

(1976) 06 CAL CK 0028
In the Calcutta High Court
Case No : Matter No. 275 of 1975

Smt. Bani Roy Chowdhury

APPELLANT

Vs

Competent Authority, Inspecting Assistant Commissioner of
Income Tax, Acquisition Range II and Others

RESPONDENT

Date of Decision : 18-06-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 269C, 269C(1), 269C(2), 269D

Citation : (1978) 112 ITR 111

Hon'ble Judges : Ramendra Mohan Datta, J

Bench : Single Bench

Judgement

Ramendra Mohan Datta, J.—The subject-matter of this writ petition relates to a notice dated the 18th June, 1973, published in the Official Gazette u/s 269D(1) of the Income Tax Act, whereby proceedings were sought to be initiated by way of acquisition of the property of the petitioner being a premises in Block B in New Alipore in Calcutta. The said notice reads as follows :

" FORM INTS-----

NOTICE u/s 269D(1) OF THE income tax ACT, 1961 (43 of 1961)

SEAL OF THE Ref. No. Ac-8/R-II/Cal/73-74 Office of the Inspecting Asst. Government of India Commissioner of Office of the..... Income Tax, Acquisition Dated 18-6-73 Range-II, Calcutta.

2. Whereas, I, M. N. Tiwary, being the competent authority u/s 269B of the Income Tax Act, 1961 (43 of 1961), have reason to believe that the immovable property, having a fair market value exceeding Rs. 25,000 and bearing No. 29/ NA (E.P. & W.P.) situated at Block " B", New Alipur (and more fully described in the Schedule annexed hereto), has been transferred as per deed registered under the Indian Registration Act, 1908 (16 of 1908), in the office of the registering officer at Dist. Registrar, 24-Parganas, Alipur, on 12-12-72 for an

apparent consideration which is less than the fair market value of the aforesaid property and I have reason to believe that the fair market value of the property as aforesaid exceeds the apparent consideration therefore by more than fifteen per cent. of such apparent consideration and that the consideration for such transfer as agreed to between the transferor(s) has not been truly stated in the said instrument of transfer with the object of-

(a) facilitating the reduction or evasion of the liability of the transferor to pay tax under the Income Tax Act, 1961 (43 of 1961), in respect of any income arising from the transfer; and/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 purposes of the Indian Income Tax Act, 1922 (11 of 1922), or the Income Tax Act, 1961 (43 of 1961), or the Wealth-tax Act, 1957 (27 of 1957);

And whereas the reasons for initiating proceedings for the acquisition of the aforesaid property in terms of Chapter XXA of the Income Tax Act, 1961 (43 of 1961), have been recorded by me;

Now, therefore, in pursuance of Section 269C, I hereby initiate proceedings for the acquisition of the aforesaid property by the issue of this notice under Sub-section (1) of Section 269D of the Income Tax Act, 1961 (43 of 1961), to the following persons, namely-

(i) M/s. Life Insurance Corporation of India,

(ii) M/s. Hindusthan Building Society Ltd.

(Confirming party) (Transferor) (2) Shrimati feani Roy Chowdhury (Transferee) (3) Shri/Shrimati/Kumari (Person in occupation of the property) (4) Shri/Shrimati/Kumari (Person whom the undersigned knows to be interested in the property). (5) Shri/Shrimati/Kumari (6) Shri/Shrimati/Kumari

Objections, if any, to the acquisition of the said property may be made in writing to the undersigned-

(a) by any of the aforesaid persons within a period of 45 days from the date of publication of this notice in the Official Gazette or a period of 30 days from the service of notice on the respective persons, whichever period expires later;

(b) by any other person interested in the said immovable property within 45 days from the date of the publication of this notice in the Official Gazette.

It is hereby notified that a date and place for hearing the objections, if any, made in response to this notice against the acquisition of the immovable property will be fixed, and notice thereof shall be given to every person who has made such objection, and the "transferee of the property.

