(2011) 03 RAJ CK 0039

In the Rajasthan High Court

Case No : IT Appeal No. 95 of 2003

Naveen Grah Nirman Sahakari Samiti — APPELLANT

Vs

Competent Authority — RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 227, 31, 311(2)
Evidence Act, 1872 — Section 126
Income Tax Act, 1961 — Section 132, 147, 230A, 230A(1), 269A
Income Tax Rules, 1962 — Rule 48E

Citation : (2011) 240 CTR 161 : (2012) 1 RLW 858

Hon'ble Judges : Arun Mishra, C.J;Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This income tax appeal is directed against judgment dt. 25th April, 2003 of income tax Appellate Tribunal, Jaipur Bench, Jaipur (for short, ''the Tribunal'') (reported as (2004) 1 SOT 885 . Appellant M/s Naveen Grah Nirman Sahakari Samiti, Jodhpur (for short ''the Assessee'') filed an appeal u/s 269F of the income tax Act, 1961 (for short, ''the Act of 1961'') against the order dt. 16th Oct., 2002 passed by the Competent Authority-cum-Addl. CIT (Acquisition) Range-I, Jaipur (for short, ''the Competent Authority''). The Tribunal by aforesaid judgment dismissed the appeal filed by the Assessee u/s 269G(1) of the Act of 1961. In the appeal, the Assessee challenged the order of the acquisition of land situated at Jodhpur measuring 1,81,818 sq. yds. passed by the Competent Authority u/s 269F(6) of the Act of 1961.

2. Facts giving rise to this appeal are that erstwhile ruler of Jodhpur State Shri Gaj Singh sold certain lands to M/s Jodhan Real Estate Development Company (P) Ltd. Out of said land, a piece of land measuring 1,81,818 sq. yds. was then sold to M/s Jai Marwar Company (P) Ltd., Jodhpur @ Rs. 5.28 per sq. yd. on 5th Nov., 1971. This company was assessed to income tax for asst. yr. 1985-86 in respect of transfer of said land. The AO enhanced the sale consideration to Rs.

25,45,452 as against the declared sale consideration of Rs. 24,45,452, thus the increase was to the tune of Rs. 1,00,000 only. The Tribunal by its order dt. 8th Nov., 2002 disallowed the said sale consideration as capital gain in the asst. yr. 1985-86 on the ground that since sale deed was executed on 1st Feb., 1982, capital gain can be assessed only in the asst. yr. 1981-82 (sic-1982-83) and not in 1985-86.

3. The Appellant is co-operative society registered under Rajasthan Cooperative Societies Act, 1965. It is claimed that one Shri Naveen Rai Dangi of Jaipur was authorized by M/s Jai Marwar Company (P) Ltd., Jodhpur, to sell the said land. The agreement to sell was executed on 2nd Oct., 1974 for sale of said land by M/s Jai Marwar Co. (P) Ltd. to Appellant. According to the agreement, land was agreed to be sold @ Rs. 8 per sq. yd. A sum of Rs. 10,101 was paid in advance towards sale consideration. Balance sale consideration was agreed to be paid within 120 days. A stipulation however was made in the agreement to sell that in case of non-payment of rest amount within 120 days, the rate of the land would be increased by Re. 1 per sq. yd. per year. However, on 18th Aug., 1980 a substituted agreement was executed revising the amount. Eventually the sale deed was executed and presented for registration on 1st Feb., 1982 bur it could be registered only on 27th July, 1984. Delay in execution of sale deed is attributed to restrictions placed by Rajasthan Urban Property (Restriction of Transfer) Act, 1973. The agreement to sell was approved by Urban Ceiling Authority vide order dt. 7th July, 1981. The Addl. Collector (Stamps and Registration), Jodhpur, however, did not approve the claim of reduction of Rs. 1,00,000 claimed by Appellant-Assessee on account of levelling and other expenses and registered the sale deed at valuation of Rs. 25,42,454.

4. An application for a certificate u/s 230A(1) of the Act of 1961 was made by the transferor company to the ITO, Central Circle Part I, Jodhpur on 14th Jan., 1982 disclosing therein the amount of Rs. 24,45,452 as sale consideration and also name of Appellant-Assessee as transferee. The AO issued a sale certificate on 22nd Jan., 1982 but simultaneously required the transferor company to deposit tax towards its liability whereas the transferor company required the Appellant-society to make such payment. A cheque amounting to Rs. 3,00,000 was received by Appellant-society. For this, the Appellant-society issued a cheque for Rs. 8,00,000 dt. 1st May, 1982.

5. The Competent Authority however initiated proceedings under Chapter XX-A of the Act of 1961 and issued notice u/s 269D of the Act of 1961 for compulsory acquisition of the subject land to transferor and transferee. The Competent Authority passed an acquisition order on 16th Oct., 2002. Aggrieved thereby, the Appellant-society filed an appeal u/s 269G before the Tribunal which vide its order dt. 25th April, 2003 dismissed the appeal.

6. The Appellant approached this Court challenging notice of acquisition dt. 15th March, 1985, acquisition order dt. 16th Oct., 2002 and order of Tribunal dt. 25th April, 2003. This Court vide its order dt. 7th Jan., 2004 admitted the appeal for

hearing on following questions of law:

1. Whether the learned lower authorities were right in law and had material to hold that the Competent Authority had reason to believe as required u/s 269C(1) of the Act to initiate proceedings for the acquisition of the impugned land ?

2. Whether the learned lower authorities had material and were right in law in holding that the notices have been validly served u/s 269D(2) of the Act on persons stated in Section 269D(2)(a) of the Act ?

3. Whether the learned lower authorities had material and were right in law in holding that statutory requirements contained u/s 269D(2)(b) of the Act stand complied with ?

4. Whether the orders of the learned lower authorities are not perverse, presumptive and the conclusion and findings arrived at are not vitiated ?

7. We have heard Shri N.M. Ranka, learned senior counsel assisted by Shri J.K. Ranka, for Appellant-Assessee, Shri J.K. Singhi assisted by Shri Anuroop Singhi, for Revenue, and Shri Shiv Charan Gupta for intervener.

8. Shri N.M. Ranka, learned senior counsel for Assessee, has argued that Competent Authority illegally initiated acquisition proceedings under Chapter XX-A of the Act of 1961 by issuing notice u/s 269D of the Act of 1961. In fact, the notice was never served on the Appellant-Assessee. Copy of notice dt. 15th March, 1985 was served on Shri Bhanwar Lal Goyal, a member of the executive committee of the Appellant-Samiti on 13th June, 1986. Whereas the same notice was served on the transferor in March, 1986. The notice was defective because it did not contain description of land with its total area and boundary. Mere mention that land was situated near Ratanada, Circuit House, Jodhpur, was vague, ambiguous and insufficient, it did not contain full and complete address of transferor and transferee. The notice is only reproduction of language of provisions contained in Section 269D. The Competent Authority did not care to strike out either of two words "and/or" and has lifted the same from the statute book. This shows total non-application of mind in as much as vagueness and uncertainty as to which of two reasons should prevail.

9. It is argued that copy of reasons dt. 15th March, 1985 and valuation report dt. 12th March, 1985 were not served on Appellant and were rather served on chartered accountant on 14th May, 2002. No notice was served on the person who was in occupation of the property in question. The Appellant-Assessee carved out plots on the disputed land and made onward allotment thereof to its members. In fact, Shri Bhanwar Lal Goyal, the executive member of Appellant-society, on first date of hearing itself furnished names and addresses of members of the Appellant-society together with amount received and plot numbers allotted to them and requested the Competent Authority to issue notices to them as well. However, no such notice was issued. Some of the members personally appeared before the Competent Authority, however no hearing was given to them. The

acquisition order dt. 16th Oct., 2002 was thus passed in utter violation of principles of natural justice and without considering material on record and objections raised.

10. Shri N.M. Ranka, learned senior counsel appearing on behalf of Appellant-Assessee, argued that several members of Appellant-society submitted application to municipal authorities seeking permission to construct residential houses. Copy of one such application submitted by Shri Parasmal Khinvasara was produced before Competent Authority. The Commr., Municipal Corporation, Jodhpur issued a public notice dt. 8th March, 2002 in respect of 70 allottee applicants. In fact, the chief executive officer rejected the application seeking permission to raise construction by the allottee members on the objections raised by the IT Department about pendency of the proceedings under Chapter XX-A of the Act of 1961. Appeals were filed before the Divisional Commr., Jodhpur, by the allottee members. Matter even came up before this Court. Shri Parasmal Khinvasara then filed SLP (Civil) No. 7085 of 2002 against the order dt. 15th April, 2002 of this Court passed at its Principal Seat, Jodhpur. The Supreme Court granted leave in that matter and finally recognized Shri Parasmal Khinvasara as owner.

