next contended that in determining the value of a property in an urban area it was necessary to take into consideration not only the situation but also its potentialities.

32. It was next contended that though instances of similar transactions in property had been made known to the appellants before the Tribunal they did not controvert the same excepting disputing their comparability with the instant transaction and were precluded from making further submission in respect thereof before the Tribunal.

33. As to the legality of the initiation of the acquisition proceedings it was contended on behalf of the revenue that the decision in Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and Others, was that of a single judge in an application under Article 226 of the Constitution and an appeal having been preferred therefrom, it was not final. A decision of the Delhi High Court in Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another, was cited on behalf of the revenue for an observation that the Competent Authority could take recourse to the provisions of Sub-section (2) of Section 269C of the Act in forming a belief that a transaction had been entered into with the objects mentioned in Sub-section (1) of the said section.

34. The Tribunal took the view that the main dispute was whether the entire property should be valued at a uniform rate as contended by the revenue or whether it should be valued under what was known as the belting method as contended by the parties to the transaction. The Tribunal found that there was no dispute that the portion of the property abutting on Gurusaday Road, i. e., the front belt was of the value of Rs. 30,000 per cottah. Following Mathura Prasad Rajgharia and Others Vs. State of West Bengal, and Nityagopal Sen Poddar and Others Vs. Secy. of State, , the Tribunal held that the belting method was appropriate in determining the market value of the property and it rejected the opinion of the Valuation Officer that this method was obsolete. The Tribunal found that by applying this method on the basis of depth factor the valuation of the property came to a figure less than that in the valuation of M/s. Talbot & Co. The Tribunal noted that the Competent Authority had not disputed the width of the various belts adopted by M/s. Talbot & Co., which were the same as those in Mathura Prasad Rajgharia and Others Vs. State of West Bengal, . The said belts were also in conformity with the observations in Principles and Practice of Valuation by Parks. Accordingly, the Tribunal held that the valuation of the property as made by M/s. Talbot & Co. was acceptable.

35. As to transactions in respect of other properties in the area relied on by the revenue the Tribunal held that it had been demonstrated by the appellants before it that by applying the depth factor method the price per front foot length of land in premises Nos. 11 and 12, Mayfair Road, Calcutta, came to the same figure as that of the property in dispute.

36. The Tribunal found that the factors to be considered in determining the fair market value of a property as laid down by the Supreme Court in Smt. Tribeni Devi and Others Vs. Collector of Ranchi, and Mathura Prasad Rajgharia and Others Vs. State of West Bengal, had been considered by M/s. Talbot & Co. as also the District Valuation Officer whereafter both had arrived at the common value of Rs. 30,000 per cottah. The Tribunal noted that after having determined such value M/s. Talbot & Co. applied the belting method whereas the Valuation Officer applied the same uniformly by rejecting the belting method.

37. As to the legality of the initiation of the acquisition proceedings the Tribunal

held that the issue was covered by the decision (of this court) in Smt. Bani Roy Ckowdhury [1918] 112 ITR 111 and that of the Allahabad High Court in U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another, and that the entire proceedings initiated by the Competent Authority under Chap. XX-A of the Act was bad in law. Accordingly, by their judgment dated the 25th September, 1976, the Tribunal allowed the appeals.

38. Subsequent to the said judgment the revenue filed a miscellaneous petition before the Tribunal for recall of the said judgment and for disposal of the appeals after a re-hearing. It was, inter alia, contended that the observation in the judgment that there was no dispute about the width of the belts adopted by M/s. Talbot & Co. was not correct and should be deleted.

39. It was stated that at the hearing it had been contended on behalf of the revenue that the depth of the first belt could never be as low as 100 ft. and in support of such contention Parks' Valuation had been cited.

40. It was further contended that there were observations of the Competent Authority in his order that the front belt of the property should in fact be valued at over Rs. 35,000 per cottah and that the price of land in the area had increased by at least 33 1/2% since September, 1973. The latter observation had been recorded in the judgment of the Tribunal. Therefore, the conclusion of the Tribunal that there was no dispute that the first belt of the land had to be valued at Rs. 30,000 per cottah was incorrect and should be deleted.

41. It was contended that the observations of the Tribunal that both M/s. Talbot & Co. and the District Valuation Officer had adopted the rate of Rs. 30,000 per cottah was incorrect inasmuch as the revenue had adopted an average rate of Rs. 3,000 per cottah whereas M/s. Talbot & Co. had adopted an average rate of only Rs. 22,000 per cottah.

42. It was also contended that calculations having been submitted by the parties to the transaction to arrive at the per front foot length prices of land in the case of premises Nos. 11 and 12, Mayfair Road, and the instant property by application of the depth factor method at the hearing before the Tribunal, for the first time, an opportunity should be given to the revenue to examine such calculations and make further submissions.

43. By its order dated the 21st October, 1976, the Tribunal dismissed this miscellaneous application of the revenue holding that at the hearing the dispute was confined as to whether the property in question should be valued by the belting method or not and that the Tribunal in its judgment had dealt with the submissions made before it. All findings or conclusions in the order appealed from need not be microscopically examined by the appellate authority.

44. Being aggrieved by the judgment and the order of the Tribunal, the revenue has preferred the present appeals u/s 269 of the Act on the 21st December, 1976.

