it was further observed that in order to constitute abandonment or waiver, it must be a voluntary act on the part of the person possessing the rights. If a person by force of circumstances was compelled to adopt one of the two courses, it could not be said that he had two courses open to him and that he adopted one and abandoned the other. I am in respectful agreement with the observations circumabove. After taking into consideration of the abovesaid circumstances, I am of the opinion that the order of ejectment in the earlier petition which had been held to be a nullity but validated later, can be executed by the petitioner even though the subsequent petition for ejectment on a similar ground had been dismissed.

(10) For the aforesaid reasons I accept the revision petition, set aside the order of the Courts below and remand the case to the executing Court for executing the decree in accordance with law. However, I make no order as to costs.

N.K.S.

Before : S. P. Goyal and G. C. Mital, JJ.

SUTLEJ CHIT FUND AND FINANCIERS (PVT.) LTD., JULLUNDUR CITY,—*Appellant.*

versus

COMMISSIONER OF INCOME TAX,—*Respondent.*

Income Tax Appeal No. 3 *of* 1977

December 17, 1985.

Income Tax Act (XLIII of 1961)—Sections 269—A(d), 269-C, 269-D, 269-E, 269-F and 269-H—Acquisition proceedings in respect of immovable property—Reason to believe that the property had been transferred for consideration which was less than the fair market value and that the consideration had not been truly stated with the objects mentioned in clause (a) or (b)—Material constituting the belief sought to be relied upon by the competent authority—Whether should be supplied to the vendor and the vendee—Competent authority relying on the report of the assistant valuation officer—Such report—Whether could provide material to form the opinion—Presumptions contained in clauses (a) and (b) of Section 269-C(2)—Whether available to the competent authority even at the stage of

forming the belief under sub-section (1)—*'fair market value'—Determination of—Consideration of a particular method being favourable to the assessee—Whether relevant.*

Held, that there was no requirement in any of the provisions of the Income Tax Act, 1961, or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the competent authority to proceed must also be communicated to the vendor or vendee. It is one thing to say that the reasons were not communicated and a totally different one not to make known the material constituting the belief and sought to be relied upon against the vendor or vendee. The communication of the reasons is neither required nor its absence fatal. However, if the material relied upon is not disclosed it would certainly result in the denial of adequate opportunity and violation of the principle of natural justice but this is not the objection and the attack is confined to the non-communication of the reasons only. The legality of the order of the competent authority cannot, therefore, be challenged on the ground that the reasons recorded for initiating the proceedings were not communicated to the vendor or vendee.

(Para 7)

Held, that the report relied upon by the competent authority contains only the material on the basis of which the fair market price was determined and as such could not provide any reason for the competent authority to believe that the under-statement of the consideration had been made with the objects stated in clause (a) or (b) of sub section (1) of section 269-C of the Act. But sub-section (2)(b) of section 269-C provides that 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 reftrred to in clause (a) or (b) of sub section (1). By virtue of this presumption the very material which provided the competent authority with the reasons to believe that any immovable property of a fair market value exceeding Rs. 25,000 has been transferred by a person to another person for an apparent consideration which is less than the fair market value of the property, would also provide reason to believe that no consideration has been mentioned with the objects enumerated in clause (a) or clause (b) of sub section (1).

(Para 8)

Held, that the presumption contained in sub section (2) of section 269-C would be available even during the proceedings prior to the publication of the notice under section 269-D initiating proceedings for the acquisition of the property. If the material is already available on the record for the competent authority to form a belief that

the consideration has been understated with the objects contained in clause (a) or clause (b) of sub clause (1), there would be no necessity to make a provision for raising a presumption at the final stage of the proceedings. In such a situation, the vendor and the vendee would be confronted with the said material and required to prove to the contrary. It would be then for the competent authority to arrive at its own conclusion after taking into consideration all the material available on the record including the material produced by the vendor and the vendee as to whether the considration has been understated with one of the said objects or not. A resort to the presumption at the final stage in these circumstances would have no meaning. Even otherwise the presumptions contained in sub section (2) are nothing but rules of evidence. The necessity to provide them was felt by the legislature because the facts constituting the requisite ingredients are always in the special knowledge of the vendor or the vendee and it is very difficult, if not impossible, for the competent authority to prove them by tangible evidence. If the availability of this rule of evidence has a rationality at the final stage, then why it would not be there at the initial stage or why a different rule of evidence should be made applicable by the Legislature at different stages of the proceedings under Chapter XX-A. The essential facts for passing the final order would invariably be the same as were at the initial stages. On the same facts if a presumption can be raised when an order deterimental to the vendor or the vendee can be passed, how can it be said that it would not be available at the intial stage for the purposes of the initiation of the proceedings which by itself cause no prejudice of any substantial nature to the party concerned. It is, therefore, held that the presumption contained in clause (a) and clause (b) of sub section (2) would be available to the competent authority even at the stage of forming the belief under section 269 C(1) of the Act.