11. It is argued that some of the allottees sold the land by registered sale deed and transferee persons are in peaceful possession. Proceedings under Chapter XX-A were wholly illegal because no notice was served upon any of them. There was total non-compliance of provisions contained in Section 269D(2)(a) and (b) of the Act of 1961. There was also noncompliance of Rule 48E of the IT Rules, 1962 because substance of notice was not affixed at conspicuous place in said locality. Statutory requirements contained in Section 269D(2)(a) and (b) are also absent. When the Appellant applied for inspection of record, it was denied. The Appellant was merely provided with copy of "Aam Suchna" (public notice) dt. 25th Oct., 1985.

12. Shri N.M. Ranka, learned senior counsel for Appellant, argued that agreement that was entered into between parties was bona fide and genuine wherein they agreed for increase of rate of sale consideration by Re. 1 per sq. yd. for each passing year. There was no material on which Competent Authority could infer evasion of tax or understatement of value of sale consideration. No assessment of tax has been made in the hands of the transferor. The value adopted for the purpose of capital gain is sufficient evidence for the market price. Learned Counsel argued that in this connection the value recorded and accepted by registering authority is the correct index. The Revenue failed to prove to the contrary. Heavy burden lay on the Competent Authority to prove that apparent sale consideration was lesser than actual market price. Such a finding cannot be recorded on the basis of mere surmises, conjectures, doubts and suspicions.

13. Land adjacent to the disputed land was sold to M/s Jodhpur Zila Sahakari Sangh vide agreement to sell dt. 20th Feb., 1976 by same transferor @ Rs. 8.20 per sq. yd. on advance payment of Rs. 10,000. Exemption was also granted

under ceiling law on the basis of said agreement. The DVO was therefore wholly unjustified in holding that there was no comparable sale instance in immediate neighbourhood of disputed land. He also erred in law in relying on sale of plots auctioned by Urban Improvement Trust, Jodhpur, which cannot be said to be comparable because those plots were situated in developed colony and were smaller in size. There was no justification for Competent Authority to hold that fair market value of the property exceeded the apparent sale consideration by more than 15 per cent. Learned Counsel relied on judgment of this Court in KRISHNA KUMAR RAWAT AND OTHERS Vs. UNION OF INDIA AND OTHERS, , wherein it has been held that comparison can be made only in respect of land having similar character and proximity with similar advantages and amenities. Proximity in time is also an important factor in such a case. In this connection, learned Counsel relied on judgment of Delhi High Court in Commissioner of Income Tax Vs. Duncans Agro Industries Ltd., and judgment of Gujarat High Court in COMMISSIONER OF Income Tax, GUJARAT-II Vs. TRUSTEES OF SHRI MANEKLAL CHUNILAL SHAH TRUST., Reliance was also placed on judgment of this Court in Commissioner of Wealth-tax Vs. Raj Kumari Bhubaneshwari Kumari, to argue that the asset, which is subject to certain hazards having effect of diminishing its market value, are relevant factors to be taken into consideration while estimating value of asset in open market.

14. Shri N.M. Ranka, learned senior counsel further argued that even though the legislature in its wisdom did not provide for any time-limit for completion of proceedings under Chapter XX-A of the Act of 1961. Nevertheless, it is well settled proposition of law that since acquisition proceeding affects property rights of citizens, therefore, even if no time-limit is prescribed, they have to be completed expeditiously without any delay and without negligence and inaction on the part of Competent Authority. The legislature purposely inserted such proviso in Section 269UD under Chapter XX-C of the Act of 1961 for providing two months. Revenue has not given any satisfactory explanation for this enormous delay of 17 years. The acquisition proceedings under Chapter XX-A should be informed of expediency. While provisions of Section 269J provide for payment of apparent sale consideration for transfer +15 per cent of the said amount by way of compensation but Section 269J(1) of the Act does not provide for payment of any interest or damages on account of delay on the part of Competent Authority. The plea set up by Revenue that acquisition proceedings could not be finalized earlier because separate proceedings for acquiring this land under ceiling law were pending is totally irrelevant. It was argued that the Supreme Court in Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, observed that every authority has to exercise its power within a reasonable period and whenever a question regarding inordinate delay is raised, it would be open to the Assessee to contend that it is bad on the ground of delay. Kerala High Court in Iswara Bhat Vs. Commissioner of Agricultural Income Tax, held that statutory powers must be exercised bona fide, reasonably, without negligence and for purpose for which they were conferred. Even in absence of a

time-limit prescribed by the statute, the authority should initiate the proceedings within a reasonable time; by the same token, even for the completion of the proceedings, the same logic should apply and the final order should be passed within a reasonable time.

15. It was argued that this Court by its order dt. 10th Jan., 1986 stayed proceedings pending before Competent Authority-cum-Addl. Commr., Urban Land (Ceiling & Registration) Act, but this could not be construed as stay of any action under any of the laws except ceiling law and there was no stay of proceedings under Chapter XX-A of the Act of 1961, which was initiated on 15th March, 1985. The Competent Authority erred in law, therefore, in relying on the opinion of advocate Shri Ashok Gaur without confronting the Assessee with that opinion in acquisition proceedings and without permitting cross-examination of the standing counsel. The Tribunal was wrong in accepting explanation of delay upto 2002 observing that litigation came to end only in 2002 whereas fact is that leave to appeal was granted by Supreme Court on 28th Oct., 2002 and impugned order of Competent Authority is dt. 16th Oct., 2002.

16. Shri N.M. Ranka, learned senior counsel further argued that valuation file, details, working etc. were not provided. The DVO was also not produced for cross-examination though the Appellant specifically raised this demand before the Competent Authority. The Competent Authority erred in law in relying on comparable sale prices of other lands, which were not referred to and relied upon by DVO and which were also not comparable and not similarly situated. It was wholly illegal for Competent Authority to accept the record of DVO because he relied on plots auctioned by Urban Improvement Trust, Jodhpur at Ratanada which is a developed colony and there was no dispute about nature and title of that land or any other hazard and the auction took place on 3rd July, 1983. They were not similar nature of plots. The DVO has made valuation of the property in question on imaginary, unreal and unreasonable basis. He did not base his valuation on sale instances of similar land with similar dispute. Those plots were situated at some distance and were of very small size admeasuring between 207 to 240 sq. yds. whereas the land in dispute was a big chunk of land.

17. It is argued that observations made by Competent Authority are contrary to material on record. This Court stayed proceedings pending before Competent Authority under urban ceiling law by order dt. 16th Dec, 1985. There was no stay on acquisition proceedings or any other proceedings under any other law or Act except ceiling law. There was then no reason to keep acquisition proceedings under Chapter XX-A in abeyance for such a long period. Observations made by the Tribunal on this aspect in para 38 of the judgment are contrary to the material on record. In para 40 of the judgment, the Tribunal observed about publication of notice and requirement u/s 269D(2)(b) of the Act of 1961. The Tribunal was wholly unjustified in doubting bona fides of the Assessee on the ground that some paper was produced by Shri Naveen Dangi on 21st Jan., 1974. There was nothing unusual. In this case, Shri Naveen Dangi was authorized by

board of directors of the transferor company to negotiate the transaction. The Tribunal also failed to consider affidavits of Shri Naveen Dangi, Shri Kundanmal Jain, Shri Manvendra Singh, Shri Bhawani Singh and Shri Mukut Singh. Observation of Tribunal that on 2nd Oct., 1974, which was National holiday, the agreement to sell could not be entered into, was wholly uncalled for as there was no prohibition that parties could not enter into agreement to sell on that date.

18. It is argued that observation of Tribunal about failure of Assessee to produce original agreement to sell is wholly misconceived. Original agreement to sell was demanded by Tribunal only on 2nd April, 2003 at the time of final hearing of appeal. Reason for non-production of such agreement was duly explained in para 7 at p. 4 of the written submissions that the same was filed in this Court at its Principal Seat, Jodhpur in Writ Petn. No. 101 of 1986. Certificate dt. 2nd April, 2003 to this effect issued by the Assessee''s advocate Shri K.N. Joshi was also produced. No adverse inference therefore could be drawn against Assessee for mere non-production of agreement to sell.

19. It is argued that though sale deed was presented for registration before registering authority on 1st Feb., 1982 and Assessee deposited the registration charges on that very day, however, registering authority did not register sale deed on the ground of various litigations and on account of stay order passed by Division Bench of this Court. An application was made by Assessee-Samiti before Division Bench with request to allow it to get the sale deed registered at its own risk. The Division Bench so permitted. It was therefore that the sale deed was registered on 27th July. 1984. By operation of law, it should relate back to date of agreement dt. 2nd Oct. 1974.