It is hereby further notified that every person to whom notice is given under the preceding paragraph shall have a right to be heard at the hearing of the

objections.

Explanation : The terms and expressions used herein as are denned in Chapter XXA of the Income Tax Act, 1961 (43 of 1961), shall have the same meaning as given in that Chapter.

The Schedule

7 cottahs of land being premises Nos. 29/NA (EP) and 29/NA (WP) Block " B ", New Alipur.

Sd/- M. N. Tiwary Competent Authority (Inspecting Assistant Commissioner of Income Tax, Acquisition Range-II) P-13, Chowringhee Square, Calcutta-1.

Seal of the Inspecting Assistant Commissioner of Income Tax, Acquisition Range-II.

Date: 18-6-73."

3. The petitioner gave a reply to the said notice disputing and challenging the scope, purport and validity of the said notice. It was, inter alia, mentioned therein that the said notice proceeded on the basis that Hindusthan Building Society Ltd. was one of the two transferors though the said Hindusthath Building Society Ltd. was acting merely as a confirming party, as described in the said conveyance whereby the said property was conveyed to the petitioner. It was stated that the confirming party was not the owner of the land and it could not, therefore, transfer the same to the petitioner and, accordingly, the notice was void ab initio with the result that Section 269 of the Income Tax Act which was invoked by the said authority had no application. It was pointed out that the pre-requisite condition for assumption of jurisdiction by the said authorities were not satisfied in this case.

4. It was further pointed out to the said authority that the rights and obligations of the previous agreement dated 30th December, 1947, entered into between the said Hindusthan Building Society Ltd. and the said Hindusthan Co-operative Insurance Society Ltd. devolved on the Life Insurance Corporation of India upon nationalisation of the insurance business in terms of the said Life Insurance Act, 1956 and, accordingly, it was only the Life Insurance Corporation of India which could convey the property to the petitioner. The petitioner complained that it was strange that the proceeding should be taken in respect of a transaction in which a Government organisation was a party. The petitioner also informed the said authority by her said letter that besides paying the stamp duty in connection with the registration charges incurred in respect of the conveyance, the petitioner also incurred an expense of about Rs. 11,000 in the improvement of the land including construction of the drainage system. She further informed thereby that she had been constructing a house on the said land and the construction thereof was nearing completion and the total expenses incurred by her in that respect till the publication in the Official Gazette of the relevant notice was to the extent of a sum of Rs. 1,30,000 approximately. On the basis as aforesaid, the petitioner

prayed that the proceedings initiated by the said competent authority should be dropped.

5. The petitioner has stated in the petition that the agreement to purchase the said property was entered into in writing on 25th January, 1972. The area involved was to the extent of 7 cottahs of land and the price thereof was agreed at Rs. 5,000 per cottah in respect of the two plots of land known as plot No. 29/NA (E.P.) and plot No. 29/NA (W.P.) of Block-B of the New Alipore Development Scheme. According to the petitioner, the entire consideration money was paid by instalments and the final instalment was paid by July, 1972. Since then, the Life Insurance Corporation took a long time to prepare, execute and register the conveyance and ultimately it was made ready by 11th October, 1972. The Life Insurance Corporation of India had it executed and registered on 11th December, 1972. Immediately after the purchase of the said two plots, the petitioner started construction of a building not only on the said 2 plots of land but also on another contiguous plot consisting of about 1 cottah which was subsequently purchased by the petitioner also from the Life Insurance Corporation of India.

6. The petitioner received two notices, both dated 10th June, 1973, u/s 269D(1) of the Income Tax Act as stated hereinabove from the competent authority whereby the said authority purported to state that it had reason to believe that the immovable property having a fair market value exceeding Rs. 25,000 had been transferred for an apparent consideration which was less than the fair market value of the said property and that the said competent authority had reason to believe that the fair market value of the said property exceeded the apparent consideration thereof by more than 15% of such apparent consideration and that the consideration for such transfer as agreed to by and between the transferor and transferee had not been truly stated in the said instrument of transfer with the object of facilitating the reduction or evasion of liability of the transferor to pay tax under the Act in respect of an income arising from the transfer and/or facilitating the concealment of any income or any monies or other assets which have not been paid or which ought to have been disclosed by the transferee for the purpose of the Indian Income Tax Act, 1922 (hereinafter to be referred to as the "old Act") or the Wealth-tax Act, 1957.