(Paras 16 and 17)

Held, that the definition of fair market value under section 269 A(d) brings to fore the concept of comparable sales method or the analysis approach or a mythical willing seller who is under no compulsion to sell and a willing buyer who is under no compulsion to buy. In many cases it becomes difficult to resort to this method and determine the market value and, therefore, courts and valuers have adopted other modes or methods called 'capitalisation method' and 'rental value method'. But the other methods must be resorted to only when the fair market value cannot be determined applying the comparable sales method or the sales analysis approach and not otherwise. There cannot be any dispute that the preliminary comparable sales method should be adopted, if possible, but in the absence of proper data in this regard the other methods would have to be resorted to.

(Para 18)

Held, that fair market value as defined in section 269A(d) means the price that the immovable property would ordinarily fetch on sale in the open market on the date of the execution of the instrument of transfer of such property. In otherwords, the fair market value would be the price which a willing purchaser might pay to a willing seller. None of the said two methods would be a proper method under all situations. A commercial site whose cost of land and the construction is much less than the cost of construction of a residential site often fetches much higher sale price because of the return owner gets from it. If the land and building method is employed qua such a building, it will not give proper figure as to its market price. But under certain circumstances the land and building method may result in much higher estimate of the market price than the rent capitalisation method. For example, in the areas where the rent restriction laws are applicable at the time of the sale the cost of the land and construction may be much higher but the building which was constructed a decade ago might be fetching only a nomial rent. In these circumstances, the land and building method may be more proper method. Similar would be the situation with regard to a residential building as well. So, it is for the competent authority to decide in a given case as to which method would be more efficacious to determine the fair market value. The use of method would thus entirely depend on the particular facts and circumstances of the case and the question whether the Tribunal was correct in applying one recognised method in determining the fair market value of the property and not another will not *per se* constitute a question of law. The question before the authorities is of determination of the fair market value of the property. Which method would be suitable to determine that value depends upon the facts and circumstances of each case. The question of the use of that method which is favourable to the assessee or to the revenue has no bearing because it is fair market value which is to be determined and not the price which is favourable either to the assessee or to the revenue. Consideration of a particular method being favourable to the assessee, therefore, would be wholly irrelevent and the competent authority is enjoined by law to adopt only that method which is most efficacious to determine the fair market value of the property sold.

(Para 19)

Commissioner of Income Tax *vs.* Smt. Vimlaben Bhagwandass Patel (1979) 118 I.T.R. 134.

Competent Authority, Inspecting Assistant Commissioner of Income Tax and others *vs.* Smt. Bani Roy Chaudhary and others (1981) 131 I.T.R. 578.

Unique Associates Co-operative Housing Society Ltd., *vs.* Union of India and others. (1985) 152 I.T.R. 114.

Smt. Bani Roy Chowdhry *vs.* Competent Authority, Inspecting Assistant Commissioner of Income-tax, Acquisition Range-II and others.

(1978) 112 I.T.R. **111.**

(Dissented from)

APPEAL UNDER SECTION 269-H of the Income Tax Act (as amended), praying that the appeal may be accepted and the judgment and order of the Income-tax Appellate Tribunal, Amritsar, dated 30th October, 1976 in I.T. [Acquisition No. 10 to 20 (ASR)] 1976-77, be set aside with costs throughout.

Bhagirath Dass Sr. Advocate, B. B. Ahuja, Advocate and Ashok Gandhi, Advocate.

Ashok Bhan Senior Advocate with Ajay Mittal, Advocate, *for the Respondent.*

JUDGMENT

S. P. Goyal, J.

(1) This judgment will dispose of 15 Income-tax Appeals Nos. 1 to 12 of 1977 and Income-tax Appeals Nos. 1 to 3 of 1978 which have been filed under section 269 H of the Income-tax Act, 1961 (hereinafter called the Act) against a common judgment of the Appellate Tribunal dated October 30, 1976 and involve similar questions of law.