45. At the hearing before us, learned counsel for the revenue reiterated that valuation of land by the belting method was not the appropriate method in the instant case. In any event, this was an artificial method and could not be resorted to in every case. The land was purchased as a single unit for the construction of multi-storeyed buildings and there was no evidence before the Tribunal that there was a diminution in the value of the land proportionate to its depth from the front. The Tribunal failed to consider that the value of a land would also depend on its future use and utility. The Competent Authority had proceeded correctly in the instant case by taking into account the value of comparable units in the locality gathered from contemporaneous transactions.

46. Learned counsel submitted further that even if the belting method was applicable, the second and third belts in the land should have been valued at the same rate as the first belt inasmuch as there was no evidence that the other belts had a lesser value and the Tribunal had no reason to assume that it was so.

47. It was submitted that there was no fool proof method for valuing a vacant plot of land. The final test was that the market value of a land would be that which a hypothetical and willing buyer would pay for the land in a hypothetical market. Such a buyer certainly would take into account how such land could be best utilized.

48. Learned counsel for the revenue next submitted that the initiation of the acquisition proceedings in the instant case was valid. The Competent Authority had proceeded after duly recording his reasons and the notice u/s 269D of the Act was duly sent for publication in the Official Gazette at the time it was issued. This notice was in fact published in the Official Gazette on the 22nd March, 1975. The Competent Authority empowered u/s 269L of the Act had duly required the Valuation Officer to determine and report about the fair market value of a property for the purpose of initiating the proceedings.

49. On the report of the Valuation Officer, the Competent Authority had sufficient reasons to believe that the property had been transferred for an apparent consideration which is less than its fair market value and on the basis of the aforesaid the Competent Authority was further justified in drawing the presumption u/s 269C(2) that the real consideration had not been truly stated in the instrument with the object of reduction or evasion of tax or to facilitate the concealment of undisclosed income or assets.

50. Learned counsel for the revenue thereafter drew our attention to the scheme of the sections in Chap. XX-A of the Act and submitted that Sub-section (2) had been introduced in Section 269C by way of an amendment. The introduction of this sub-section in the section as also the report of the Select Committee which recommended the amendment made it amply clear that it was the intention of the Legislature that the Competent Authority would draw the presumptions introduced even at the initiation of the proceedings and the expression "proceeding" referred to in Sub-section (2) of Section 269C would be deemed to

include all proceedings and steps to be taken by the Competent Authority from the receipt of the particulars of a transaction in the prescribed Form No. 37G till the issue of a notice u/s 269D. Though administrative in nature, the same would still be proceedings under the said Chapter.

51. Learned counsel submitted that on the basis of the recorded particulars of the transaction and the report of the Valuation Officer, once the Competent Authority came to hold the belief that the fair market value exceeded the apparent consideration by the prescribed percentage it was open to him also to draw the presumptions under Sub-section (2) of Section 269C and came to have reasons to believe that the object of the transfer came within the mischief of the said section. There could not be any other material before the Competent Authority at that stage on which he would found his reasons to believe that the transfer had been made with the said objects. The Competent Authority, though empowered u/s 269L, could not take advantage of and proceed u/s 131 of the Act as the powers thereunder could be exercised only when some proceeding would be pending before him and not at the stage of initiation of such proceedings.

52. Learned counsel for the revenue lastly contended that the decision of the Tribunal was erroneous inasmuch as the Tribunal had failed to take into account the increase in the price of land in the area during the relevant period to the extent of 33 1/2 % to 50% as also the unusual provision in the conveyance for payment of the consideration in instalments. It was submitted further that the Tribunal proceeded on the erroneous assumption that there was no dispute as to the width of the different belts to be adopted for the purpose of valuation and the respective values thereof. The Competent Authority had never accepted the correctness of the width or the number of belts as taken by M/s. Talbot & Co. or the respective values thereof.

53. In support of their contentions, learned counsel for the revenue relied on and cited the following decisions :

(a) Allaul Haq v. Secretary of State for India in Council [1911] 11 CLJ 393. In this case, in the calculation of compensation under the Land Acquisition Act, though the value of the front portion of the land acquired was estimated separately, the entire land was valued as one unit. On an appeal to this court from a decision of the District Court on a reference, the valuation was upheld. This court observed as follows:

"As observed in the case of Government of Bombay v. Karim Tar Mohomed ILR [1908] 33 Bom 328, it cannot be taken as a hard and fast rule that back land must be worth half the frontage of land. "

(b) Raghunath Das v. Collector or Dacca [1911] 2 CLJ 612. This is a decision of a Division Bench of this court on a similar appeal under the Land Acquisition Act. The appellants had claimed that the land acquired should be divided into belts and the valuation should be made accordingly. It was observed in the judgment

as follows :

"It was pointed out by this court in the case of Secretary of State v. India General Steam Navigation Company that the mode of valuation by division into belts is artificial and does not always afford a reliable guide to the ascertainment of the market value, and this view was subsequently affirmed by the Judicial Committee. It may further be observed that if the mode of valuation by division into belts was adopted, a great deal would depend upon the depth of the belts assumed more or less arbitrarily. "