7. It is necessary at this stage to set out the provisions of Section 269C which runs as follows :

" 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 purposes of the Indian Income Tax Act, 1922 (11 of 1922), or this Act or the Wealth-tax Act, 1957 (27 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)."

8. It has to be noted that this is a new Chapter being Chapter XXA which has been inserted into this Income Tax Act by the Taxation Laws (Amendment) Act, 1972, which has come into effect on and from 15th November, 1972. The said Chapter consists of 19 sections, i.e., from Section 269A to Section 269S and provides for the machinery whereby proceedings under this Chapter are to be had. The heading of the Chapter is as follows :

" Acquisition of immovable properties in certain cases of transfer to counteract evasion of tax."

9. It would appear from the said Section 269C that the competent authority would have to form his reason to believe, first, that the property concerned which is sought to be transferred has a fair market value exceeding Rs. 25,000. Secondly, it has been transferred by the transferor to the transferee for an apparent consideration which is less than the fair market value of the property by more than 15%. To quote the language of the proviso to the section : " 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 15% of such apparent consideration." Thirdly, that the consideration for such transfer, as agreed to by and between the transferor and the transferee, has not been truly stated in the instrument of transfer with the object of facilitating the reduction or evasion of the liability of the transferor to pay tax under the Income Tax Act in respect of any income arising from the transfer ; or with the object of facilitating the concealment of any income or monies 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 (11 of 1922), or this Act or the Wealth-tax Act, 1957 (27 of 1957).

10. Lastly, the competent authority shall record his reasons for initiating such proceedings.

11. If all the above conditions are fulfilled, then only the competent authority may, subject to the provisions of the said Chapter XXA, initiate proceedings for the acquisition of such property under the said Chapter.

12. Mr. B. L. Pal, appearing on behalf of the respondent, contends that in so far as the presumption provided under Sub-section (2) of Section 269C is concerned, the same along with the other provisions of the said sub-section would be attracted, even at the stage when the competent authority has been forming his opinion to arrive at his reasons to believe. In other words, all that the competent authority has to find out is that the subject-matter of the transfer is an immovable property the fair market value whereof exceeds Rs. 25,000 and the apparent consideration which is mentioned in the transfer document is less than the fair market value of the property by more than 15% of such apparent consideration. According to Mr. B.L. Pal, the rest is a matter of presumption whereby the competent authority would form his belief that the consideration for such transfer as agreed to between the parties is so agreed with the object as mentioned in Clause (a) or (b) of Sub-section (1) of Section 269C.

13. It would seem that the provisions of Sub-section (2) relate to matters of proof for the purpose of simplifying the law of evidence in so far as the competent authority was concerned. The opening words of Sub-section (2) relate to the various proceedings which are provided under Chapter XXA and the expression " any proceedings " there cannot, in my opinion, include the administration stage when the competent authority has to arrive at his independent reason to believe that such a transaction had taken place in which proceedings ought to be commenced, inter alia, for the reason that the transferor and the transferee agreed to give such untrue price in the instrument with the object of evasion of taxes. The provision of subsection (2) was originally placed u/s 269F which provided for hearing of objections when the matter was set out in the Bill before it was passed in Parliament. Thereafter, when the matter was referred to the Select Committee, it was placed as Sub-section (2) u/s 269C without in any way altering the language thereof. It would, appear that since the

language remains the same it must refer to the stage of proceedings which is to be initiated after the competent authority would form his reason to believe under Sub-section (1) independently of the said presumption of the said matter of proof which are provided for simplifying the law of evidence. But in view of the clear language used in the said subsection, it is not necessary for this court to look into the original Bill from the recommendations of the Select Committee, as discussed above. More so, no specific reason has been mentioned anywhere in the report of the Select Committee as to why such Sub-section (2) has been placed under Sub-section (1) of Section 269C except in paragraph (6) of the report of the Select Committee which appears in [1972] 85 ITR 2 as follows :