(2) Messrs Sutlej Chit Fund and Financers, Private, Limited, transferors, purchased a vacant site from the Government at the rate of Rs. 750 per *marla* in the year 1971 and constructed 20 shops on a part thereof popularly kown as Sutlej Market, each shop having an area of 608 Sq. Ft. Shops Nos. 6 to 12 were completed by March 1972 and the remaining by September 1973. Eleven shops bearing numbers 6 to 12 and 17 to 20 were sold between February to December 1973, each for a consideration of Rs. 20,000. The Competent Authority, on the basis of the reports obtained from the Assistant Valuation Officer/Inspector who assessed the fair market value of each shop at Rs. 67,500 according to the rent capitalisation method and Rs. 65,200 as per land building method, having reason to believe that the apparent consideration was less than the fair market

value of the property and that the consideration for the transfer as agreed between the parties has not been truly stated in the instrument of transfer with the object of facilitating evasion of the liability of the transferor to pay tax under the Act in respect of any income arising from the transfer, initiated proceedings under section 269-D of the Act by publishing a notice in the Official Gazette. Notices were also served on the transferor and the transferees under section 269-D (2) (a) as well as got published under sub-section (2) (b) by affixation on a conspicuous place in his office and in the locality.

(3) Objections were filed to the proposed action both by the transferor and the transferees who stated that the sale consideration was not under-stated nor the fair-market value of the disputed shops was more than Rs. 25,000. After hearing the objections, the Competent Authority found that the fair market price of each of the disputed shop was Rs. 52,162 which exeeded the apparent consideration by more than 15 per cent. He further held that as the fair market value of the said shops exceeded the apparent consideration by more than 25 per cent, the consideration for such transfer, as agreed between the parties, has not been truly stated in the instrument of transfer with the object of evasion of the liability of the transferor to pay tax under the Act in respect of the income arising from the transfer. Consequently, he ordered acquisition of all the eleven shops under section 269F (6) of the Act. Having failed before the Tribunal as well, the transferor and the transferees have come up in these appeals under section 269-H of the Act.

(4) Income-tax Appeals Nos. 1 and 2 have been filed by the vendees against the order of the Tribunal dismissing their appeals under section 269-G as barred by time. An appeal to this Court under section 269-H lies only on a question of law. As no question of law arising out of the order of the Tribunal was pointed out by the learned counsel, these appeals have to be dismissed on this very short ground.

(5) Mr. Bhagirath Dass, learned counsel in Income-tax Appeal No. 3 of 1977 challenged the impugned judgment only on the ground that proper method was not adopted in determining the fair market price. As this ground was fully covered by the laborious and eleborate arguments of Mr. B. B. Ahuja, we do not propose to notice or deal with it separately.

(6) Mr. Ahuja initially formulated several propositions but ultimatedly confined his arguments to the following three law points:—

1. that the material constituting the reasons to believe that the apparent consideration was less than the fair market value and that the consideration as agreed between the parties has not been truly stated in the instrument of transfer with the object of evasion of the liability of the transferor to pay tax under the Act, was not supplied to the appellants.

2. that there was no reason to believe that the apparent consideration has not ben truly stated with the object of evasion of the liability of the transferor to pay the tax.

3. that the Competent Authority has not correctly assessed the fair market value of the shops in dispute and in assessing the same has employed a method not recognised by law.

(7) The first point need not detain us long as it stands concluded by a judgment of the Supreme Court in *S. Narayanappa and others* vs. *Commissioner of Income-tax Bangalore* (1). In that case to challange the re-assessment order under section 34 of 1922 Act (Section 147 of the present Act) one of the arguments raised was that the reasons recorded by the Assessing Authority to institute the proceedings under section 34 of the Act were not communicated to the assessee. The contention was repelled with the observation that there was no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under section 34 must also be communicated to the assessee. It is one thing to say that the reasons were not communicated and a totally different one not to make known the material constituting the belief and sought to be relied upon against the vendor or the vendee. The communication of the reasons as held by the Supreme Court in the above noted case is neither required nor its absence fatal. However, if the material relied upon is not disclosed it would certainly result in the denial of adequate opportunity and violation of the principle of natural justice. But

(1) (1967) 63 I.T.R. 219.

this is not the objection raised and the attack is confined to the non-communication of the reasons only. The legality of the order of the Competent Authority, therefore, cannot be challenged on the ground that the reasons recorded for initiating the proceedings were not communicated to the appellant and the first point urged, therefore, has no merit.

(3) A great stress was laid by the learned counsel on the second point. It was contended that the only material available with the Competent Authority at the time when the notice for initiating the proceedings was published, was a report of the Assistant valuation Officer or of the Inspector. Neither of these reports could possibly provide any material to form an opinion that the consideration was under-stated with the object of facilitating the reduction or evasion of the liability of the transferor to pay tax in respect of any income arising from the transfer or of facilitating the concealment of any income or any monies or other assets which have not been or which ought to have been disclosed by the transferor for the purpose of the Income-tax Act or the Wealth Tax Act. The report relied upon in the present case by the Competent Authority contains only the material on the basis of which the fair market price was determined and as such could not provide any reason for the Competent Authority to believe that the under-statement of the consideration has been made with the said object. But sub-section (2) (b) of section 269-C provides that 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). By virtue of this presumption, the very material which provided the Competent Authority with the reasons to believe that any immoveable property of a fair market value exceeding Rs. 25,000 has been transferred by a person to another person for an apparent consideration which is less than the fair market value of the property, would also provide reason to believe that the under-consideration has been mentioned with the objects enumerated in clause (a) or clause (b) of sub-section (1). The learned counsel, however, urged that the said presumption is not available to the issuance of the notice initiating proceedings under Chapter XX-A for the acquisition of the immoveable property, the subject-matter of the sale. To substantiate this contention, the learned counsel referred to the opening