20. In order to substantiate his arguments, learned Counsel relied on judgment of Supreme Court in Gurbax Singh v. Kartar Singh and Ors. (2002) 173 CTR (SC) 477 : (2002) 254 ITR 112 (SC) , judgment of this Court in Maharani Yogeshwari Kumari Vs. Commissioner of Income Tax, judgment of Andhra Pradesh High Court in M. Syamala Rao Vs. Commissioner of Income Tax, and judgment of Gujarat High Court in Commissioner of Income Tax v. Mormasji Mancharji Vaid, (2001) 250 ITR 542 (Guj)

21. It was argued that sub-Registrar accepted the sale consideration indicated in the sale deed as just, correct and reasonable. There was therefore no occasion for the Competent Authority to doubt correctness of the sale consideration. Learned Counsel relied on judgment of Madras High Court in Commissioner of Income Tax Vs. Dr. V.K. Bhaskaran Nair and Another, wherein it was held that the value adopted by sub-Registrar, who had a right to independently value the property not only for assessment to stamp duty but also for purposes of charging appropriate registration fee, is a proper guide and has to be taken note of. Karnataka High Court in Inspecting Assistant Commissioner of Income Tax Vs. National Flag Perfumery Works, held that power of acquisition has to be exercised with full responsibility and onus of proving the market value was on Competent Authority.

22. Shri N.M. Ranka, learned senior counsel appearing on behalf of Assessee, argued that Competent Authority has on extraneous, irrelevant and arbitrary considerations, come to conclusion about evasion of tax by transferor or transferee. Admittedly, in present case, the assessment of transferor has been completed accepting the apparent sale consideration and the Appellant-society was not shown to have any taxable income, and was not assessed to income tax or wealth-tax. The valuation made by DVO at Rs. 1,20,91,000 is wholly arbitrary, whimsical, capricious and without material and not based on comparable sales of similarly situated land and is against principles of law.

23. The ITO, Central Circle Ward, Jodhpur, issued a notice (sic-certificate) u/s 230A(1) of the Act of 1961 on 22nd Jan., 1982 finding value recorded at Rs. 24,45,452 as just, fair and reasonable and this was done after due verification and complete satisfaction. Only addition of Rs. 1,00,000 by registering authority was for the purpose of computing fair market value because he did not allow deduction of that amount on account of development done by Appellant-society. In fact, this valuation was accepted as correct in the assessment of transferor company by the Tribunal in its order dt. 8th Nov., 2002.

24. Learned Counsel argued that Competent Authority is required to record his reasons before initiating proceedings under Chapter XX-A of the Act of 1961. Competent Authority has, in show-cause notice, while initiating proceedings, used both expressions "and/or" with reference to Section 269C of the Act of 1961 and was uncertain as to which was of the two clauses would be attracted and germane for initiation of proceedings. The satisfaction arrived in initiation of proceedings by Competent Authority was thus vitiated by non-application of mind. In this connection, learned Counsel relied on the judgments of Bombay High Court in All India Reported Ltd. and others Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax and others, Apeejay Premises Co-operative Society Ltd. and another Vs. Nishar Ahmed and another, Udharam Aildas Thadani and others Vs. Inspecting Assistant Commissioner of Income Tax and others, , Carmichael Shikarkunj Co-operative Housing Society Ltd. Vs. Union of India and others, and judgment of Punjab & Haryana High Court in CIT v. Khaitan Electricals Ltd. (2004) 186 CTR (P&H) 153 : (2004) 134 Taxman 797 (P&H).

Udharam Aildas Thadani and others Vs. Inspecting Assistant Commissioner of Income Tax and others, , Carmichael Shikarkunj Co-operative Housing Society Ltd. Vs. Union of India and others, and judgment of Punjab & Haryana High Court in CIT v. Khaitan Electricals Ltd. (2004) 186 CTR (P&H) 153 : (2004) 134 Taxman 797 (P&H).

25. Shri Shiv Charan Gupta, learned Counsel appearing as intervener for one of the allottees, argued that main object of Chapter XX-A of the Act of 1961 was to prevent evasion of tax liability, therefore, it was incumbent upon the Competent Authority to arrive at satisfaction about prima facie foundation that (i) the apparent sale consideration was less than fair market value by 15 per cent, (ii)

the consideration stated in instrument was at a lesser figure than that actually received by Assessee, (iii) it was to facilitate evasion of tax liability by transferor, or (iv) to facilitate concealment of income by transferee for IT Act or WT Act. In present case, none of these ingredients were proved in as much as it was also not proved as to what amount was actually received by transferor, which was more than fair market price nor the Department has made out a case of concealment of income as against transferee, rather in assessment of transferor, it was held that Department has not been able to discharge burden of evidence cast upon it to show that Assessee had understated sale consideration. Learned Counsel in this connection relied on judgment of Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, It was argued that DVO has illegally made valuation of land on the basis of plots of smaller size about 200 sq. yds., which is wholly illegal. Learned Counsel in this connection relied on the judgment of Supreme Court in Rishi Pal Singh and Others Vs. Meerut Development Authority and Another, . In the case of transferor, valuation of Rs. 24,45,452 as stated in subject agreement was taken as correct. Besides, the DVO computed the value as on 27th July, 1984 whereas agreement to sell was executed on 2nd Oct., 1974 and the sale deed is dt. 1st Feb., 1982. The Tribunal has computed the value of the property as on the date of execution of sale deed i.e. 1st Feb., 1982.

26. Learned Counsel argued that details which were worked out in the valuation report were not supplied to either Appellant society or any of its members. It was an ex parte valuation done by IT Department. The DVO has wrongly mentioned that there was no other instance of comparable sale in neighbourhood of the land whereas the instances were there; for example sale agreement dt. 20th Feb., 1976 executed by same transferor, namely, Jai Marwar Co. in favour of another purchaser Jodhpur Zila Sahakari Sangh from the same chunk of land @ Rs. 8.20 per sq. yd. The land in question remained entangled in litigation and proceedings were started under the Rajasthan Land Reform and Acquisition of Land Owners Estate Act, 1964, and Urban Land Ceiling and Regulation Act, 1976, and therefore also its valuation could not be same as of any other land, which was free from encumbrances. In fact, this land was declared as construction zone by this Court in Writ Petn. (PIL) No. 6073 of 1993 filed by one Mahendra Mal Lodha. The judgment of this Court dt. 15th April, 2002 was challenged before Supreme Court in Special Leave Petition. The Supreme Court set aside the same by its judgment dt. 8th May, 2002. IT Department gave clearance certificate for registration of sale deed wherein it accepted the sale consideration of Rs. 24,45,452 as valid. It is argued that Tribunal had no legal jurisdiction to question genuineness and validity of agreement to sell/sale deed, which jurisdiction was available only to a Civil Court in a regular civil suit. The Tribunal has wrongly relied on order of District Judge, Jodhpur, with regard to award of compensation in lieu of acquired plots of smaller size under the Land Acquisition Act. It has further erred in law in increasing value of the land without giving reasonable deductions for developing residential colony, including the colony roads, gardens,

parks, play grounds, community center, schools, dispensary etc., which are basic amenities.

27. Shri S.C. Gupta, learned Counsel further argued that the Chapter XX-A of the Act of 1961 stood already repealed w.e.f. 1st Oct., 1986 and further that proceedings pending thereafter were ordered to be dropped in view of Circular No. 455 dt. 16th May, 1986 ((1986) 54 CTR (St) 27) where value of the property was upto Rs. 5,00,000. The main object behind all these enactments was to prevent evasion of tax liability but when it was realized that the provisions were being misused, the same was repealed. It is further argued that observations of the Competent Authority that agreement was vicious and was prepared with oblique motive to escape from the proceedings of Rajasthan Urban Property (Restriction on Transfer) Act, 1973 and that the agreement was not genuine, were not only extraneous but had influenced the decision-making process of the Competent Authority as well as of the Tribunal and as such same suffers from malice in law.