(c) The Collector Vs. Ramchandra Harischandra, . This is a decision of a Division Bench of the Bombay High Court on a similar appeal under the Land Acquisition Act. This decision was cited for the following observation in the judgment (p. 45):

" ...where a large area of 13 1/2 acres has to be valued, it is impossible to fix the value of various portions of it at different rates on anything like approaching an accurate basis. The only way in which the market value can be arrived at is to judge from other sales what the whole land would have been likely to realise in the market. "

(d) Nityagopal Sen Poddar and Others Vs. Secy. of State, . This is again a judgment of a Division Bench of this court on a similar appeal under the Land Acquisition Act. In valuing for compensation the land had been divided into three belts according to their distance from the public road and valued at different rates. The appellants contended that the land should have been valued at one rate. The court observed as follows (p. 26):

" Now so far as the system of belting is concerned it is a system which is widely used, but its value as a system depends much upon a variety of facts. If data are available showing the proportion at which the value of land diminished, accordingly as it is situated at a particular distance from a main road or thoroughfare, the system would be perfectly scientific. In the absence of any such data also, it may be assumed that in big cities where land sells by cottas or yards or feet there is such a proportion, as common experience shows. For instance, in land acquisition or improvement schemes in and near about Calcutta land is generally divided into blocks facing some particular street or road or lane and each block is divided into three belts, the first to a depth of 60 feet or so on the road frontage, the second to a depth of about 150 feet thereafter and the third consisting of all land behind, and the relative values of the three belts are fixed in the proportion of 100, 66"6 and 50. But in places and localities where lands are sold by bighas or acres, and there is no real evidence of such proportionate diminution in value the system is based on no sound principle and must be regarded as a method not quite satisfactory. Of course there is almost always a distinction in value between front lands and back lands everywhere but that distinction would not obviously justify a recourse to the belting system in each and every case. It is a highly artificial system and cannot be resorted to as a hard and fast rule."

(e) Mathura Prasad Rajgharia and Others Vs. State of West Bengal, . The dispute in this case arose in respect of compensation awarded under the Land Acquisition Act. On a reference u/s 18 of the Act to the Calcutta Improvement Tribunal the initial compensation was enhanced. A further appeal to the High Court resulted in further enhancement. The claimants took up the matter to the Supreme Court on final appeal. The Supreme Court observed as follows (p. 469):

"Where a large area of land in an urban locality is sought to be acquired in determining the market value, "the method of belting" is appropriate. It is common knowledge that lands having frontage on the main roads in urban areas are always more attractive than the lands which have no such frontage. No objection was raised before us against the adoption of " the method of belting ". It was also accepted that of the land under acquisition the front belt would be 100 feet deep: the second belt 150 ft. deep and the rest may be included in the third belt. No objection was again raised to the opinion of the Tribunal that the price of the second belt should be taken at 75% per cottah of the value of the land per cottah in the first belt; and the price per cottah of the third belt should be taken at 50% of the value of the land per cottah in the first belt."

(f) Smt. Tribeni Devi and Others Vs. Collector of Ranchi, . The dispute in this case also arose about the determination of compensation payable under the Land Acquisition Act. This decision was cited for the following observations in the judgment (pp. 1419, 1420):

"The general principles for determining compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The rent which an owner was actually receiving at the relevant point of time or the rent which the neighbouring lands of similar nature are fetching can be taken into account by capitalising the rent which according to the present prevailing rate of interest is 20 times the annual rent. But this also is not a conclusive method.....These methods, however, do not preclude the court from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. In arriving at a reasonable correct market value, it may be necessary to take even two or all of those methods into account inasmuch as the exact valuation is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is

it possible in all cases to have reliable material from which that valuation can be accurately determined."

(g) *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, In this case, the assessee challenged the reassessment of their income u/s 34(1) of the Indian I.T. Act, 1922. Being unsuccessful up to the Tribunal the assessee invited a reference to the High Court. The question whether the ITO had jurisdiction to initiate reassessment proceeding u/s 34(1)(a) of the Indian I.T. Act, 1922, was answered by the High Court in favour of the revenue. The assessee thereafter went up on appeal to the Supreme Court. One of the grounds urged by the assessee before the Supreme Court was that before initiating the reassessment proceeding the ITO should have communicated to them the reasons for the initiation of the impugned reassessment proceeding which the ITO refused to do in spite of a request. The Supreme Court held that the assessee was not entitled to such a communication. In this connection, the Supreme Court discussed the nature of the reassessment proceedings and observed as follows (p. 222):

" The proceedings for assessment or reassessment u/s 34(1)(a) of the Income Tax Acts start with the issue of a notice and it is only after the service of the notice that the assessee, whose income is sought to be assessed or reassessed, becomes a party to those proceedings. The earlier stage of the proceeding for recording the reasons of the Income Tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasi-judicial. The scheme of Section 34 of the Act is that, if the conditions of the main section are satisfied, a notice has to be issued to the assessee containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 22. But before issuing the notice, the proviso requires that the officer should record his reasons for initiating action u/s 34 and obtain the sanction of the Commissioner who must be satisfied that the action u/s 34 was justified. There is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed u/s 34 must also be communicated to the assessee."