words of section 269-C (2) and argued that the presumption would be available only during the proceedings under Chapter XX-A and the proceedings, according to him, are not initiated till the notice is published in the Official Gazette under section 269-D. Reliance for this proposition was placed on *Commissioner of Income-tax- Gujrat-II* v. *Smt. Vimlaben Bhagwandas Patel* (2), *Competent Authority, Inspecting Assistant Commissioner of Income-tax and others* v. *Smt. Bani Roy Chowdhry and others* (3), *Commissioner of Income-tax, Jullundur* v. *Amrit Sports Industries* (4) and *Unique Associates Co-operative Housing Society Ltd.* v. *Union of India and others* (5). Reference was also made to a Single Bench decision of the Calcutta High Court in *Smt. Bani Roy Chowdhry* v. *Competent Authority, Inspecting Assistant Commissioner of Income-tax, Acquisition Range-II and others* (6), which was relied upon in three Single Bench decisions of the same court. But as the decision in *Smt. Bani Roy Chawdhry's case* (supra) was affirmed by the Division Bench in *Smt. Bani Roy Chowdhry and others' case* (supra) it is not necessary to notice them saparately.

(9) The question, as to whether the provisions of sub-section (2) of section 269-C would be available to the Competent Authority prior to the publication of the notice in the Official Gazette initiating proceedings for the acquisition of the property or not was first considered by Ramendra Mohan Datta, J. in *Smt. Bani Roy Chawdhury's case* (supra). It would, therefore, be proper to notice in *extenso* the process of reasoning which led the learned Judge to come to the conclusion that the said presumption was only available after the initiation of the proceedings has taken place by publication of the notice in the official Gazette. The main reason given was that the expression, "any proceedings" in the opening words of sub-section (2) means proceedings at the various stages commencing from the initiation of those proceedings which are provided under Chapter XX-A. It was further stated that even after the formation of the belief, the Competent Authority still has the discretion to initiate proceedings or not. But if the presumption would be available at that stage, the matter would be a *fait accompli* and no discretion

(2) (1979) 118 I.T.R. 134.
(3) (1981) 131 I.T.R. 578.
(4) (1984) 145 I.T.R. 231.
(5) (1985) 152 I.T.R. 114.

would be left with the authority not to initiate the proceedings. The third reason adopted was that there is a mandatory provision contained in the proviso that before initiating the proceedings, the Competent Authority must record its reasons for doing so and lastly it was said that under clause (b) of sub-section (2) a presumption would be raised in spite of the fact that the fair market price exceeds the apparent consideration by more than 15 per cent or not which necessarily means that it can only be raised at the final stage because at the time of the initiation of the proceedings one of the proviso requires that the fair market price must exceed the apparent consideration by more than 15 per cent. Let now each of the reasons be examined to find out if any one of them justifies the view experssed by the learned Judge.

(10) The words used in he opening of sub-secion (2) are "in any proceedings under this Chapter". The reason given is that the proceedings are initiated under section 269D (1) only when the notice is published in the official Gazette because the word "proceedings" according to the learned Judge has to be interpreted carrying the same meaning throughout the whole chapter. With due respect to the learned Judge, we are unable to subscribe to this view. The word, "proceedings" has to be interpreted in the context in which it has been used in the various sections. The word, "proceedings" has been used in sub-section (1) but is qualified with the words "for the acquisition of such property". Similarly, this word has been qualified in sub-section (1) of section 260-D. The word, "proceedings" in the above context obviously means the proceedings for the acquisition of the property under the said Chapter. However, in sub-section (2) the words used are "any proceedings" under this Chapter" and not "proceedings for the acquisition of such property". The word, "proceedings" in sub-section (2), therefore, does not signify the proceedings for the acquisition of such property which are initiated only after the publication of the notice in the Official Gazette under section 269-D. When the Competent Authority has to form an opinion under section 269-C (1), there has to be some material to support the same. Obviously it has to probe in the matter and collect some material which will provide reasons to believe that the consideration has been under-stated with the objects specified in clause (a) or clause (b) of the said sub-section. The Competent Authority would have no authority to do so except in exercise of the powers under section 269-C. All these acts would be nothing but proceedings under section 269-C which necesssarily

means proceedings under Chapter XX-A. After collecting the necessary data, the Competent Authority has to form its opinion and record its reasons for the same. Though the formation of the opinion is subjective but based on objective data. The act of the formation of the believe would again be done in exercise of the powers under section 269-C which necessarily means taking of proceedings under the said provision. The recording of the reasons though held to be an administrative act by the Supreme Court in *S. Narayanappa's case* (supra) still would be a constituent of the proceedings which ultimately culminate into the publication of the notice under section 269-C. Thus all the steps taken prior to the stage of the publication of notice are nothing but proceedings under-taken by virtue of the provisions of section 269-C, that is under Chapter XX-A of the Act.