28. Per contra, Shri J.K. Singhi, learned Counsel for Revenue, argued that on receipt of information regarding transfer of immovable property u/s 269P, Competent Authority requested Valuation Officer to determine fair market value of the property as on the date of registration of transfer deed. Valuation of the property for the purpose of Section 269C of the Act of 1961 has to be made as on the date of registration of transfer deed and not on the date there-before. Since, in present case, sale deed was executed on 6th July, 1984, the Valuation Officer on that basis determined fair market value at Rs. 1,20,91,000 as against declared sale consideration of Rs. 24,45,452. It is argued that report of DVO is statutory evidence u/s 269L(1)(a) of the Act of 1961. Since there was a very substantial difference between fair market value of the property and declared sale consideration in instrument of transfer coupled with the fact that agreement to sell remained unregistered and unsubstantiated for seven years, the Competent Authority had reason to believe that consideration in instrument of transfer was not truly stated and that prima facie this was with object of facilitating reduction/evasion of liability of transferor/ transferee to pay tax. On given material, this satisfaction of Competent Authority was rational and justified. Learned Counsel argued that sufficiency of reasons is not required to be gone into details. In support of this contention, learned Counsel relied on judgments of Supreme Court in Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others, Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd., and judgment of Gujarat High Court in Commissioner of Income Tax, Gujarat II Vs. Vimlaben Bhagwandas Patel and Kamlaben Kanjibhai Patel,

29. Shri J.K. Singhi, learned Counsel for Revenue, argued that time-limit for initiation of proceedings u/s 269D(1) of the Act of 1961 is nine months from end of the month in which instrument of transfer was registered. In present case,

sale deed was registered on 27th July, 1984 and notice of initiation of proceedings u/s 269D(1) of the Act was issued on 15th March, 1985, which was published in Official Gazette on 6th April, 1985. The notice was thus published within permissible time-limit which time-limit expired on 30th April, 1985. It was argued that Assessee is a society registered as co-operative society. It represents interests of its members. Membership keeps changing with approval of the society at different points of time. The society was always in effective occupation and control and use of said land. Service of notice on the society has to be taken as service effected also on its members for purposes of Section 269D(2). In any case, it is the society which purchased the disputed land against sale consideration and in whose favour the agreement to sell was executed and ultimately sale deed was registered and instrument of transfer was executed. Members of Assessee-society have been allotted plots subsequently. None of its members has filed appeal against the impugned order u/s 269F of the Act of 1961 raising objection regarding non-service of notice u/s 269D(2). This objection about non-service of notice on its members was not available to Assessee-society. The notice was in any case published in Official Gazette and also affixed in the locality and was affixed in office of Competent Authority. Learned Counsel in this connection relied on judgment of Gujarat High Court in Commissioner of Income Tax, Gujarat-II Vs. Premanand Industrial Co-operative Service Society Ltd., 6, to argue that objections as to non-service of notice can only be taken by the person on whom notice is not served. As regards mention of words "and/or" between sub-para ''Ka'' and sub-para ''Kha'' of para B of reasons recorded in show-cause notice dt. 15th March, 1985, learned Counsel argued that mention of both words did not and could not vitiate proceedings because Sub-clause (a) of Section 269C of the Act is separated from Sub-clause (b) only by word "or", and Section 292B of the Act provides that no proceedings shall be invalid on account of such mistakes, defect or omission. In support of this argument, learned Counsel relied on judgment of Madras High Court in I. Devarajan and Others Vs. Tamil Nadu Farmers Service Co-operative Federation and Others,

30. It was argued that issuance of certificate u/s 230A of the Act of 1961 cannot be a reason to hold present proceedings illegal. Initiation of proceedings on that basis cannot'' be said to be illegal because that provision simply considers as to if any demand of tax is pending against Assessee or not and if it is so, whether satisfactory arrangement has been made for its payment. This certificate does not in any way legitimize the valuation done in the sale deed.

31. Shri J.K. Singhi, learned Counsel further argued that order u/s 269F(6) of the Act of 1961 was passed by Competent Authority on 16th Oct., 2002 because so many cases were pending regarding this land and this was yet to be decided whether land in question would be otherwise acquired by State Government under ceiling law. Thus, only in the event of other proceedings being dropped it would be free land available for sale. There was an order by this Court at its Principal Seat, Jodhpur in S.B. Civil Writ Petn. No. 101 of 1986, in which interim

order was passed by this Court on 10th Jan., 1986, whereby proceedings under Urban Land (Ceiling and Regulation) Act, 1976, were stayed and ultimately that interim stay order was vacated on 19th Nov., 1999. The land came out of purview of ceiling law when the ceiling proceedings were dropped on 19th Nov., 1999 with the repeal of ULCAR Act. The delay in completion of proceedings was therefore owing to valid and justified reasons and does not affect the validity of the impugned order.

32. Shri J.K. Singhi, learned Counsel for Revenue, argued that mere non-providing opportunity to cross-examine the DVO does not have any effect of violating the principles of natural justice as per the ratio of judgment of Supreme Court in State of Jammu and Kashmir Vs. Bakshi Ghulam Mohammad, Even otherwise, the Appellant-society failed to show as to what prejudice was caused to it by mere non-providing opportunity to cross-examine the DVO. On the question of prejudice, the learned Counsel has relied on judgments of Supreme Court in Union of India (UOI) and Others Vs. Alok Kumar, Sarv U.P. Gramin Bank Vs. Manoj Kumar Sinha, Om Prakash Mann Vs. Director of Education (BASIC) and Others, and Aligarh Muslim University and Others Vs. Mansoor Ali Khan,

33. Shri J.K. Singhi, learned Counsel for Revenue, further argued that Competent Authority was fully justified in arriving at valuation of property on the basis of sale deed and in doing so he rightly accepted the sale consideration declared by the society at Rs. 25,45,452 on 2nd Oct., 1974 as per agreement to sell and accordingly the fair market value was arrived as on 1st Feb., 1982. when the sale deed was executed. The Competent Authority in para No. 4.3 at p. 13 of his order has given reasons for his observation that the agreement to sell dt. 1st Oct., 1974 was superseded on 18th Aug., 1980 and has further referred to p. 16/17 of the sale deed according to which fresh agreement was arrived at on 18th Aug., 1980. Consideration shown in the alleged agreement to sell is Rs. 25,45,452 and in the sale deed it is only Rs. 24,54,452. It was argued that fair market value u/s 269A(d)(i) means the price that the immovable property would ordinarily fetch on sale in the open market on the date of execution of the instrument of transfer of such property. Instrument of transfer u/s 269A(f) of the Act means the instrument of transfer registered under the Registration Act. So in this case though the sale deed is dt. 1st Feb., 1982 but it was registered on 2nd July, 1984. The fair market value has to be therefore determined with reference to the date of execution of instrument of transfer. The date of agreement to sell is thus not relevant in arriving at fair market value. It was further argued that DVO u/s 269L of the Act is statutory authority with statutory role to determine fair market value and also to represent before the Tribunal, if so required by the Competent Authority. The report submitted by the DVO is statutory evidence. He cannot therefore be taken to be a witness. He was thus not liable to be cross-examined. The DVO prepared the valuation report in due discharge of his duties. There being no allegation of mala fide against him, he need not be subjected to cross-examination in respect of his report. It was argued that Competent Authority had provided to the Appellant-Assessee copy of the report of DVO and

other relevant documents. The Appellant filed its objections to the report. The Competent Authority visited disputed property and also the comparable cases cited by the DVO. The Competent Authority has exhaustively considered and dealt with the objections of the transferee to the report of DVO in order of acquisition u/s 269F(6) of the Act. In this connection, learned Counsel referred to paras 14 to 23 of the impugned order.

34. It is also argued that the Competent Authority has discussed the report of the registered valuer filed on behalf of the transferee and given valid reasons in para 17.5 of the order as to why it cannot be accepted. After considering the objections and relevant legal provisions, the Competent Authority has concluded that the fair market value of the disputed property should be determined as on the date of sale deed i.e. 1st Feb., 1982. The Competent Authority has found that the agreement to sell dt. 1st Oct., 1974 cannot be relied on for that purpose. He has agreed that the date of execution of instrument of transfer, the date of sale deed i.e. 1st Feb. 1982 should be the date for determining fair market value and not the date of its registration i.e. 27th July, 1984. It is on that basis that Competent Authority has determined the value of Rs. 61,31,630 as fair market value as on 1st Feb., 1982 as against Rs. 24,45,452, as stated in the said deed. The Competent Authority has further relied on the judgment of the learned District Judge, Jodhpur, in the case of a similarly situated land across the road measuring 35,553 sq. yds. at Rs. 49.50 per sq. yd. as on 10th Oct., 1974 and has thus arrived @ Rs. 154.67 per sq. yd. as on 1st Feb., 1982, and thus was awarded compensation in a land acquisition case. Thus in all situations, the fair market value of the land was much higher than 15 per cent of the apparent sale consideration. Learned Counsel further argued that Competent Authority has given valid and convincing reasons for valuation of fair market value and for the conclusion that it exceeds the apparent consideration by more than 15 per cent and that there is understatement of consideration in the instrument of transfer with a view to facilitating evasion of tax. The Competent Authority has rightly considered the commercial potential of the property, which has not been considered by the registered valuer, who has relied on sale consideration of the property, which cannot be said to be comparable sale instances of constructed property. Besides, he was also influenced by the sale deed dt: 1st Feb., 1982, which was not found to be genuine.

35. Shri J.K. Singhi, learned Counsel for Revenue, argued that even otherwise the date of agreement to sell being 1st Oct., 1974, date of execution of sale deed being 1st Feb., 1982 was more than 7 years later, it is reasonable to believe that during this long period of seven years fair market value of property in dispute must have been doubled. Nondisclosure of true sale consideration was solely intended to evade tax by both transferor and transferee. Learned Counsel, in support of his argument, has relied on judgments of the Supreme Court in Ravinder Narain and Another Vs. Union of India (UOI), Rishi Pal Singh and Ors. v. Meerut Development Authority and Anr. (2006) 35 CC 205 , Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , The Land

Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, and Subh Ram and Others Vs. Haryana State and Another,

36. We have give our earnest considerations to the rival submissions, perused the impugned orders and other material on record and respectfully studied the cited precedents.