(h) *Debi Prosad Poddar Vs. Commissioner of Wealth Tax*, . This decision in a reference under the W.T. Act was cited for the following observations of a Division Bench of this court on the valuation of immovable property (p. 773) :

" (1) Attempt must be made to find out the price which the immovable property would fetch on the valuation date imagining a willing buyer to purchase the property from a willing seller in respect of the property.

(2) In respect of the immovable property there is no fixed market such as market for shares or for other commodities, like sugar, cloth, etc. In order to arrive at a valuation in respect of the property there must necessarily be certain element of guess. But the guess must be based on certain facts and according to

certain principles which would be, in the facts and circumstances of each case, as fair as possible to the revenue as well as to the assessee in trying to imagine reasonably and intelligently the price which was expected to be fetched if it was possible to sell the property in question on the relevant valuation date.

(3) Such a determination, therefore, involves adopting-certain methods in determining the valuation and there are different kinds of methods, as mentioned in the circulars of the Board and the principles enunciated in the several decisions of the court as noticed before.

(4) Which one of the various methods would be suitable for a particular case must depend upon the nature of the property, the location of the property, the purpose for which the property is used and several other objective factors, viz., the time when the valuation is made, the prospect of buying and selling in respect of the property at the relevant time and also special features in respect of the property, if there be any. Taking all these factors into consideration it is, therefore, necessary to determine which one of the various methods will be most suitable to reach as accurate as possible a guess as to the valuation on the valuation date.

(5) Another factor that has to be borne in mind is that such a method should be preferred which has more objective reliable data to rely upon than mere subjective opinions. For instance, if there are more objective data to work out in respect of one method more reliable than another then that method for a particular land should be preferred. If, however, there is any objective reliable evidence of any transaction of sale of the land or property similar in quality or of the same type and in approximately same time then that would, however, provide more reliable method to follow."

(i) Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another, . In this case, the vires of Chap. XX-A of the I.T. Act, 1961, was challenged in a proceeding under Article 226 of the Constitution before a Division Bench of the Delhi High Court. The High Court held that the impugned chapter was valid and was not violative of arts. 14, 19 and 31 of the Constitution. Some observations were made in the judgment on the presumptions to be drawn u/s 269C as follows (p. 219);

"... in the present case, if a presumption were not to be drawn when a transaction is genuine and is to be drawn when it is not genuine, the impugned Act would be unworkable. For, it is impossible to find out, a priori, as to which is a genuine case and which is a non-genuine case. The presumption is, therefore, raised in every case. This is reasonable because justice required that a person who acquires property for a consideration less than the market value of the property should be required to displace the presumption. If the purchase is a genuine one, he should be able to rebut the presumption."

54. Learned counsel for the revenue also cited passages from Dymond's Death Duties, 15th edn., and Verma's Law and Practice of Wealth-tax, 1978 Edn.,

containing general discussions on the principles of valuation of immovable property.

55. Learned counsel for the respondents contended, on the other hand, that in the instant case nothing has been recorded by the Competent Authority on which he could have come to the belief that the apparent consideration in the transaction had been falsely stated with the object or objects as specified in Clauses (a) and (b) of Sub-section (1) of Section 269C. Such a belief could not have been entertained by the Competent Authority by merely looking at the deed of sale and the report of the Valuation Officer.

56. It was submitted that Sub-section (2) of Section 269C prescribed rules of evidence and the onus of proof which could be applied in a proceeding under this chapter only after it was initiated by the issue of a preliminary notice u/s 269D. Such a proceeding would not include the preliminary steps taken prior to its initiation. It was not, therefore, open to the Competent Authority to invoke such rules of evidence at any such earlier stage. In the instant case, it was submitted, proceedings were initiated without the formation of the requisite beliefs and, therefore, the same were entirely without jurisdiction.

57. Learned counsel submitted that Sections 269C and 269D of the Act left no doubt that proceedings under Chap. XX-A could only be initiated by issue of the preliminary notice u/s 269D. Sub-section (1) of Section 269C, compared with Sub-section (2) thereof, clearly brought out the distinction between the initiation of a proceeding and the proceeding itself.

58. Learned counsel submitted that if it was intended that Sub-section (2) of Section 269C would apply even at the stage of initiation of proceeding it would not Have been necessary to require the Competent Authority also to be satisfied as to the genuineness of the consideration of the transfer and about the objects for which the consideration was understated and to record the reasons for such satisfaction. The interpretation suggested on behalf of the revenue would make the later part of Sub-section (1) of Section 269C redundant.

59. It was further submitted that a property might be sold at a price less than its fair market value on the date of the transfer for various reasons, e.g., distress or non-commercial considerations or on account of delay in executing the conveyance caused by investigation of title or clearance from the revenue authorities. In such cases, the Competent Authority could not ignore the facts and proceed only on the presumptions u/s 269C(1). It was submitted that even at the stage of initiation of proceedings the Competent Authority had sufficient power u/s 131 of the Act, enabling him to collect materials. Such power has been specifically conferred by Section 269M and a time of nine months has been allowed for the initiation of a proceeding under this chapter.