" (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 15 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 25 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,"

14. It will also appear from the language used in Clause (iii) of paragraph (6) that any proceedings" referred to in Sub-section (2) would mean proceedings at all stages of the acquisition proceedings, that is to say, after acquisition proceedings had been commenced.

15. Various case laws have been cited from the Bar on the question as to whether reference should be made to the history of legislation in construing the provision of an enactment. Mr. P.K. Pal, learned counsel appearing on behalf of the petitioner, however, contended with reference to some case laws that the court should not look into the bill in its original form in construing the sections in the enactment nor could rely on the Select Committee Report in incorporating or construing the sections of the Act. Mr. Pal relied on the following cases : Debendra Narain Roy Vs. Jogendra Narain Deb and Others, ; AIR 1920 56 (Privy Council); Dina Nath Pal and Others Vs. Raja Sati Prasad Garga Bahadur and Others, ; Mt. Tamijannessa Khatun Vs. Purna Chandra Chakravarti and Others, ; Mobarik Ali Ahmed Vs. The State of Bombay, and The Central Bank of India Vs.

Their Workmen, . In the last mentioned case, the Supreme Court observed that the statement of objects and reasons was not admissible in evidence in construing the sections nor could it control the actual words used. The last of such pronouncements is by the Supreme Court in the case of The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, , the Supreme Court has observed as follows :

" It is true that it is dangerous and may be misleading to gather the meaning of the words used in an enactment merely from what was said by any speaker in the course of a debate in Parliament on the subject. Such a speech cannot be used to defeat or detract from a meaning which clearly emerges from a consideration of the enacting words actually used. But, in the case before us, the real meaning and purpose of the words used cannot be understood at all satisfactorily without referring to the past history of legislation on the subject and the speech of the mover of the amendment who was, undoubtedly, in the best position to explain what defect in the law the amendment had sought to remove.....If the reason given by him only elucidates what is also deducible from the words used in the amended provision, we do not see why we should refuse to take it into consideration as an aid to a correct interpretation. It harmonises with and clarifies the real intent of the words used. Must we, in such circumstances, ignore it ? "

16. To my mind the provisions of Sub-section (2) do not create any difficulty to find out its meaning because the language there is clear and free from any ambiguity. The expression " any proceeding " to my mind must mean the proceedings at the various stages commencing from the initiation of those proceedings which are provided under the said Chapter XXA and further because wherever the said expression has been used in the said Chapter, the same has been so used in the same context to convey the same meaning. To my mind, save and except creating a little confusion because the said provision of Sub-section (2) of Section 269F has been taken out of its context from the Bill before Parliament and placed within the said Section 269C thereof as recommended by the Select Committee as stated hereinabove, the language thereof makes it abundantly clear that the same cannot be applied at the initial stage when the competent authority has to form its reason to believe. In fact my conclusion on this point would find support from the further fact that the initiation of the proceedings even after its formation of such belief has been made a matter of discretion and the competent authority has to exercise such discretion by taking into consideration all the facts and the surrounding circumstances of each case after considering its individual merits as to whether such object was evading the taxes mentioned therein. The expression " may " in the sentence, " ... the competent authority may, subject to the provisions of this Chapter, initiate proceedings for the acquisition of such property under this Chapter.. " would denote that the competent authority in appropriate cases might as well form its reason to believe that the proceeding should not be initiated because of certain special factors which are taken into account, according to it would not make it