(11) The second reason that if the presumption would be available at the initial stage then the Competent Authority would have no option but to initiate the proceedings is equally untenable. In spite of the presumption available there may be inherent circumstance in the instrument of sale which may negative the presumption. Take for example that a property is sold by 'A' to 'B' for a consideration of Rs. 50,000. In the deed itself it is recited that the market price of the property is about rupees one lac but it is being transferred for half the price because of the services rendered and love and affection between the parties. Under these circumstances although the presumption would be available under sub-section (2) (b) still the Competent Authority may not initiate proceedings if he is of the opinion that the presumption stands rebutted from the other circumstances narrated in the instrument of transfer itself. So the discretion conferred on the Competent Authority in no way would be fettered by the presumption available under sub-section (2) (b). However, if there are no such circumstances available rebutting the presumption the word "may" shall operate like "shall" and the Competent Authority has to initiate proceedings in discharge of the obligation imposed upon him by virtue of the provisions of section 269-C.

(12) So far as the third reason is concerned, we regret our inability to appreciate as to how the mandatory requirement of recording the reasons has any bearing on the points at issue. The reasons are not confined only to the objects contained in clause (a) and clause (b) of sub-section (1). The reasons have to be recorded to justify the belief that the consideration has been under-stated. For

the belief qua the object of such under-statement, if the other requirements are satisfied, the Competent Authority can have a resort to the presumption available under sub-section (2) (b). Reliance on the presumption for the formation of the belief that the consideration has been under-stated with one of the objects enumerated in clause (a) or clause (b) of sub-section (1) would certainly be a valid reason for the belief and thus compliance with the requirement of the proviso.

(13) The efficacy of the last ground is again highly doubtful. No doubt clause (b) of sub-section (2) does not in so many words require that the apparent consideration must be less by more than 15 per cent to the fair market value but this requirement has necessarily to be read in this clause. The second proviso to sub-section (1) provides that no proceedings for the acquisition of the property shall be initiated unless the Competent Authority has reason to believe that the fair market value of such property exceeds the apparent consideration therefor by more than 15 per cent of such apparent consideration. If no proceedings can be initiated unless the fair market value exceeds by more than 15 per cent than the apparent consideration, the question of resorting to the presumption for the formation of belief as to the object of the under-statement of the consideration would not arise. It would be only when the said pre-requisite condition is satisfied that the Competent Authority would be required to form any opinion as to the object of the under statement of the consideration. So, the non-repetition of the extent of the under-statement in clause (b) of sub-section (2) is of no consequence and as such would provide no reason for the view that the said presumption would not be available at the initial stage and can be resorted to only after the initiation of the proceedings under section 269-D of the Act.

(14) The judgment of the learned Single Judge in *Smt. Bani Roy Chowdhury's case* (supra) was affirmed by the Division Bench and it is reported in *Smt. Bani Roy Chowdhury and others' case* (supra). One of the reasons adopted was the same, namely, that at the first stage there are no proceedings and the acts of the Competent Authority relate to the preparation for the initiation of the proceedings. This matter has already been discussed at length above. The Bench put forward another reason for upholding the view of the learned Single Judge which is contained in the following passage:—

"** ** **

> If the contention of the revenue that the stage when the competent authority forms his belief under sub-section

(1) is a proceeding within the meaning of the expression 'any proceeding under this Chapter' occurring in sub-section (2), is accepted, then such belief of the competent authority will be conclusive proof that the consideration as agreed to between the parties has not been truly stated in the instrument of transfer, which is absurd and will render the provisions of filing objections, determination of valuation and decision of the competent authority meaningless and nugatory. While clause (a) provides for conclusive proof, clause (b) raises a presumption. If for the purpose of clause (a) of sub-section (2), the stage at which the competent authority forms his belief under sub-section (1) is not a proceeding as contemplated by sub-section (2) it will be quite unreasonable to think that it is a proceeding for raising the presumption under clause (b) of sub-section (2). The presumption under clause (b) will arise if the fair market value of the property exceeds the apparent consideration. The fair market value has to be determined on evidence including what may be adduced by the parties, and cannot, in our opinion, be the subject-matter of the belief of the competent authority for the purpose of raising the presumption under clause (b)."