37. Before adverting to merits of the case we consider it necessary to decide the objection raised by the Appellant that the acquisition order dt. 16th Oct., 2002 could not have been passed almost 18 years after registration of sale deed on 27th July, 1984. Indisputably, proceedings under ceiling law were initiated by the Government for acquiring this very land under Urban Land (Ceiling & Registration) Act soon after registration of sale deed. Those proceedings were assailed by none other than the Appellant herein i.e. M/s Naveen Grah Nirman Sahakari Samiti by filing Writ Petn. No. 101 of 1986. This Court by order dt. 10th Jan., 1986 while issuing notice to the Government directed that in the meantime further proceedings pending before Competent Authority-cum-Addl. Collector, Urban Land (Ceiling & Registration) Act, Jodhpur shall remain stayed. The Competent Authority in the present case therefore was advised by their standing counsel on 23rd Feb., 1999 that in view of stay order granted by this Court, Department could not proceed to acquire the land under Chapter XX-A of the Act. In our view, the Department was justified in taking that approach because if the land was already subject-matter of acquisition under Urban Land (Ceiling & Registration) Act, 1976, there was no point in continuing with the proceedings for acquisition of this very land under Chapter XX-A of the Act by the Central Government. The IT Department on this aspect was thus rightly advised in taking that view because the proceedings under the Act could not have been concluded prior to finalization of the proceedings under Urban Land (Ceiling & Registration) Act. Finally, the Urban Land (Ceiling & Registration) Act was repealed through an Ordinance on 11th Jan., 1999 which was followed by Urban Land (Ceiling & Regulation) Repeal Act, 1999, which received assent of President of India on 22nd March, 1999 and published in Official Gazette of India dt. 22nd March, 1999. The said Central Enactment (Repeal Act) was adopted by the Rajasthan State Legislature on 23rd Sept., 1999 w.e.f. 11th Jan., 1999. The interim order was thereafter vacated on 19th Nov., 1999 and thus the land became free from acquisition proceedings under ULCAR Act. Delay in present case in finalization of proceedings under Chapter XX-A of the Act of 1961, therefore, cannot be attributed to the IT Department. Mere non-supply of opinion of the standing counsel/advocate of the IT Department cannot be said to have occasioned any prejudice to the Appellant because opinion by an advocate to its client is a privileged communication in the meaning of Section 126 of Indian Evidence Act, 1872. What the Appellant can be said to have been concerned with was the reason for such decision of the IT Department and not the opinion given, which was not to go ahead with the proceedings under Chapter XX-A of the Act, which reason, as noticed above, was already known to the Appellant because the same

Appellant had assailed the proceedings under the urban ceiling law before this Court by filing writ petition. After those proceedings were dropped on 19th Nov., 1999, the IT Department carried the proceeding under Chapter XX-A further to its logical conclusion by ultimately passing the order on 16th Oct., 2002. The argument of the Appellant is therefore liable to be rejected and we accordingly do so.

38. The next most significant argument that has been advanced on behalf of the Appellant is that there was no prima facie material with the Competent Authority so as to furnish "the reason to believe" that the consideration in instrument of transfer was not truly stated with the object of facilitating reduction/evasion of liability of transferor/transferee to pay tax. In order to consider this argument, we have to first analyze the reasons which Competent Authority in the notice u/s 269D(1) of the Act dt. 15th March, 1985 has disclosed. In that notice, it was stated that Competent Authority had reason to believe that fair market value of the immovable property was exceeding Rs. 1,00,000, and land situated at Jodhpur, has been transferred under the Registration Act, 1908 in the office of the registering officer at Jodhpur on 27th July, 1984 for an apparent consideration, which is less than the fair market value of the aforesaid property and that the fair market value of the property as aforesaid exceeds the apparent consideration thereof by more than fifteen per cent of such apparent consideration and the consideration for such transfer as agreed to between the parties has not been truly stated. The notice was accompanied by the reasons which were that while the sale consideration of the property has been declared to be Rs. 24,45,452 whereas its prevalent market value was estimated as high as Rs. 1,20,91,000 and difference between the two is by more than 25 per cent. The Competent Authority in doing so relied on the report of the DVO, which is on record. In column No. 4 of the said valuation report, it is mentioned that the said land is situated near Ratanada Circuit House, Dhanwantari Nagar, Jodhpur and the total land area is 1,81,818 sq. yds. In column No. 6 it is described to be a freehold land. In column No. 6.3 it is further mentioned that the land falls in the planned area of UIT, Jodhpur, and that it is fully occupied by the owner. In column No. 7, the method of valuation has been mentioned and it has been stated that the valuation has been made on parallel sale instances basis and the reason why this method has been adopted is also stated that the vacant possession has been transferred, therefore the parallel sale instances method of valuation has been adopted. The rate of Rs. 66.50 per sq. yd. has been applied for arriving at the aforesaid valuation. The land rate analysis has been separately attached with the valuation report, which was done on the basis of four plots sold by UIT, Jodhpur, in auction, each measuring 250 sq. yd. on 3rd July, 1983 @ Rs. 210, 207, 213 and 243 per sq. yd., respectively; and substantial reduction on this rate has been given for the reason of lack of good residential colonies in immediate neighbourhood of the land in dispute. The land rate at Rs. 175 per sq. yd. was considered fair and reasonable for developed plots in the said land in July, 1984 and on that basis it was stated that rate of Rs. 200 per sq. yd. was

considered fair and reasonable. Allowing 1/3rd open spaces for roads, parks etc., the land rate was taken to be reduced to Rs. 133 per sq. yd. and further allowing deduction for development of roads, drains, street lights, sewers etc., and for the purpose of levelling the land etc., the land rate was reduced to Rs. 66.50 per sq. yd. and it is on that basis the value of the land admeasuring 1,81,818 sq. yds. was worked out to Rs. 1,20,90,897 i.e. approximately Rs. 1,20,91,000. Against the backdrop of these facts, we have to examine whether the Competent Authority had "reason to believe" that consideration in instrument of transfer was not truly stated and that prima facie this was so done with the object of reduction/evasion of liability of transferor/transferee to pay tax. In other words, whether Competent Authority had justification for initiation of proceedings u/s 269C of the Act.

39. In this connection, we may refer to the judgment of Supreme Court in ITO v. Lakhmani Mewal Das (supra), wherein it was observed by the Supreme Court that reasons for formation of belief contemplated by Section 147(a) of the IT Act, 1961 for reopening of an assessment must have a rational connection or relevant bearing on the formation of the belief, which postulates that there must be a direct nexus or live link between the material coming to the notice of the ITO and the formation of his belief that there has been escapement of the income of the Assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It was held that the Court cannot go into sufficiency or adequacy of material and substitute its own opinion for that of the ITO on the point as to whether action should be initiated for reopening the assessment. At the same time, however the Supreme Court held that it should be borne in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of such belief.

40. In CIT v. Smt Vimlaben Bhagwandas Patel and Anr. (supra) what was held by Gujarat High Court was that satisfaction of the Competent Authority for initiation of acquisition proceedings is a subjective satisfaction of the objective facts. The reasons for formation of belief must have a rational and direct connection with the material coming to the notice of the Competent Authority, though the question of sufficiency or adequacy of the material is not open to judicial review.

41. The Supreme Court in Ganga Saran & Sons (P) Ltd. v. ITO and Ors. (supra) while considering the scope of Section 147(a) of the Act on the question of "has reason to believe" held that these words are stronger than the words "is satisfied". The belief entertained by the ITO must not be arbitrary or irrational. It must be reasonable or in other words it must be based on reasons which are relevant and material. The Courts, however, cannot investigate into the adequacy or sufficiency of reasons which have weighed with the ITO in coming to the belief, but the Court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which he is required to entertain the belief before he can issue notice u/s 147(a). The same view was reiterated by

the Supreme Court in Raymond Woollen Mills Ltd. v. ITO and Ors. (supra) when it held that on this question the Courts can only consider whether there was a prima facie case for reassessment. The Courts cannot go into sufficiency of material in determining whether commencement of reassessment proceedings was valid. The Courts have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at the stage of notice.

42. In Asstt. CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd. (supra), the Supreme Court again considering the provisions of Section 147 held that the expression "reason to believe" in that provision would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, he can be said to have reason to believe that income had escaped assessment. The expression cannot be read to mean that the AO should have at that stage finally ascertained the fact by legal evidence or conclusion. What is required is "reason to believe" but not the established fact of escapement of income.