worthwhile that the proceedings ought to be initiated. If that be the correct position, viz., that the competent authority has still a discretion in the matter, there would not be such a position as to bring about an anomaly because if it is bound to apply the presumption then no discretion is left to it to decide whether such proceedings would be initiated or not because the matter is already a fait accompli. Under such circumstances it would have no other alternative to initiate proceedings. Under such circumstances the expression "reason to believe" is bound to lose its very vital effect and much of its force. The further fact that the mandatory provisions have been made in the section itself to the effect that the competent authority must have to record his reasons for initiating such proceedings would go to support the view I have taken because this creates a further safeguard so far as the question of exercising his discretion is concerned. It is undoubtedly the intention of the legislature to make such a safeguard so that the discretion exercised by him could be examined at any future stage if occasion would so arise. Furthermore, the language of Clause (b) of subsection (2) of Section 269C suggests that the presumption would apply as soon as it would be found that the property has been transferred for an apparent consideration which is less than its fair market value, no matter whether it is less by 10% or more. In order to apply the presumption it would not be necessary to find out whether the fair market value of the property would exceed the apparent consideration thereof by more than 15% of such apparent consideration or not. In other words, the condition precedent which is provided under Sub-section (1) need not be fulfilled in order to apply the presumptions as provided by Clause (b) of Sub-section (2) of Section 269C. In my opinion, that could never have been the intention of the legislature.

17. These are some of the reasons which have impelled me to come to the finding that in so far as the provision of Sub-section (2) of Section 269C is concerned the same is a matter of proof and the legislature intended to simplify the procedure so far as the revenue is concerned by applying such rules of evidence relating to presumptions and to matters of proof so that in the absence of evidence to the contrary the competent authority might not be faced with any difficulty at the hearing stage of the proceeding in arriving at his conclusion without any positive proof therefore that the transfer was so effected with the object of evading the tax as mentioned therein. As stated above the scheme of the provisions of this new Chapter is to counteract the evasion of tax in certain cases. It is to be appreciated that the competent authority has to take note of the said fact and proceed on that basis. It is not that in any and in every case "wherever the apparent consideration is less than the real market value that it must form its reason to believe in the manner as provided in Clauses (a) and (b) of subsection (1) of Section 269C of the Act. It has to take a rational view of the matter. In the process of the formation of its belief it would be one of the most vital factors for it to consider whether or not the transaction was so entered into with the object of evading taxes and it is incumbent upon it to record its reasons for arriving at the belief. Merely quoting the section would not do. The relevant

factors which led him to believe must be recorded. Supposing he comes across a case where from the nature of the transaction he finds that even though the apparent consideration is lesser by 15% than the fair market value but statutory bodies or semi-government organisations or bodies have entered into such transactions, the competent authority under such circumstances might legitimately feel that there could not have been any such object of evading taxes as contemplated under Clauses (a) and (b) of Sub-section (1), and, in such circumstances, he must be left free to use his discretion not to initiate proceedings in such matter. To my mind, it was not the intention of the legislature to fetter his hands by directing him to apply the presumptions and to come to such a stage of his belief that he would have no other alternative but to initiate such proceeding. In such event it would not be its own belief and the expression "reason to believe" under such circumstances would be a redundant expression which, to my mind, the legislature could never have intended.

18. On the basis of my findings as aforesaid, I now proceed to discuss the reason to believe which has been recorded in this case by the competent authority. Such recorded reasons to believe has been made a part of the affidavit of R. V. Lalmavia affirmed by him on 6th January, 1966, and the same reads as follows :

" Annexure " A "

From the papers produced by B. Sengupta it is seen that application for purchasing the plot was made by Smt. Bani Roy Chowdhury only in January, 1972. Shri Sengupta gives me no.....reason why the sale was effected at such a low price of Rs. 5,000 per cottah. In file No. AC-6-/R-II/ Cal/73-74, I have noted the result of local inquiry by the Inspector which shows that the rates prevailing in June, 1973, are Rs. 16,000 per cottah in New Alipore. The rates for 1972 were not much different.