The Bench appears to have been influenced in its view by the conclusive presumption contained in clause (a) of sub-section (2). This clause provides that where the market value of such property exceeds the apparent consideration therefore by more than 25 per cent of its apparent consideration it shall be conclusive proof that the consideration for such transfer, as agreed between the parties, has not been truly stated in the instrument of transfer. The conclusive presumption would arise only if the pre-requisite that the fair market value of such property exceeds by more than 25 per cent of the apparent consideration, is established. Even though the Competent Authority may have formed an opinion that the fair market price exceeds the apparent consideration by more than 25 per cent but the opinion is open to challenge and is not conclusive as is apparent from sub-section (3) of section 269-E, which provides that objection may be made under sub-section (1) that the provision of clause (a) of sub-section (2) of section 269-C did not apply in relation to any immovable property on the ground that the fair market value of such pro-

perty does not exceed the apparent consideration therefor by more than 25 per cent of such apparent consideration. No doubt, if the party concerned fails to produce reliable material and dislodge the belief formed by the Competent Authority as to the excess between the fair market price and the apparent consideration, an irrebutable presumption would come into play but that does not mean that the filing of the objection or the determination of the valuation by the Competent Authority is meaningless or insignificant as the party can prevent the operation of the irrebuttable presumption by showing that the fair market price does not exceed the apparent consideration by more than 25 per cent. So the observation of the Bench that the belief of the Competent Authority will be conclusive proof that the consideration, as agreed to between the parties, has not been truly stated in the instrument of transfer which is absurd and will render the provisions for filing the objections, determining the value and decision of the Competent Authority meaningless and nugatory, is hardly justified and appear to have been made because of the non-noticing of the provisions of section 269-E (3) of the Act.

(15) The only other decision worth noticing is that of the Gujarat High Court in *Smt. Vimlaben Bhagwandas Patel's case* (supra) because in *Unique Associates Co-operative Housing Society's case* (supra) the learned Judge relied for his view on the former case without advancing any new reasons and in *Amrit Sports Industrie's case* (supra), the order initiating the proceedings had been quashed because it contained no reasons. The decision in *Smt. Vimlaben Bhagwandas Patel's case* (supra) again proceeds on the reasoning that the said presumption would not be available unless the proceedings are initiated and the proceedings are initiated only when a notice is published under section 269-D in the Official Gazette. We have already recorded our reasons in detail for not following this view which need not be repeated again. However, it would be necessary to record our view on the doubt expressed by the Bench as to the rationality of the irrebuttable assessment contained in sub-section (2) (a) and the view expressed by the Delhi High Court in *Mahavir Metal Works P. Ltd. and another* v. *Union of India and another* (7) that even the provisions of sub-section (2) (a) raise a rebuttable presumption. The Delhi High Court in *Mahavir Metal Workers' case* (supra) held that the presumption contained in both clauses (a) and (b) of sub-section (2) of section 269-C are rebuttable

(7) (1974)95 I.T.R. 97.

on the following ratio:

> "Though the words, 'conclusive proof' are used in section 269-C (2) (a), a reading of the above provisions together does not show that the parties to the transaction are precluded from showing that the consideration for the transfer was truly stated in the instrument of transfer. This idea is made very clear by section 269-E (3). During the enquiry that is to be held by the Assistant Commissioner the transferor and/or the transferee or any other person interested may show that the provisions of clause (a) of sub-section (2) of section 269-C do not apply to the case concerned."

With due respect to the learned Judges we are constrained to say that the reasoning suffers from an apparent fallacy. As discussed above, before an irrebuttable presumption, as provided in sub-section (2) (a) can arise the condition precedent has to be satisfied, namely, that the fair market price of the property in dispute exceeds the apparent consideration by more than 25 per cent. Once that is established, the presumption arising therefrom that the consideration was not truly stated in the instrument of transfer would be irrebuttable under the provisions of section 269-E (3). But it is open to the party to show that the condition precedent for raising the presumption under sub-section (2) (a) is non-existent. If a party fails to show that the fair market price does not exceed the apparent consideration by more than 25 per cent, the presumption arising therefrom would be irrebuttable and it would not be open to him to show that the apparent consideration was truly stated even though it fell short by more than 25 per cent of the fair market price. Once the condition precedent is satisfied, it cannot by any stretch of reasoning be said that it was a rebuttable presumption. We are equally unable to persuade ourself to agree with the observation of the Bench in *Smt. Vimlaben Bhagwandas Patel's case* (supra) that it was not fair and just to raise the presumption by an artificial rule of evidence that the disparity between the apparent consideration and the fair market value by a prescribed margin of 25 per cent would be conclusive proof that the parties to a transfer have been untruthfully stating the agreed consideration in the instrument of transfer since there may be countless *bona fide* cases where the agreed consideration may be lower than the fair market value on the date of the execution of sale deed. No doubt, sometime there