43. In view of settled proposition of law as noticed above, in our considered view, what the Competent Authority at the stage of issue of notice for initiation of proceedings was required to see was that he should have "reason to believe" for which purpose the only requirement was that there was prima facie some material on the basis of which he could have come to hold such "reason to believe" that the consideration in instrument of transfer was not truly stated for prima facie object of facilitating the reduction or evasion of liability of transferor/ transferee to pay tax. At that stage, he could not be expected to come to final conclusion so as to make determination of fact with certainty that this was done for facilitating reduction or evasion of liability of transferor/transferee to pay tax. At such initial stage, what is required is that there is some relevant material on the basis of which a reasonable person can form requisite belief; although such subjective satisfaction has to be based on objective material. In the present case, we are not inclined to hold that comparable sale instances which were made basis for the purpose of valuation by the DVO and which report was relied by the Competent Authority for the limited purpose of initiation of proceedings under Chapter XX-A, were either vague and indefinite or distant or remote or far-fetched. This Court cannot go into the sufficiency or adequacy of such material and all that it has to see is whether there was some material with Competent Authority to entertain that requisite belief.

44. Contention that notice that was issued by the Competent Authority for initiation of proceedings u/s 269D of the Act was defective because it referred to "and/or" whereas the legislature has separated Sub-clause (a) of Section 269C of the Act by use of the word "or" from Sub-clause (b) thereof and that since the notice that was issued in the present case has used both words "and/or", it reflects total non-application of mind on the part of the Competent Authority and

indicates that it was not definite as to under which of the two clauses, the matter would fall, is noticed only to be rejected, for reasons which we shall presently state.

45. In order to buttress his argument, the learned Counsel for Appellant-Assessee has relied on the Division Bench judgment of Punjab & Haryana High Court in Commissioner of Income Tax Vs. Norton Motors, wherein, in the context of Section 292B of the Act, it was held that if the notice or summons suffers from an inherent lacuna affecting jurisdiction, the same cannot be cured by having resort to Section 292B. In this connection, further reliance has been placed by learned Counsel on the judgment of Allahabad High Court in Commissioner of Income Tax Vs. Shital Prasad Kharag Prasad, Learned Counsel for Assessee has also cited two judgments of Gujarat High Court in Indian Dyestuff Industries Ltd. Vs. Inspecting Assistant Commissioner of Income Tax and Another, and Unique Associates Co-operative Housing Society Ltd. Vs. Union of India and others, to gain support on the proposition that since the notice had used both words "and/or", which only indicates that notice was vague and it was not definitely stated whether it was for the object (a) or object (b), for which purpose the proceedings have been initiated therefore the Competent Authority lacked the jurisdiction to initiate proceedings.

46. In Indian Dyestuff Industries Ltd.''s case (supra), the Gujarat High Court noticed the argument with regard to vagueness and uncertainty about satisfaction of Competent Authority of reflecting from use of both words "and/or", it ultimately decided the issue in favour of the Assessee on arriving at conclusion that there was no material with the Competent Authority to initiate proceedings u/s 269C of the Act. In Apeejay Premises Co-operative Society Ltd. v. Nishar Ahmed and Anr. (supra), though this very argument was considered by the Court to hold that use of both words "and/or" is reflecting non-application of mind on the part of the Competent Authority that he was uncertain as to whether the understatement was with the object of one or the other. But, in this connection the counsel for Revenue has cited judgment of Madras High Court in I. Devarajan and Ors. v. Tamil Nadu Farmers Service Co-operative Federation and Ors. (supra). In that case an argument was raised that Form No. 45, in the context of search and seizure u/s 132 of the IT Act, had not been properly filled up and that the exercise of power u/s 132 was invalid and illegal. What was pointed out was that in the whole body of the first page of Form No. 45 after the words "whereas information has been laid before me and on the consideration thereof I have reason to believe that...." a part of the form has been left intact while the rest has been scored out. The argument was that this shows that the authority did not apply its mind properly and that in a serious matter like this, where the right of property guaranteed under Articles 19 and 31 of the Constitution was interfered with, then the provisions of statute have to be strictly complied and any defect in such compliance will render the whole action illegal. The Division Bench of Madras High Court repelling this argument held that omission to score out part of the wordings was not such which misled anyone

and that the search held in pursuance thereof cannot be characterized as illegal exercise of powers. At the most, there were some irregularities in not scoring out that part of the form but that did not in any manner affect the power of the authority concerned. It was held that Section 292B provides that no proceedings taken in pursuance of the Act shall be invalid, by reason of any mistake or defect in the proceedings if it is in effect in conformity with or according to intent or purposes of the Act. Thus any defect in the Form was held to have been cured by the provision in Section 292B of the Act of 1961.

47. In the present case also, we are not inclined to uphold this contention because mere use of both the words "and/or" simultaneously does not mean that Competent Authority did not apply its mind to the material and that he lacked the jurisdiction to initiate proceedings. This is because while Clause (a) of Section 269C(1) provides that consideration of transfer has not been truly stated with the object of facilitating the reduction or evasion of liability of the transferor to pay tax under the Act in respect of any income arising from the transfer, Clause (b) however provides that consideration has not been truly stated with the object of facilitating concealment of any income or any money or other assets, which ought to have been disclosed by the transferee for the purpose of IT Act or WT Act. It is thus apparent that while Clause (a) of Section 269C(1) pertains to the object of facilitating reduction or evasion of liability to pay tax by the transferor, Clause (b) thereof is applicable qua the transferee on the premise that true sale consideration was not stated in the instrument of transfer with the object of facilitating concealment of any income or money or other assets, which should have been or which ought to have been disclosed by the transferee for the purpose of IT Act or WT Act. It cannot be said that for initiation of proceedings u/s 269C(1) a matter, even though it may be both evasion of tax and concealment of income, should always fall in one clause to the exclusion of another and that proceeding must always be initiated only against transferee and not against transferor or vice versa.

48. In present case, the notice for initiation of such proceedings was served upon the transferor and the transferee both and therefore at that stage, the Competent Authority did not in our view commit any mistake in using both words "and/or" because that was the stage of initiation of proceedings, he could not have let off one and merely proceeded against another while in his prima facie view both the transferor and transferee, may have been responsible for not stating the true sale consideration for facilitating reduction or evasion of liability to pay tax, insofar as transferee was concerned and for transferee, the Competent Authority entertained a prima facie belief that he did so though for facilitating concealment of his income or any money or other assets, which he ought to have disclosed for the purpose of IT Act or the WT Act.

49. In this view of the matter, use of words "and/or" together can at the maximum be described as a mere technical omission or defect and in view of provisions contained in Section 292B, the notice for initiation of proceedings

cannot be held to be invalid or deemed to be invalid by mere reason of such a mistake, defect or omission. This view has been expressed not only by Madras High Court in I. Devarajan and Ors. v. Tamil Nadu Farmers Service Co-operative Federation and Ors. (supra) relied on by learned Counsel for Revenue but also by the Division Bench of Punjab & Haryana High Court in CIT v. Norton Motors (supra). This argument of the Assessee is also therefore rejected.

50. This now brings up to question whether the Revenue has been able to discharge the burden of proving that the apparent consideration has been understated; that there has been evasion of tax; it was not a bona fide transaction; and that the consideration has not been truly stated in the instrument of transfer with the object of facilitating reduction or evasion of liability of transferor to pay tax or facilitating concealment of income or money or assets, which have not been and which ought to have been disclosed by the transferor for the purpose of IT Act and WT Act. In order to substantiate this argument, learned Counsel for the Assessee has relied on the judgments of Gujarat High Court in CIT v. Smt. Vimlaben Bhagwandas Patel (supra) judgment of Karnataka High Court in IAC v. National Flag Perfumery Works (supra), judgments of the Supreme Court in K.P. Varghese v. ITO and Anr. (supra) and Commissioner of Income Tax, Madras Vs. Shivakami Co. Pvt. Ltd., and judgment of this Court in Commissioner of Income Tax Vs. Raja Narendra,

51. In all these judgments it has been held that the burden of proof is on the Revenue to show that the Assessee had received the amount more than what has been declared by him of consideration in the sale deed, namely, the burden of proving such understatement or concealment is on the Revenue.

52. We may at the outset observe that scope of interference under Article 226/227 of the Constitution of India, which can be culled out from catena of judgments of the Supreme Court, is that while examining validity of an acquisition order under Chapter XX-A or similar preemptive purchase order under Chapter XX-C of the Act of 1961, this Court in exercise of its powers of judicial review can interfere only if it finds that (i) relevant material has been ignored or (ii) irrelevant or erroneous material has been considered or (iii) it has been passed in utter violation of principles of natural justice or (iv) there has been infraction of any statutory provision in the process of decision-making or (v) decision is such which no reasonable person could on available material arrive at. We have to therefore examine the arguments and counter-arguments advanced in this case on the touchstone of these parameters.