60. Learned counsel for the respondents next submitted that the belting method of valuation of land had not become obsolete and was the appropriate method for valuing large plots of urban land. This was also established by the decisions

and authorities cited on behalf of the revenue. It was not open to the revenue at this stage to question the correctness of the manner in which the belting method was applied in the instant case. At the hearing before the Tribunal, the entire argument of the parties centered round the point whether the belting method is obsolete or not. The computation of M/s. Talbot & Co. was never disputed nor was it contended that the width of the belts had not been properly determined or that the value of the belts had been taken at a low figure. The arguments before the Tribunal have been duly recorded in the order of the Tribunal. The revenue sought to reagitate the matter before the Tribunal by filing the said miscellaneous application which was rejected and the Tribunal in their subsequent order again stated the nature and ambit of the arguments advanced in the appeal before it.

61. Comparable transactions in land brought to the notice of the Tribunal on behalf of the revenue were duly considered. The respondents satisfied the Tribunal that the said cases were not really comparable and in support submitted calculations in respect of each case. The calculations were made available to the counsel for the revenue. Objections to the said calculations were not raised at the material time.

62. The following decisions were cited in support of the contentions of the respondents.

(a) New Central Jute Mills Co. Ltd. Vs. Dwijendralal Brahmachari and Others, . In this case, a summons issued u/s 131 of the I.T. Act, 1961, was impugned in a proceeding under Article 226 of the Constitution, inter alia, on the ground that powers under the said section could not be invoked for the collateral purpose of the investigation. It was held that Section 131 could be invoked for all the purposes of the Act and all proceedings incidental thereto including investigation for reopening of an assessment. It was observed in the judgment as follows (p. 472):

"The purpose of the Income Tax Act is not only to make the assessments; to make investigations to find out whether reassessment was necessary and proceedings for reassessment should be initiated or not is also within the purpose of the Act. The Income Tax Officer has stated that there were allegations against the petitioner regarding the concealment of huge income arising out of export business and if to investigate regarding the completed assessments and for the purpose of future assessments, the documents, books and papers were required by the Income Tax Officer as was suggested by him in his affidavit, in my opinion it cannot be characterised that the same was not for the purpose of the Act."

This judgment was affirmed on appeal.

(b) Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and Others, . In this case, proceedings initiated under Chap. XX-A of the Act in respect of a transaction of

the LIC was challenged in an application under Article 226 of the Constitution. It was, inter alia, contended that conditions for assumption of jurisdiction under the said chapter had not been satisfied. Ramendra Mohan Datta J. set aside the impugned proceeding holding, inter alia, as follows:

(a) "proceeding" within the meaning of Section 269C(2) commenced only from the initiation thereof as prescribed under Chap. XX-A and the said expression must be held to convey the same meaning wherever used in the chapter.

(b) The presumptions under Sub-section (2) of Section 269C cannot be applied at the initial stage when the Competent Authority has to form his reasons to believe.

(c) Even after the formation of such a belief the initiation of proceedings was a matter of discretion to be exercised by the Competent Authority by taking into consideration facts and circumstances of each case.

63. Learned counsel for the respondents also cited a passage from the text book, Principles & Practice of Valuation, by Parks, 4th Edn., at p. 95, the relevant portions whereof are as follows:

"You cannot value a property by what is sometimes called " The Belting Method of Valuation", but by the belting method it is possible to estimate the value of one plot of land, fairly accurately in comparison with another plot of known value.....

It has already been explained that frontage land has a greater value than back land; so when making comparisons by belting, the very first step is to ascertain to what depth of the land does the maximum value extend. Having decided this point, the standard of measurement applicable in that district will become units. In Calcutta the measurement is by kottahs; therefore, having found that the area of the land to which the maximum value extends is 4 kottahs, this would become 4 units. The next step is to ascertain the relationship regarding the value of the back land to the front. If it is found that the back land value is one-half of the front land value, then the back land area would be divided by 2 to convert the kottahs into front belt units.

This method has become recognised by the courts....."

64. An unreported judgment of this court in Civil Rule No. 5538(W) of 1974 dated the 26th February, 1979 [since reported-- SUBHKARAN CHOWDHURY AND OTHERS Vs. INSPECTING ASSISTANT COMMISSIONER OF Income Tax, ACQUISITION RANGE I, AND OTHERS.,] was also cited on behalf of the respondents. In this case, a proceeding for acquisition of a premises under Chap. XX-A of the Act was challenged by the purchaser in an application under Article 226 of the Constitution on, inter alia, the ground that the conditions precedent for initiation of such proceeding had not been fulfilled. It was held by Sabyasachi Mukharji J., following Smt. Bani Roy Chowdhury Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax, Acquisition Range II and

Others, , that in initiating such proceedings the Competent Authority must have material before it to believe that the fair market value of the property being transferred had not been correctly stated in the instrument of transfer in order to facilitate the reduction or evasion of tax liability of the transferor or concealment of income or money or assets of the transferee. The learned judge held further that the evidentiary value of presumption under Sub-section (2) of Section 269C was not attracted at the stage of initiation of such proceedings as in that case there would be no further question of rebutting such presumption.