In file No. AC-I/R-II/Cal/73-74, I have noted there was an advertisement in the "properties, etc." column of the Statesman dated 20-4-73, wherein a buyer has offered up to Rs. 1.5 lakhs for 3-4 cottahs land in South-Central Calcutta. This works out to between Rs. 37,000 to Rs. 50,000 per cottah. In my estimation this is a fair index of the market value of land in this area.

I have also come across two other advertisements in the same column of the Statesman dated 11-3-73 and 11-2-73 where comparable plots in Blocks D and B, respectively, have been offered for sale at Rs. 16,000 and Rs. 20,000 per cottah, respectively. Smt. Dipali Chakraborty of No. 162/ B/400, Prince Anwar Shah Road, Calcutta-45, who bought a 4'63 cottah plot of land from the Life Insurance Corporation of India on 29-12-72 in pursuance of an earlier agreement mentions the fair market value at Rs. 16,000 per cottah in Form No. 370 submitted to joint Sub-Registrar, Alipore.

In view of these evidences I am convinced that the fair market value of the 7 cottahs plot purchased by Smt. Bani Roy Chowdhury cannot be less than Rs. 1,12,000 even if valued at Rs. 16,000 per cottah only.

I have, therefore, reason to believe that this property has been transferred for an apparent consideration (Rs. 35,000) which is less than the fair market value (Rs. 1,12,000) estimated and that the fair market value -exceeds the apparent consideration by more than 15% thereof, rather by more than 25% thereof.

I have further reason to believe that the consideration for such transfer as agreed to between the transferor and the transferee 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 the Income Tax Act, 1961, in respect of income arising from the transfer, and

(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 purposes of the Indian Income Tax Act, 1922, or this Act or the Wealth-tax Act, 1957. In fact, this is the presumption raised by Section 269C(2)(a) and (b).

I, therefore, hereby initiate proceedings for the acquisition of this property by the issue of notice u/s 269D(1).

Sd/- M. N. Tiwary 18-6-73 Competent Authority."

19. On a perusal of the said recorded reasons it would be apparent on the face of it that the competent authority has misguided itself by wrongly assuming that the said Hindusthan Building Society Ltd. was one of the transferors in the transaction and accordingly the said Hindusthan Building Society Ltd. has been shown as one of the transferors even though it has been described as a confirming party. It would seem that the competent authority had totally misguided itself in the formation of its belief on the basis of such wrong assumptions of facts and had it not so misguided itself, then it was quite possible for the competent authority to arrive at a different belief. In other words, if the competent authority had considered the matter from the point of view of the transferor being only the Life Insurance Corporation of India, then the competent authority might have come to a different conclusion.

20. In the normal course in the different columns provided in the form itself, the name of the confirming party should have been put down below against the general column and not in the position as transferor No. 2. This is an erroneous reason in the formation of its belief and it appears on the face of the records. The fact that against the name of the transferor No. 2 the words " confirming party " have been mentioned does not change the position because it makes a good deal of difference as to whether the Life Insurance Corporation alone is a transferor or the confirming party along with the Life Insurance Corporation were the transferors for the purposes of Section 269C. The competent authority completely failed to take into consideration the fact that a party usually joins in a conveyance as a confirming party not in the capacity of a transferor but mainly for the purpose of making out a good marketable title to the property so that in

future there might not be any difficulty in conveying or encumbering or in the matter of passing title to the property by the vendor to the vendee. If the competent authority had appreciated that fact it might not have any reason to believe that in the matter of such a transfer the Life Insurance Corporation of India, which is a statutory body, could possibly have tried to evade the tax by entering into such an agreement with the petitioner.

21. Again, from the recorded reasons as set out above, it would appear that one B. Sen Gupta, who happened to be a representative of the said confirming party, viz., Hindusthan Building Society Ltd., appeared before the competent authority and failed to give any reason as to why the sale was effected at such a low price. From the file produced on behalf of the competent authority and, as admitted by Mr. B. L. Pal, learned counsel appearing on behalf of the respondents, it appears that the said B. Sen Gupta was the representative of the said Hindusthan Building Society Ltd., which, in fact, could not have any interest in the matter any longer whatsoever except figuring as a confirming party in the matter of the said conveyance.