53. This shall have to be decided on the basis of material whether or not the Revenue has been able to discharge its burden which material has been taken into consideration by Competent Authority in arriving at such decision. The Competent Authority for the purpose of valuation relied on the sale deed dt. 1st Feb., 1982 wherein it is stated that consideration of sale as on 2nd Oct., 1974 was Rs. 25,45,452. It is on that basis that the fair market value was computed and arrived at by the Competent Authority as on 1st Feb., 1982, the date on

which the sale deed was executed. The Competent Authority has also taken into consideration the fact that the agreement to sell dt. 2nd Oct., 1974 was superseded on 18th Aug., 1980 on which date a fresh agreement was arrived at. While in the agreement to sell a sum of Rs. 25,45,452 has been shown to be sale consideration but in the sale deed it is indicated to be only Rs. 24,54,452. The agreement to sell dt. 2nd Oct., 1974 was not registered under the Registration Act, 1908 nor notarized and a doubt was expressed as to whether it was a genuine document as it was alleged that the agreement to sell was back-dated and fabricated some time in 1980-1982 to escape the provisions of Urban Land (Ceiling & Regulation) Act, 1976 so that the land could have been transferred to Appellant M/s Naveen GNSS but that issue was not found to be relevant for deciding the present controversy. Though the sale deed is dt. 1st Feb., 1982 but it was registered on 27th July, 1984 and it is on this date that the valuation of the land has to be considered for the purpose of compulsory acquisition of the property under Chapter XX-A of the Act of 1961. But, considering the fact that the sub-Registrar refused to register the property due to operation of the ULCAR Act, the Competent Authority proceeded to decide the question of fair market value/sale consideration of this disputed property as on 1st Feb., 1982, the date on which the sale deed was executed. On the amount of consideration of Rs. 24,45,452 declared as on 2nd Oct., 1974, the ft, Competent Authority increased the cost of the land from 2nd Oct., 1974 to 1st Feb., 1982 @ 150 per cent so as to arrive at its fair market value as on 1st Feb., 1982 and with addition of Rs. 36,68,178, arrived at a total sum of Rs. 61,13,630. As against this, the apparent consideration mentioned in the sale deed was of Rs. 24,45,452. Thus there was a difference of more than 15 per cent between the fair market value and the apparent sale consideration as on 1st Feb., 1982.

54. In comparison to this, the value computed by the DVO as on 27th July, 1984 was Rs. 1,20,90,000, according to which the rate of the land would come to Rs. 66.50 per sq. yd. This was done on the basis of four comparable sale instances in the Ratanada area of Jodhpur. For this, however, objection of the Appellant is that the said plots of the land were sold in auction by the UIT in 1983 whereas agreement to sell in the present case was executed in 1974 and that they were smaller in size whereas the land in dispute is a big chunk of land. The Competent Authority in para 17.1 of its order dt. 16th Oct., 2002 has noticed the comparable sale instances produced by the Assessee. The land size whereof ranged between 655 sq. mtrs. to 1409 sq. mtrs. But the Competent Authority found that the land of which instances were given by the DVO was closer to the disputed land and therefore they could form better basis for arriving at fair market value of disputed land. The Competent Authority has noted that the disputed land touches the main road for its whole length for nearly 1000 sq. yds. and that it has tremendous commercial value as is borne out by the fact that the Assessee itself sold 66 commercial plots as per list submitted by the Assessee and the map of the land prepared by the Assessee shows land was left for cinema halls and hotels etc. therein. The valuation submitted by the Assessee

from registered valuer was not accepted because he deducted the cost of construction from sale consideration in three comparable instances cited by him, which was not held to be according to the prevalent market practice.

55. Most importantly, the Competent Authority in para 19 of its order has observed that the disputed land comes closest to the land of which compensation was awarded by the District Judge, Jodhpur, to M/s Umaid Industries Land Development Company vide order dt. 9th Feb., 1983. In this case, a huge chunk of land measuring 35,553 sq. yds. was situated just across the road from the disputed land. The disputed land was lying on the west of the road leading from Ratanada Circle to Circuit House, whereas the said acquired land was on the east of the said road just behind Ajit Bhawan. Acquisition proceedings for that land were also started by the UIT, Jodhpur on 3rd June, 1974 and question before the District Judge, Jodhpur was for determination of compensation to be paid by the UIT/Government of Rajasthan as on that date. The District Judge relied on certain sale instances to determine the rate at which the land had to be acquired. There were 30 instances of sale at or about the relevant time, which were considered by the District Judge. While in six instances relied upon by the UIT, the rate varied from Rs. 4.40 per sq. ft. to Rs. 5 per sq. ft.; in two other cases, the rate as per records of the Government of India and Government of Rajasthan was Rs. 5 per sq. ft. and the rates as per 22 instances quoted by the Assessee were Rs. 3.30 per sq. ft. to Rs. 7.15 per sq. ft. These sale instances were for the period from 24th July, 1970 to 7th Dec, 1978. The learned District Judge also noted that the land of Puri Petrol Pump, Ratanada, at the relevant period was valued @ Rs. 128.29 per sq. yd. In another instance, the land adjacent thereto belonging to Shri Ajit Singh was valued by the DVO, IT Department between 1968 to 1976 @ Rs. 18 to Rs. 36 per sq. yd. In our view, the Competent Authority was justified in comparing the rates adopted by the District Judge, Jodhpur, in the case of acquisition of the land just opposite the disputed land which he found to be closer to the land in dispute for the reasons that its size was reasonably large being 35,553 sq. yds. and its location is also almost the same from the disputed land and it was closer to the land in dispute as compared to any other land in different instances cited by the Revenue and the Assessee. The District Judge, Jodhpur, had fixed compensation @ Rs. 5.50 per sq. ft. or Rs. 49.50 per sq. yd. and also ordered for payment of interest @ 6 per cent per annum from 10th Oct., 1974 till the date of acquisition to 9th Feb., 1983. Having arrived @ Rs. 49.50 per sq. yd. as on 10th Oct., 1974 on which basis acquisition was made in the cited sale instance, the Competent Authority noted that compensation under land acquisition proceedings was always paid towards lower side and was usually less than the fair market value therefore it should be enhanced by 50 per cent, thus the rate was increased to Rs. 74.25, and a further enhancement on appreciation of land price from 1974 to 1982 was made at 150 per cent. Even otherwise, as per the bank rate prevailing in that period, a deposit used to double in 5-14 per cent years and triple in eight years. Thus, a sum of Rs. 111.37 per sq. yd. was further added to the aforesaid amount of Rs. 74.25 so

as to arrive @ Rs. 185.62 per sq. yd. 25 per cent was added for commercial potential of the land. Thus taking the rate to Rs. 232.02 and a reduction of 1/3rd i.e. 33 per cent of that price, was given for the reason that the land was in a less developed area as compared to the land for which acquisition case was decided by learned District Judge. The net amount that was arrived at was Rs. 154.67 per sq. yd. As against this, the DVO had computed the fair market value of the disputed land only at Rs. 66.50 per sq. yd. as on 27th July, 1984. The objections that were raised by the Assessee for adoption of the rate of UILDC''s land rates approved by the District Judge were considered and rejected because already for the reason of development of the land, reduction of 1/3rd on the rate computed was given. The Competent Authority having thus made the valuation of the land by different modes came to hold that rate of Rs. 14.50 per sq. yd. claimed in the registered valuer''s report for transfer of the disputed land as on 1st Feb., 1982 could not be justified. Computing the value of the land by any of the above referred to methods, it was found that difference between the apparent sale consideration and fair market value was in every situation much more than 15 per cent.

56. Contention of learned Counsel for Appellant that since the registering authority has allowed registration of sale deed on sale consideration of Rs. 25,45,452, it should be accepted as correct sale consideration. His further submission is that though originally the sale deed was presented, sale consideration of Rs. 25,45,452 but the registering authority has merely disallowed the deduction of Rs. 1,00,000 for the purpose of levelling of the land therefore the valuation so declared by the transferor and transferee and accepted by the registering authority should be considered as final. We find ourselves unable to uphold this submission either. A Division Bench of this Court in Krishna Kumar Rawat and Ors. v. Union of India and Ors. (2007) 210 CTR (Raj) 553 : 2007 (4) RLW 3132 (Raj) while repelling challenge to pre-emptive purchase order passed u/s 269UC of Chapter XX-C of the Act of 1961, held that area-wise static rates fixed uniformly for the purpose of registration of conveyance deeds, have no application to pre-emptive purchase order. It was held that what is popularly known as DLC rates, fixed by the District Level Committee, by themselves cannot be a conclusive index of prevalent market rate in a given area.

57. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, it was held by the Supreme Court that for making determination of the valuation by instances method the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value. Even post-notification instances can be taken into account if they are very proximate, genuine and acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects. A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors evaluated in terms of price variation as a prudent purchaser would do. The Supreme Court in Rishi Pal Singh and Ors. v. Meerut Development Authority and Anr. (2006) 3 SCC 20 and The Land

Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, also expressed the same view.

58. Contention of learned Counsel for Assessee that since the agreement to sell that was executed on 2nd April, 1974 provided an increase in the rate of the land by Re. 1 per sq. yd. the rate was settled on the said date at Rs. 8 per sq. yd. as per the stipulation of increase of Re. 1 per sq. yd. for every passing year, the rate should be taken to have been enhanced accordingly in 1982 when sale deed was presented for registration, cannot be accepted. This would mean that only Rs. 6 should be increased in the rate of land price for six years that have gone by in between whereas according to normal market conditions actual appreciation in the valuation of the land in a fast growing city like Jodhpur was manifold where price of this land cannot be expected to have been increased to only this extent, more particularly when this land is abutting the main road facing the Circuit House.

59. Learned Counsel for Assessee/intervener have cited judgment of Supreme Court in K.P. Varghese v. ITO (supra) and argued that on the question of understatement the difference between the market value and consideration declared, the Assessee must be shown to have received more than what is declared or disclosed by him as consideration and the burden to prove so is on the Revenue. What the Supreme Court in K.P. Varghese''s case (supra) held was that this burden may be discharged by the Revenue "by establishing facts and circumstances from which a reasonable inference can be drawn that the Assessee has not correctly declared or disclosed the consideration received by him and there is an understatement or concealment of consideration in respect of transfer". It may not be possible for the Revenue to pinpointedly prove by direct evidence the factum regarding understatement of valuation or consideration. As rightly held by the Supreme Court in K.P. Varghese''s case (supra), it is only by establishing facts and circumstances from which a reasonable inference can be drawn by a person of ordinary prudence that Assessee has not correctly declared or disclosed income received by him and there is understatement or concealment of consideration in respect of this land. There are in this case several such factors owing to which the Competent Authority was fully justified in drawing that inference. The Tribunal has in this behalf rightly concurred with the view expressed by the Competent Authority.

60. Adverting now to the argument that Competent Authority should have issued/ served notice to/on each of the members of the Assessee-society, we must observe that this argument cannot be upheld because the members claimed their right or interest only through the society and that their existence came into being only after the society had acquired this land by execution of the sale deed. It was the society which was in effective occupation and control of land in dispute and service of notice on the society was sufficient compliance for the purpose of Section 269D(2). Members have despite subsequent allotment of plots to them

not come forward to either raise objection or file appeal against acquisition order. It is the members who can come forward and take such objection and not the Assessee-society which itself claims to represent the cause of the members. Reference in this connection may be usefully made to the judgment of Gujarat High Court in CIT v. Premanand Industrial Cooperative Service Society Ltd. (supra), wherein the Division Bench of Gujarat High Court analyzing the meaning of phraseology "persons interested" while dealing with objection of non-service of notice u/s 269D(2), held that such objection can be properly taken not by the third party but only by the person on whom notice is not served and we are in respectful agreement with that view.

61. Merely because the certificate u/s 230A of the Act was issued, it cannot be held that the option of the IT Department to compulsorily acquire this land stood foreclosed. This provision simply intends to ensure whether any payment of tax is pending against Assessee or not, and if it is so, whether satisfactory arrangement has been made for its payment. Issuance of certificate under that provision cannot be taken as approval of the correctness of the valuation shown therein nor does it otherwise legitimize the sale. Such view taken by the Competent Authority and the Tribunal cannot be faulted. Intention of legislature in inserting Section 230A in the Act is merely to ensure recovery of dues from a person who defaulted in making payment of arrears or payment of tax. Otherwise if he is allowed to transfer his property without payment of such dues, it is the Revenue which ultimately is going to suffer because it would not get the property to fall back upon to realize the income tax.

62. Coming now to the argument about not giving opportunity to cross-examine the DVO, we have to consider as to what role the DVO has to play. According to Section 269C r/w Section 269F, the Valuation Officer is merely called upon to determine fair market value of a particular immovable property. He merely acts as an expert and adviser to the Competent Authority for the purpose of enabling such Competent Authority to determine fair market value of the property firstly at the stage of initiation of proceedings and finally at the time when he has to decide the question whether property has to be acquired u/s 269F. In present case, we are concerned with the report of the Valuation Officer at the time of initiation of proceedings u/s 269C. But, despite obtaining his report, the Competent Authority has to take his own independent judgment at the stage of initiation of proceedings. The Competent Authority in this respect has rightly held that report given by Valuation Officer in writing has been furnished to the Assessee and their objections to such valuation report have also been considered as also another valuation report submitted by the Assessee has been considered. While considering the demand of the Assessee to cross-examine the Valuation Officer and on the question of principle of natural justice, the Competent Authority in para 25 of its order rightly relied on the judgment of Tribunal Bombay in GTC Industries Ltd. v. Asstt. CIT (1998) 60 TTJ (Bom) 308 : (1998) 65 ITD 380 (Bom) wherein similar issues were raised by the Assessee and it was held that if material or evidence used for the purpose of assessment is collateral

in nature, the rule that adverse evidence and material relied upon to reach finality should be disclosed is not applicable; that right to cross-examine a witness who made an adverse report is not an invariable attribute of requirement of the dictum of audi alteram partem; if witnesses whose statements are only secondary and of subordinate material used to buttress main matter connected with amount of additions, are not allowed to be cross-examined being secondary in nature.

63. The Supreme Court in Transmission Corporation of A.P. Ltd. and Others Vs. Sri Rama Krishna Rice Mill, held that one is required to make out a case of prejudice so as to establish that cross-examination is necessary. The nature of adjudication under Clause 39.9.2 of terms and conditions of supply of electrical energy of A.P. State Electricity Board, is somewhat different from an enquiry under Article 311(2) of the Constitution. It cannot be laid down as a rule of universal application whenever the statement of Departmental officer is pressed into service for the purpose of adjudication, a right of cross-examination is inbuilt. It was further held by Supreme Court that in order to establish that cross-examination is necessary, the affected party has to make out a case for the same. Merely stating that statement of an officer is being utilized for the purpose of adjudication, would not be sufficient to uphold the contention of prejudice, if such officer was not liable to be cross-examined. It was held that applications seeking cross-examination are not to be filed in routine manner and equally also not to be disposed of by the authority in casual and routine manner. The affected party has to show as to why cross-examination is necessary. The Supreme Court in State of Jammu & Kashmir and Ors. v. Bakshi Gulam Mohammad and Anr. (supra) held that right of cross-examination can be claimed and granted only in case of viva-voce evidence or oral evidence given by a witness.

64. In the facts of present case, in our considered view, no prejudice was caused to the Assessee by mere fact that he could not cross-examine the DVO.

65. Argument that valuation of the land in the hands of transferor Jai Marwar Company (P) Ltd., Jodhpur has been accepted by the IT Department, cannot be upheld because the Tribunal by its order dt. 8th Nov., 2002 has merely held the assessment order for asst. yr. 1985-86 as invalid on the ground that since sale deed was executed on 1st Feb., 1982, the capital gain can be assessed in asst. yr. 1982-83 and not in asst. yr. 1985-86. It is thus evident that the Tribunal without final determination of valuation of the land and the capital gain thereon, simply deleted such addition for the asst. yr. 1985-86. It cannot therefore be said to have given finality to valuation of land submitted by the transferor. In this connection, we may usefully refer to Division Bench judgment of Bombay High Court in Commissioner of Income Tax Vs. Shah Construction Co. Ltd., In that case, a certain amount was receivable in previous year as service charges which would be income of Assessee. According to the Revenue, this should be treated as income of Assessee for that year. Argument was raised by Assessee that since amount receivable by it has not been allowed as deduction while making

assessment of party from whom it was receivable, it cannot be taken as income accrued to Assessee. It was held by the High Court that so far as Assessee is concerned, said amount was receivable as service charges from construction company in question in the previous year relevant to assessment order under reference. There is no reason to hold that it was not includible in Assessee''s income. The allowance or disallowance of the same in the hands of the payer is of no relevance in deciding the taxability of the same in the hands of the recipient.

66. In view of what we have held above, the present matter does not fall in any of five categories enumerated in para 52 above and, therefore, we answer all the four questions of law enumerated in para 6 of this judgment in affirmative, in favour of the Revenue and against the Assessee.

67. Resultantly, challenge to order dt. 16th Oct., 2002 passed by the Competent Authority-cum-Addl. CIT (Acquisition) Range-I, Jaipur, and order dt. 25th April, 2003 passed by the Tribunal, Jaipur Bench, Jaipur, fails and the appeal is accordingly dismissed with no order as to costs.