can be a case in which the consideration may have been truthfully stated in the instrument of sale even though the apparent consideration be far less than the fair market price of the property sold. For example, a person may sell his land for a nominal consideration to a registered society or a trust for being used for the welfare of the public at large or charitable purposes. The consideration mentioned in such a case cannot be said to have been untruly stated. All the same, a presumption would arise under sub-section (2) (a) that the consideration has not been truly stated. In spite of this presumption being available it would not be possible for the Competent Authority to initiate any proceeding because of the absence of any object specified in clause (a) or clause (b) of sub-section (1) and the said presumption would not be able to operate to the deteriment of the vendor or the vendee in any manner. It is, therefore, evident that the presumption would only have any meaning or consequence if the transaction is not *bona fide* and the variance between the fair market price and the apparent consideration takes place with one of the objects contained in clause (a) or clause (b). On the contrary, if a property is sold for an apparent consideration which is half the fair market price, it would be almost impossible for the competent authority to prove on tangible reasons that the consideration has been untruly stated. In cases of such like transactions which are in fact not *bona fide* there could be no other way except to provide a presumption, as contained in sub-secion (2) (a), to establish that the apparent consideration has not been truly stated in the instrument of sale. So the provisions of sub-section (2) (a) of section 269-C are neither unfair nor unjust and contain a rule of evidence most necessary to stem the ever-spreading menace of black money.

(16) Now we may notice our reasons for taking the view that the presumption contained in sub-section (2) of section 269-C would be available even during the proceedings prior to the publication of the notice under section 269-D initiating proceedings for the acquisition of the property. Firstly, if the material is already available on the record for the Competent Authority to form a belief that the consideration has been under-stated with the objects contained in clause (a) or clause (b) of sub-section (1), there would be no necessity to make a provision for raising a presumption at the final stage of the proceedings. In such a situation, the vendor and the vendee would be confronted with the said material and required to prove to the contrary. It would be then for the Competent Authority

to arrive at its own conclusion after taking into consideration all the material available on the record including the material produced by the vendor and the vendee as to whether the consideration has been understated with one of the said objects or not. A resort to the presumption at the final stage in these circumstances would have no meaning.

(17) Secondly, the presumptions contained in sub-section (2) are nothing but rules of evidence. The necessity to provide them was felt by the Legislature because the facts constituting the requisite ingredients are always in the special knowledge of the vendor or the vendee and it is very difficult, if not impossible for the Competent Authority to prove them by tangible evidence. If the availability of this rule of evidence has any rationality at the final stage, it passes our comprehension as to why it would not be there at the initial stage or why a different rule of evidence should be made applicable by the Legislature at different stages of the proceedings under Chapter XX-A. The essential facts for passing the final order would invariably be the same as were at the initial stages. On the same facts if a presumption can be raised when an order really detrimental to the vendor or the vendee can be passed. how can it be said that it would not be available at the initial stage for the purposes of the initiation of the proceedings which by itself cause no prejudice of any substantial nature to the party concerned. We, therefore, prefer to agree with the view expressed by the Delhi High Court in *Mahavir Metal Works' case* (supra) and hold that the presumptions contained in clause (a) and clause (b) of sub-section (2) would be available to the Competent Authority even at the stage of forming the belief under section 269-C (1) of the Act.

(18) On the third point, the first contention raised was that the rent capitalisation method employed by the Competent Authority to assess the fair market price was not proper and a permissible method. Reliance for this contention was placed on a Supreme Court decision in *Special Land Acquisition Officer, Devangsre* v. *P. Verrabhandarappa etc.* (8) and the Karnataka High Court decision in *A. Premchand and others* v. *Inspecting Assistant Commissioner of Income-tax and others*, (9). In *P. Verrabhandarappa's*

(8) AIR 1984 S.C. 774.
(9) (1985) 153 I.T.R. 774.