22. Mr. Pronab Pal submits that the competent authority proceeded on an entirely erroneous basis in arriving at the fair market value of the property. It has referred to another file No. A/c-6/R-II/Cal/73-74 which is not a file in connection with this case. Under those circumstances, learned counsel contends that there was no proper enquiry by an inspector in respect of the prevailing market rate of the land in question. Furthermore, the inspector's report to the extent of Rs. 16,000 per cottah relates to a period of June, 1973, whereas the conveyance in the matter was executed during the end of 1972. Then again, the competent authority has referred to an advertisement in the Statesman newspaper dated 28th April, 1973, whereunder a buyer had offered up to a sum of Rs. 1.5 lakhs for 3/4 cottahs of land in south/central Calcutta and has thereby tried to arrive at a valuation. To my mind, here also the competent authority has misguided itself completely inasmuch as the advertisement could not have given any index to the price structure in respect of the plot of land at New Alipore and the same could not have been considered as a fair market value in the area in which the property herein is situated. Then again the competent authority also referred to two other advertisements in respect of some plots in Blocks " D " and " B " and tried to arrive at a valuation figure. The said authority also referred to another plot of land which is situated in Prince Anwarshah Road, Calcutta-45, which is situated at a far distant place from the land in question and, accordingly, the same can hardly stand in comparison to the building in question in New Alipore because that is a different locality. These are the materials on the basis whereof the competent authority was supposed to have formed the " reason to believe " that the property in question had been sold at a consideration which was below the fair market value by more than 15%. On the basis of the aforesaid, the competent authority has formed his belief that the consideration for such transfer had not been truly stated in the instrument of transfer with the object as mentioned in Clauses (a) and (b) of Sub-section (1) of Section 269C of

the Income Tax Act and has quoted the sections therein. In the recent Supreme Court case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, , the Supreme Court in dealing with the expression "reason to believe" as appearing in Section 147(a) and Section 147(b) and Section 148 of the Income Tax Act, 1961, which is similar in terms as that of Section 34(1)(a) and (b) of the Indian Income Tax Act, 1922, at page 448, made the following observation :

" As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income Tax Officer 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 is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income Tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment."

In the same page it was observed further as follows :

" The powers of the Income Tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are " reason to believe " and not " reason to suspect ". The reopening of the assessment after the lapse of many years is a serious matter. The Act, no . doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the Income Tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision, finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income Tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter"s failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment."

23. To my mind, in this case, in arriving at the market valuation the competent authority did not apply its mind properly and purported to take into consideration any and every material that were available before it without even considering that the same were not material for the purpose of arriving at the correct and/or fair market value of the property in that area. An insertion in the newspapers for

selling or buying a plot of land at a valuation would hardly be the correct nexus in arriving at the fair market valuation. The conveyance of a nearby plot would surely have been a material which could be relied upon properly as is usually done under similar circumstances. Then again the period when the transaction took place is also material for the consideration of the competent authority in arriving at the fair market valuation. Even then there was enough scope to appoint a valuer and to value the same plots. Instead of taking any such step, all that the competent authority relied on was the conveyance in respect of a plot of land at Prince Anwarshah Road, the valuation whereof has no nexus, not to speak of any close nexus, which might be taken into consideration as the material for the purpose of arriving at the fair market valuation of the plot in question. In fact, in the affidavit-in-reply it has been stated that the nearby plots have all been sold at similar price, namely, Rs. 5,000 per cottah. The petitioner has stated in paragraph 17 of the said affidavit affirmed by her on 23rd February, 1972, as follows :

" I say that the price of south-facing plots in Block " B ", New Alipore, at which the Life Insurance Corporation of India sold the same to other purchasers was, at all material times, and is still Rs. 5,000 per cottah. The said fact will appear from the conveyance, certified copies whereof I crave leave to produce and refer to at the time of hearing of this application."