65. We are unable to accept the contention of the revenue that in valuing the land in the instant case the "belting method" was not appropriate or that such method has become obsolete. In none of the decisions cited at the bar the belting method has been held to be obsolete or entirely rejected. In *Allaul Haq* [1911] 11 CLJ 393 (Cal) all that was quoted by this court was that there was no hard and fast rule that land at the back must be worth half the land in the front. In *Raghunath* [1911] 11 CLJ 612 (Cal), it was observed that the mode of valuation by division into belts was artificial and does not always afford a reliable guide for ascertainment of market value. In *Nityagopal Sen Poddar and Others Vs. Secy. of State*, , relied on by the revenue, it appears that valuation on the basis of belting was in vogue and it was observed that on proper data the system was scientific. But where land was sold in large portions in non-urban areas it would be difficult to obtain evidence of the diminution of the value of the land in relation to its situation. The Bombay High Court made similar observations in *Nityagopal Sen Poddar and Others Vs. Secy. of State*, .

66. But, in our opinion, the controversy has been set at rest by the Supreme Court in *Mathura Prasad Rajgharia and Others Vs. State of West Bengal*, . Though there was no dispute before the Supreme Court whether the belting method should be adopted or not, the Supreme Court clearly laid down that where a large area of land was being acquired in an urban locality the method of belting for determining the value thereof was appropriate and that it was common knowledge that land in urban areas having a frontage on the main road was more attractive than the land which has no such frontage. The said observations appear to have been made de hors any concession and is intended to lay down the law. Observations of the Supreme Court, even if obiter, would be binding.

67. In *Parks*" text book on Valuation the belting method has been noted and discussed.

68. The fact that the land was being purchased for construction of multi-storeyed buildings cannot in our opinion rule out the application of the belting method. The Tribunal has noted the methods of valuation of land adopted in advanced countries like the U.S.A., where "high rise" buildings are common. Even there, in valuation of land, the distance of different parts thereof from the main thoroughfare is taken into account and the "depth factor" is introduced in the calculation of such value. We are unable to accept the contention of the revenue that the Tribunal failed to note that the land in the instant case was to be utilised

for the construction of multi storeyed buildings.

69. The contention of the revenue that the Tribunal failed to take into account the contemporaneous transactions in land in the neighbourhood and proceeded solely on the artificial belting method is equally untenable. From the judgment of the Tribunal, it appears that other instances of sale of land relied on by the revenue were duly considered and tested by applying the belting method. Relevant calculations were furnished by the parties to the transaction and were duly gone into.

70. The further contention of the revenue has been that the Tribunal wrongly assumed that the width and/or the depth of the belts of the land as determined by M/s. Talbot & Co. and the difference in their respective values were not in dispute and had proceeded on such erroneous basis. The Tribunal, it was submitted, also failed to consider the increase in the price of land area between the date of the agreement and the date of the conveyance. The calculations in respect of several transactions cited for comparison submitted by the transferor and the transferee, it is alleged, could not be controverted by the revenue for want of opportunity.

71. In our view, it is not open to the revenue to raise such contentions at this stage as it does not appear from the records that such contentions were raised and urged before the Tribunal. Even in the miscellaneous petition of the revenue filed before the Tribunal it was not alleged that the said contentions were argued at the hearing before the Tribunal. It was only after the judgment of the Tribunal that such contentions were sought to be raised.

72. In rejecting this miscellaneous application, the Tribunal has clearly and categorically recorded what was in fact argued before it. In our opinion, this is a finding of fact and in this appeal it is not open to us to adjudicate on the correctness thereof. We may refer to the following observations of the Supreme Court in *Thakur Sukhpal Singh Vs. Thakur Kalyan Singh*, which appear to us to be relevant in this context (pp. 147-48).

" ...the question is whether the appellate court is bound to decide an appeal on merits on the basis of the material on the record when the appellant appears at the hearing but does not address the court...These matters have to be in the judgment when points in dispute between parties are raised before the appellate court. If no such points are raised for consideration the appellate judgment cannot refer to the points for determination in its judgment and, when there be no points raised for determination, there can possibly be no decision thereon and no reasons for such decision. Such is the position when the appellant does not address the court and does not submit anything against the decision of the court below. The memorandum of appeal does contain the grounds of objection to the decree appealed from, without any argument or narrative as laid down in Sub-rule (2) of Rule 1, Order 41. Such grounds cannot take the place of the points for determination contemplated by Rule 31. Not unoften certain grounds of objection

raised in the memorandum of appeal are not argued or pressed at the hearing and in that case such grounds cannot be taken to be the points for determination and are rightly not discussed in the judgment at all. It is for the appellant to raise the points against the judgment appealed from. He has to submit reasons against its correctness. He cannot just raise objections in his memorandum of appeal and leave it to the appellate court to give its decision on those points after going through the records and determining the correctness thereof. It is not for the appellate court itself to find out what the points for determination can be and then proceed to give a decision on those points."

73. The above observations, though made with reference to an appellant, in our view, apply equally to a respondent to an appeal who does not make his case at the hearing.

74. It appears to us that the so-called "belting method" is nothing more than a method of calculation in which the value of the portion of land nearest to the main thoroughfare, i. e., the front belt is first ascertained in the usual manner on objective data. Thereafter, the value of the other portions are determined taking into account the progressive decrease in value according to the distance from the front. In the instant case, the value of the front belt has been considered and determined by the Tribunal by taking into consideration the evidence produced including the reports, respectively, of the Valuation Officer and M/s. Talbot & Co. The Tribunal has also taken into account the comparable transactions cited.

