

**(1990) 03 BOM CK 0089****Bombay High Court****Case No:** Writ Petition No. 647 of 1987

Godsil Investments Pvt. Ltd.

APPELLANT

Vs

Inspecting Assistant

Commissioner of Income Tax  
and others

RESPONDENT

**Date of Decision:** March 30, 1990**Acts Referred:**

- Income Tax Act, 1961 - Section 269AB(2), 269C, 269D

**Citation:** (1990) 185 ITR 389**Hon'ble Judges:** T.D. Sugla, J**Bench:** Single Bench**Advocate:** F.M.J. Talyarkhan, for the Appellant; Dr. V. Balasubramanian, for the Respondent**Judgement**

T.D. Sugla, J.

The petitioner has challenged the validity and legality of the notice dated October 8, 1985, issued by the Competent Authority informing the petitioner that he was directing that proceedings for acquisition of the suit property be initiated u/s 269D of the Income Tax Act, 1961.

2. The petitioner and respondent No. 3 entered into a sale agreement dated November 19, 1984, in respect of the suit property which is a flat in a residential building. The agreement was registered with the Registrar of Assurances on February 20, 1985. Particulars as required u/s 269AB(2) of the Income Tax Act, 1961, in Form No. 37EE were submitted by the petitioner to the Competent Authority on December 18, 1984, and the agreement was deemed to have been registered at Serial No. 5434 on February 14, 1985, in the office of the Competent Authority.
3. By the impugned notice dated October 8, 1985, which is stated to have been received by the petitioner on February 3, 1987, the Competent Authority, as stated

above, directed initiation of proceedings for acquisition of the suit property u/s 269D. Referring to the ground No.(a) at page 6 of the petition, it is stated by Shri Talyarkhan, learned counsel for the petitioner, that the proceedings u/s 269D were initiated out of time inasmuch as (i) the notice was received by the petitioner on February 3, 1987, i.e., long after nine months of the registration of the sale agreement; (ii) to the knowledge of the petitioner, the said notice was not published in the Official Gazette, and (iii) there was non-application of mind on the part of the Competent Authority as he had not stated precisely whether the alleged understatement of value in the sale document was with view to avoiding the taxable income of the transferor or the transferee or both. Placing reliance on this court's judgment in the case of All India Reported Ltd. and others Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax and others, he stated that the Competent Authority had to be sure before proceedings u/s 269D as to whether the understatement of the market value in the same document was with a view to object (a) or object (b) or both. He could not say "and/or" because that would mean non-application of mind.

4. Dr. Balasubramanian, learned counsel for the Department, fairly invited the court's attention to the fact that a similar matter had come up before this court in Writ Petition No. 1095 of 1987 Udharam Aildas Thadani and others Vs. Inspecting Assistant Commissioner of Income Tax and others, on Friday, the 23rd instant and the judgment pronounced in that case was in favour of the petitioner. Both the issues, viz., publication of notice in the Official Gazette as well as retention of the words "and/or" in the notice between the two objects are covered by that judgment.

5. Fact and rival contentions in this case being covered by the judgment of this court in Writ Petition No. 1095 of 1987 Udharam Aildas Thadani and others Vs. Inspecting Assistant Commissioner of Income Tax and others, for reasons given therein, it is held that, in the absence of an affidavit-in-reply, the proceedings u/s 269D have to be treated as out of time. the Competent Authority's not indicating its mind clearly and precisely as to the object of understatement of consideration, if any, in the sale instrument amounted to non-application of mind. Both these issues are fatal to the assumption of jurisdiction u/s 269D. Accordingly, the petition is allowed. Rule is made absolute in the terms of prayer (a). No order as to costs.