# Commissioner of Income Tax Vs Balram Prasad

**Court:** Allahabad High Court

**Date of Decision:** Aug. 29, 1984

**Acts Referred:** Income Tax Act, 1961 â€" Section 256, 256(2), 269, 269C(2), 269F(6)

**Citation:** (1985) 44 CTR 132 : (1984) 150 ITR 687 : (1985) 23 TAXMAN 285

**Hon'ble Judges:** N.D. Ojha, J; Anshuman Singh, J

**Bench:** Division Bench

**Final Decision:** Dismissed

## Judgement

Ojha, J.
Consequent upon a sale deed being executed by the assessee-opposite party of a plot of land in favour of M/s. Quality Ice

Cream, Calcutta, proceedings under Chapter XXA of the I.T. Act, 1961 (hereinafter referred to as ""the Act""), for acquisition of the said plot were

initiated by the Inspecting Assistant Commissioner of Income Tax (Acquisition) and, ultimately, an order was passed on November 11, 1975, u/s

269F(6) of the Act, wherein it was held that the apparent consideration in the sale deed fell short of the fair market value of the plot sold by about

60 per cent. and, accordingly, in view of the provisions of Section 269C(2)(b) of the Act it had to be held that there was conclusive proof that the

consideration agreed upon between the parties had not been truly shown in the deed. Thereafter, proceedings u/s 52(2) of the Act were initiated

against the opposite party and accepting the reasonings of the IAC (Acquisition) in the acquisition proceedings, the capital gains were worked out

by the ITO whose order was upheld by the AAC of Income Tax. The assessee went up in appeal before the Income Tax Appellate Tribunal (A)

Bench, Allahabad (hereinafter referred to as ""the Tribunal""), which by its order dated January 21, 1982, allowed the appeal relying on the decision

of the Supreme Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, , on the finding that no material had been brought on

record to show that the assessee had in fact received something more than the apparent sale consideration. An application was made by the

Commissioner before the Tribunal u/s 256(1) of the Act for referring four questions of law to this court. The said application was, however,

dismissed by the Tribunal on November 30, 1982. Aggrieved, the Commissioner has made this application u/s 256(2) of the Act with the prayer

that the Tribunal be directed to refer the four questions of law aforesaid to this court for its opinion.

2. It has been urged by the counsel for the applicant that the order dated November 11, 1975, passed by the IAC (Acquisition) u/s 269F(6) of the

Act constituted material to establish that the assessee had in fact received something more than the sale consideration mentioned in the sale deed in

question and that the Tribunal committed an error of law in holding that no material had been brought on record to establish the aforesaid fact.

Reliance was placed by the counsel for the applicant on Section 269C(2) of the Act which reads:

(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).

3. On this basis, it was urged that the finding recorded in the order u/s 269F(6) constituted conclusive proof of the fact that the consideration had

not been truly stated in the sale deed in question. For the assessee, on the other hand, it has been urged by his counsel that the words ""under this

Chapter"" in Section 269C(2) make it clear beyond any doubt that any finding recorded in proceedings under Chapter XXA of the Act is material

only for the purposes of that Chapter and has no relevance while determining the question u/s 52(2) of the Act as to whether any capital gain has

accrued to the assessee or not. In this connection, it was submitted that had the intention of Parliament been to make a finding recorded in the

proceedings under other provisions of the Act, the words ""under this Act"" would have been used in place of the words ""under this Chapter"" or at

all events a corresponding amendment would have been made in Section 52 of the Act also. In the alternative, it was also urged that even if the

finding given u/s 269F(6) could be looked into while determining the liability of the assessee u/s 52(2) of the Act, the order dated November 11,

1975, in the instant case, constituted no material on the point in question as the finding recorded therein that the consideration agreed upon

between the parties had not been truly stated in the sale deed was a finding arrived at on the basis of a presumption arising out of the circumstance

that the apparent consideration of the property sold fell short of the fair market value of the said property by about 60%. There was no finding on

the basis of any material other than the presumption mentioned above that the assessee had actually received anything more than that declared in

the sale deed.

4. Having heard counsel for the parties, we are of the opinion that, in the instant case, it is not necessary to go into the question as to whether an

order u/s 269F(6) of the Act can be looked into or not while proceeding u/s 52(2) thereof inasmuch as we find substance in the alternative

submission made by the counsel for the assessee. Before taking the view on the basis of the order u/s 269F(6) of the Act that the Tribunal has

erroneously stated that there was no material on record to show that the assessee had in fact received something more than the apparent sale

consideration and as such a question of law arises from the order of the Tribunal, it has to be held that the said order contains a finding on the

aforesaid fact. We have carefully perused the order dated November 1I, 1975, passed u/s 269F(6) of the Act and find substance in the

submission made by the counsel for the assessee that the conclusion in the aforesaid order that the consideration agreed upon between the parties

had. not been truly shown in the sale deed in question has been reached only on the basis of a presumption arising out of the circumstance that the

apparent sale consideration fell short of the fair market value by about 60%. The said order contains no finding on the basis of any material other

than the presumption mentioned above that the assessee had actually received anything more than that declared in the sale deed. In this connection,

reference may usefully be made to the following observations about the scope of Section 52(2) of the Act made by the Supreme Court in the case

of K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, :

If, therefore, the revenue seeks to bring a case within Sub-section (2), it must show not only that the fair market value of the capital asset as on

the date of the transfer exceeds the full value of the consideration declared by the assessee by not less than 15% of the value so declared, but also

that the consideration has been understated and the assessee has actually received more than what is declared by him. There are two distinct

conditions which have to be satisfied before Sub-section (2) can be invoked by the revenue and the burden of showing that these two conditions

are satisfied rests on the revenue. It is for the revenue to show that each of these two conditions is satisfied and the revenue cannot claim to have

discharged this burden which lies upon it, by merely establishing that the fair market value of the capital asset as on the date of the transfer exceeds

by 15% or more the full value of the consideration declared in respect of the transfer and the first condition is, therefore, satisfied. The revenue

must go further, and prove that the second condition is also satisfied. Merely by showing that the first condition is satisfied, the revenue cannot ask

the court to presume that the second condition too is fulfilled, because even in a case where the first condition of 15% difference is satisfied, the

transaction may be a perfectly honest and bona fide transaction and there may be no under- statement of the consideration. The fulfillment of the

second condition has, therefore, to be established independently of the first condition and merely because the first condition is satisfied, no

inference can necessarily follow that the second condition is also fulfilled. Each condition has got to be viewed and established independently

before Sub-section (2) can be invoked and the burden of doing so is clearly on the revenue. It is a well-settled rule of law that the onus of

establishing that the conditions of taxability are fulfilled is always on the revenue and the second condition being as much a condition of taxability as

the first, the burden lies on the revenue to show that there is an understatement of the consideration and the second condition is fulfilled.....This

burden may be discharged by the revenue by establishing facts and circumstances from which a reasonable inference can be drawn that the

assessee has not correctly declared or disclosed the consideration received by him and there is an understatement or concealment of the

consideration in respect of the transfer. Sub-section (2) has no application in the case of an honest and bona fide transaction where the

consideration received by the assessee has been correctly declared or disclosed by him, and there is no concealment or suppression of the

consideration.

5. In view of the foregoing discussion, we find it difficult to hold that the finding of the Tribunal that no material has been brought on record to show

that the assessee had in fact received something more than the apparent sale consideration is erroneous and that, on this ground, a question of law

arises in the instant case.

6. This application is, accordingly, dismissed.