case (supra), the Supreme Court observed that normally, the method of capitalising the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. The Karnataka High Court in *A. Premchand's case* (supra), relying on the definition of fair market value under section 269-A (d) observed that the said definition brings to fore the concept of comparable sales method or the analysis approach or a mythical willing seller who is under no compulsion to sell and a willing buyer who is under no compulsion to buy. It further observed that in many cases it becomes difficult to resort to this method and determine the market value, and therefore, courts and valuers have adopted other bodes or methods called "capitalisation method" and "rental value method". But the other methods must be resorted to only when the fair market value cannot be determined applying the comparable sales method or the sales analysis approach and not otherwise. Before the Supreme Court, the market price of the agricultural land was in question and as such the observations made therein provide no proper guidance so far as the determination of the market price of a commercial building is concerned. So far as the views expressed in *A. Premchand's case* (supra) are concerned, there cannot be any dispute that the preliminary comparable sale method should be adopted, if possible. In the present case no argument was advanced in this regard before the Tribunal and rightly so because there was no evidence of comparable sales available on the record. No doubt, the transferees did prove some sale instances but those related to vacant plots which being away from the G.T. Road had no potential of being used as commercial sites. The sale instances were, therefore, ruled out by the Competent Authority and rightly no reliance was placed on them before the Tribunal by the appellant. It is thus evident that in the present case the comparable sales method could not be employed because of the absence of proper data in this regard.

(19) It was then contended that out of the remaining two methods, that is, land and building valuation and rent capitalisation, the more favourable to the assessee should have been adopted. Support for this contention was sought from a decision of this Court in *Jaswant Rai* v. *Commissioner of Wealth-Tax Patiala-I* (10).

(10) (1977) 107 I.T.R. 477.

Before dealing with this contention we may point out that the fair market value as defined in section 269-A (d) means the price that the immovable property would ordinarily fetch on sale in the open market on the date of the execution of the instrument of transfer of such property. In other words, the fair market value would be the price which a willing purchaser might pay to a willing seller. In our view, none of the said two methods would be a proper method under all situations. A commercial site whose cost of land and the construction is much less than the cost of construction of a residential site often fetches much higher sale price because of the return owner gets from it. If the land and building method is employed *qua* such a building it will not give proper figure as to its market price. But under certain circumstances the land and building method may result in much higher estimate of the market price than the rent capitalisation method. For example, in the areas where the rent restriction laws are applicable, at the time of the sale the cost of the land and construction may be much higher but the building which was constructed a decade prior might be fetching only a nominal rent. In these circumstances, the land and building method may be more proper method. Similar would be the situation with regard to a residential building as well. So, it is for the Competent Authority to decide in a given situation as to which method would be more efficacious to determine the fair market value. The use of method would thus entirely depend on the particular facts and circumstances of the case and it was probably for this reason that a Division Bench of this Court in *Commissioner of Income Tax* v. *Shri Radhey Mohan*, (11), ruled that the question whether the Tribunal was correct in applying one recognised method in determining the fair market value of the property and not another will not *per se* constitute a question of law. Consequently the determination of the fair market price by employing the rent capitalisation method would not be open to challenge on the ground that the other method which was more favourable to the assessee should have been adopted. No doubt, in *Jaswant Rai's case* (supra) it was observed that it is fair and proper that the benefit of the method which is more favourable to the assessee should be followed and the choice of the method to be adopted for determining the value of the property should be left to the assessee but as this observation has not laid down any proposition of law, we do not propose to refer the case to a larger Bench. The question before

(11) (1985) 153 I.T.R. 349.

the authorities is of the determination of the fair market value of the property. Which method would be suitable to determine that value, as observed above, depends on the facts and circumstances of each case. The question of the use of that method which is favourable to the assessee or to the revenue has no bearing because it is fair market value which is to be determined and not the price which is favourable either to the assessee or the revenue. Consideration of a particular method being favourable to the assessee, therefore, would be wholly irrelevant and the Competent Authority is enjoined by law to adopt only that method which is most efficacious to determine the fair market value of the property sold.

(20) Lastly, the learned counsel for the appellant sought to attack the finding of the authorities on the ground which entirely fall within the domain of appreciation of evidence. It was contended that the report of the valuer produced by the appellant was wrongly rejected on wholly untenable reasons and the value fixed was highly excessive. We are afraid, it is not open to us to scrutinise the evidence again or to disturb the finding as to the fair market price on merits because the appeal to this Court under section 269-H is maintainable only on a question of law. It is, therefore, not open to the appellant to challenge the correctness of the fair market price assessed by the authorities below on such a ground and the contention of the learned counsel has to be overruled.

(21) In the result these appeals fail and are hereby dismissed but without any order as to costs.

G. C. Mital, J.—I agree.

N.K.S.

Before P. C. Jain, C.J. and I. S. Tiwana, J.

BABU RAM NARAIN PARSHAD,—*Appellant*

versus

SALES TAX TRIBUNAL AND ANOTHER,—*Respondent.*

Letter Patent Appeal No. 348 of 1982.

December 17, 1985.

Punjab General Sales Tax (XLVI of 1948)—Section 21—Assessment framed levying tax on the assessee—Such assessee filing appeal before the Deputy Excise and Taxation Commissioner—Said