75. We also note that the conclusion of the Competent Authority that there has been an increase in value of land by 33 1/2% to 50% is based on only four transactions relating to properties in Mayfair Road. The Competent Authority appears to have ignored an earlier transaction in respect of premises No. 11, Gurusaday Road, though it was brought to his notice. The Competent Authority does not appear to have considered that in at least two of such properties in Mayfair Road there were substantial residential buildings and the properties were not sold as vacant land. In any event, on the records, it is not possible to ascertain the increase, if any, in the price of land to the extent as found by the Competent Authority,

76. The next question which falls for our determination is whether, in the instant case, the acquisition proceedings were validly initiated. It will be convenient to refer to the relevant sections of the Act at this stage.

" 269C. Immovable property in respect of which proceedings for acquisition may be taken.--(1) Where the competent authority has reason to believe that any immovable property of a fair market value exceeding twenty-five thousand rupees has been transferred by a person (hereafter in this Chapter referred to as the transferor) to another person (hereafter in this Chapter referred to as the transferee) for an apparent consideration which is less than the fair market value of the property and that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object

of-

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under this Act in respect of any income arising from the transfer ; or

(b) facilitating the concealment of any income or any moneys or other assets which have not been or which ought to be disclosed by the transferee for the purpose of the Indian Income Tax Act, 1922 (XI of 1922) or this Act or the Wealth-tax Act, 1957 (XXVII of 1957),

the Competent Authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter:

Provided that before initiating such proceedings, the competent authority shall record his reasons for doing so :

Provided further that no such proceedings shall be initiated unless the competent authority has reason to believe that the fair market value of the property exceeds the apparent consideration therefore by more than fifteen per cent, of such apparent consideration.

(2) In any proceedings under this Chapter in respect of any immovable property,--

(a) where the fair market value of such property exceeds the apparent consideration therefore by more than twenty-five per cent. of such apparent consideration, it shall be conclusive proof that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer ;

(b) where the property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed, unless the contrary is proved, that the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in Clause (a) or Clause (b) of Sub-section (1)."

"269D. (1) The competent authority shall initiate proceedings for the acquisition, under this Chapter, of any immovable property referred to in section 269C by notice to that effect published in the Official Gazette :

Provided that no such proceedings shall be initiated in respect of any immovable property after the expiration of a period of nine months from the end of the month in which the instrument of transfer in respect of such property is registered under the Registration Act, 1908 (16 of 1908)."

"269E. (1) Objections against the acquisition of the immovable property in respect of which a notice has been published in the Official Gazette under Sub-section (1) of section 269D may be made-

(a) by the transferor or the transferee or any other person referred to in Clause (a) of Sub-section (2) of that section...

(3) For the removal of doubts, it is hereby declared that objection may be made under Sub-section (1) that the provisions of Clause (a) of Sub-section (2) of Section 269C do not apply in relation to any immovable property on the ground that the fair market value of such property does not exceed the apparent consideration therefore by more than twenty-five per cent, of such apparent consideration ."

"269F. (6) If after hearing the objections, if any, and after taking into account all the relevant material on record, the competent authority is satisfied that,--

(a) the immovable property to which the proceedings relate is of a fair market value exceeding twenty-five thousand rupees;

(b) the fair market value of such property exceeds the apparent consideration therefore by more than fifteen per cent. of such apparent consideration; and

(c) the consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with such object as is referred to in Clause (a) or Clause (b) of sub-section (1) or section 269C,

he may, after obtaining the approval of the Commissioner, make an order for the acquisition of the property under this Chapter."

77. The proviso to Section 269C and Sub-section (2) therein were introduced by the Taxation Laws (Amendment) Bill, 1971. The Select Committee, introducing the bill, observed as follows (see Jag Mohan and Others Vs. Controller of Estate Duty,):

"(6) Special rules of evidence should be provided to ensure effective operation of the law. By way of safeguards the Committee recommend,

(i) that the competent authority should record his reasons in writing before initiating acquisition proceedings ;

(ii) he should not initiate proceedings in any case unless he is of opinion that the fair market value of the property exceeds its apparent consideration by more than fifteen per cent. of such consideration. The Committee accordingly recommended that the fact that the fair market value of any property transferred exceeds its apparent consideration by more than twenty five per cent, of such apparent consideration shall, in proceedings for acquisition of such property, be deemed to be conclusive proof of the fact that the consideration for the property has not been truly stated in the instrument of transfer;

(iii) where any property has been transferred for an apparent consideration which is less than its fair market value, it shall be presumed that the consideration for the transfer has not been truly stated with the object of evasion of tax, at all stages of the acquisition proceedings and not merely at the stage of passing the order of acquisition."

78. From the aforesaid sections, it appears that acquisition proceedings can be

validly initiated only when the conditions prescribed in Sections 269C and 269D are satisfied. Such conditions are that the Competent Authority must have reason to believe that:

(a) The transfer involves immovable property of fair market value exceeding Rs. 25,000.

(b) Such property has been transferred for an apparent consideration which is less than the fair market value by at least 15%.

(c) The consideration for such transfer as agreed to between the parties has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the tax liability of the transferor or the concealment of any income, money or assets by the transferee.

79. When the said conditions exist the Competent Authority is required to take further ministerial steps for initiating the proceedings as follows :

(a) he has to record his reasons for initiating the proceedings;

(b) he has to issue a notice u/s 269D to be published in the Official Gazette.