24. In fact, if the correct position was appreciated by the competent authority, it would not have misguided itself in the manner it has done by taking into consideration the fact that apart from the Life Insurance Corporation of India, there is another transferor, viz , Hindusthan Building Society Ltd., which entered into the said transaction as one of the transferors thereon.

25. It is to be further noticed that the competent authority, in this case, has not applied its mind nor has correctly appreciated the position and even if it had done so, in its over-zealous mental condition, it had applied both Clauses (a) and (b) of Sub-section (1) in arriving at its belief whereas, ordinarily, it was required to apply only one of the said two clauses and that would have been sufficient. In other words, the expression " or " which has been mentioned in between the Clauses (a) and (b) appear to have been overlooked and what has been relied on is both Clauses (a) and (b) as would appear from the word " and " used in the recorded reasons. Thereby, the transferor Life Insurance Corporation also has been sought to be equally made a guilty party. This would show total non-application of mind and its anxiety to commence proceedings without even fulfilling the basic conditions precedent herein. It would appear in recording its reasons to believe that it has merely quoted the sections and has purported to apply both the objects which are provided in Clauses (a) and (b) in so far as evasion of taxation is concerned. Over and above that, it has also purported to rely on the presumptions in arriving at its reasons to believe.

26. I have already come to my findings, as would appear from the above, that such presumptions are not to be applied at the stage when the competent

authority has to form his mind in arriving at his decision whether or not to initiate the proceedings.

27. The next point that has been argued on behalf of the respondents is that there is a complete machinery provided in this Chapter by way of alternative remedy which should have been followed by the petitioner instead of seeking remedy under the writ jurisdiction of this court. I have already arrived at the findings that the conditions precedent as provided hereinafter have not been fulfilled by the competent authority and, accordingly, the writ court has jurisdiction to entertain an application of this nature at this stage under its writ jurisdiction. Moreover, the point has been argued at length and I should not refuse entertaining the application at this stage, after the rule herein has been directed and the matter has been argued on other points.

28. A point was sought to be taken by Mr. Pronab Pal to the effect that the publication in the Official Gazette as contemplated u/s 269D was made beyond the period as provided therein and at any rate it was brought to the notice of the petitioner beyond the period of nine months, but I do not think that the said point should be allowed to be agitated at this stage because neither in the petition nor at any previous stage this point was ever indicated. In any event, a copy of the Gazette has been made available to the court wherefrom it appears that the proceedings were sought to be initiated within the period as provided by the statute.

29. There is still another point which was sought to be argued by Mr. Pronab Pal appearing on behalf of the petitioner to the effect that the provisions of Chapter XXA of the Income Tax Act are penal in nature. It is by way of additional revenue and the same is sought to be collected by the Government. Hence, it should not be a public purpose within the meaning of Article 31 of the Constitution. It is contended by counsel that Chapter XXA does not mention any reason as to why the properties of the citizens would be acquired. It is contended that the Income Tax Act does not deal with anything else but revenue but by enacting this provision what was sought to be recovered was additional tax apart from other tax. It is contended that, according to its own estimate, the Government valuation would be more than at least Rs. 16,000 per cottah, i.e., Rs. 1,12,000 for seven cottahs of land, and under such circumstances the revenue should not be entitled to this balance amount. Mr. B. L. Pal, on the other hand, contends that this point was thoroughly dealt with and fully covered in the case of Mahavir Metal Works P. Ltd and Another Vs. Union of India and Another, as also in the case of Basudev Sahu Vs. Union of India (UOI) and Others, .

30. To my mind, in view of my findings on the other points as discussed above, it is not necessary for me to go into these points and, accordingly, the same is left open for future consideration if the occasion would so arise.

31. After taking into consideration all these points, I am of the opinion that the petitioner ought to succeed in this case and I, accordingly, make the rule

absolute. The petitioner is to get the costs from the respondents. The stay of the operation of order is granted for a fortnight.