80. In our view, the conditions prescribed in Section 269C are not disjunctive and each of them must exist before a proceeding can be validly initiated.

81. In the instance case, admittedly, the fair market value of the property exceeds Rs. 25,000. The Valuation Officer has estimated the fair market value of the property at a figure and his figure exceeds the consideration stated in the conveyance by more than 15% (of the consideration). The report of the Valuation Officer contains sufficient material for the Competent Authority to have reason to believe that the property was transferred at an apparent consideration less than its fair market value and that the fair market value of the property exceeds the apparent consideration by more than 15% (of the apparent consideration).

82. Solely on the basis of the aforesaid, the Competent Authority has drawn a presumption u/s 269C(2) and has recorded that he had reasons to believe that the agreed consideration had not been truly stated in the conveyance with the object of evasion, reduction and/or concealment within the meaning of Section 269C(1).

83. It is to be determined whether the Competent Authority was entitled to initiate proceedings in the instant case on the basis of such presumptions in the absence of any further material. In our view, it was not open to the Competent Authority to draw any presumption u/s 269C(1) prior to the initiation of the acquisition proceedings. Section 269C lays down that such presumption can be drawn in any proceeding under that chapter. Section 269D similarly lays down equally clearly that proceedings for acquisition under that chapter can be initiated only by a notice to be issued under that section. We are unable to accept the contention of the revenue that the word "proceeding" in Section 269C include all initial steps to be taken by the Competent Authority prior to the issue

of a notice u/s 269D. This contention appears to be untenable in the face of the clear language of Section 269D. It was also not open to the Competent Authority to draw any presumption u/s 269C at that stage for other reasons. The presumption u/s 269C(2) can be drawn only where the fair market value of the property exceeds the apparent consideration by a certain percentage (of the apparent consideration). In our view, such a presumption can be drawn only when the value of the property has been finally determined and not before. At the time of initiation of the proceeding, the Competent Authority is required only to record his reasons for his belief that the fair market value of the property exceeds the apparent consideration by the prescribed percentage. He is neither called upon nor empowered to come to any final conclusion regarding the value of the property and as such the question of drawing the presumption under Sub-section (2) of Section 269C can never arise at that stage.

84. In any event, presumption is nothing more than a rule of evidence and is intended to be applied in the adjudication of a disputed fact. Unless there is a lis and a question of fact is being contested between parties there cannot be any occasion for drawing a presumption. Where the Competent Authority has only to record his reasons for his belief as statement of facts he cannot proceed on the basis of rules of evidence.

85. Under Clause (a) of Sub-section (2) of Section 269C where the fair market value of a property exceeds the apparent consideration by more than 25% (of such apparent consideration) it will be conclusive proof that the consideration has not been truly stated. Under Clause (b) of the said sub-section where the apparent consideration is less than the fair market value of the property the presumption is that such consideration has not been truly stated (in the instrument of transfer), with the object of reduction or evasion of tax or concealment of income, money or assets. At the stage of initiation of the proceedings, the Competent Authority is not required to proceed by way of proof. It is only required that he should record reasons for the belief that, inter alia, the consideration has been understated with the aforesaid object or objects. The presumption to be drawn under Clause (b) is rebuttable and it is for the parties who are aggrieved to come and rebut the same by adducing evidence. This opportunity will not be available to the parties concerned at the stage of initiation of proceedings. If it is held that the Competent Authority is required to draw any presumption under Clause (b) of Sub-section (2) of Section 269C then even if there are other materials before the Authority showing the genuineness of the transfer, viz., in cases of distress sales, court sales, sales for non-commercial considerations and transaction with Government and quasi-governmental authorities where there is no question of any evasion or concealment, the Competent Authority will have no other alternative but to initiate proceedings inasmuch as on his presumption he cannot be called upon nor will be required to rebut the same.

86. The fact that on the recommendation of the Select Committee a provision for

drawing presumptions has been included u/s 269C does not advance the contentions of the revenue any further. If the contentions of the revenue are accepted then all that is required for the Competent Authority to initiate proceeding under the said chapter is to record his reasons for his belief that the fair market value of the property being transferred has exceeded the apparent consideration by the prescribed percentage and nothing more. The Legislature has prescribed that the Competent Authority must also have reasons to believe that the consideration has been understated with the object of reduction, evasion or concealment of taxes and/or assets by the parties to the transfer and this part of Section 269C would become absolutely redundant if we accept the contentions of the revenue.

87. For the reasons as aforesaid, we hold that all the necessary conditions precedent for initiation of acquisition proceedings in the instant case did not exist and/or were not satisfied.

88. Learned counsel for the respondents did not seriously press the point whether the initiation of the impugned proceedings was bad also on the ground of non-publication of the notice u/s 269D in the Official Gazette and, accordingly, it is not necessary for us to adjudicate on the same. We only note that the decision of the Allahabad High Court in U.S. Awasthi and Another Vs. Inspecting Assistant Commissioner of Income Tax (Acquisition Range) and Another, is not of much relevance on this question.

89. For the reasons as aforesaid the appeals fail and are dismissed with costs.

C.K. Banerji, J.

90. I agree.