

**(1990) 08 BOM CK 0106****Bombay High Court****Case No:** Writ Petition No. 916 of 1988

Narpatraj Besarmal Mehta and  
others

**APPELLANT****Vs**

A. Baidya, Competent Authority  
and others

**RESPONDENT****Date of Decision:** Aug. 6, 1990**Acts Referred:**

- Income Tax Act, 1961 - Section 269, 269(AB)(2), 269(C), 269(D)(1), 269(UL)(3)

**Citation:** (1991) 95 CTR 41 : (1991) 189 ITR 452**Hon'ble Judges:** T.D. Sugla, J**Bench:** Single Bench**Advocate:** Dilip Dwarkadas, for the Appellant; Mrs. Manjula Singh, for the Respondent

### **Judgement**

T.D. Sugla, J.

By this petition under article 226 of the Constitution of India, the petitioners have challenged the jurisdiction of the Competent Authority to issue notice dated July 14, 1987, u/s 269D(1) and the jurisdiction of the Valuation Officer to issue notice dated September 23, 1987, u/s 269L of the Income Tax Act, 1961.

2. The petitioners purchased the suit property for a sum of Rs. 30,00,000 under an agreement of sale dated July 16, 1986. The property comprised of a building standing on or about 6,377 sq. mts. of land. It was tenanted and was purchased on the "as is where is" basis. Form No. 37EE was filed by the petitioners and the sellers before the appropriate authority as require u/s 269AB(2) of the Income Tax Act. Form No. 37-I was also filed on October 15, 1986. A certificate u/s 269UL(3) of the Income Tax Act dated February 5, 1986, was issued under letter dated February 16, 1987, by the appropriate authority to the effect that the authority had no objection to the transfer of the property to the petitioner for a sum of Rs. 30,00,000.

3. Some time thereafter, the petitioners received a notice dated July 14, 1987, u/s 269D(1) from the Inspecting Assistant Commissioner of Income Tax requiring the petitioners to show cause why the proceedings to acquire the suit property u/s 269C should not be initiated. On September 23, 1987, the District Valuation Officer issued a notice u/s 269L. At this stage, the petitioners filed the present petition.

4. The petition is actually filed on March 25, 1988, and was admitted on April 5, 1988, when interim relief in terms of prayer clause (a) was granted. However, no affidavit-in-reply has yet been filed on behalf of the Department. In the circumstances, the averment made in the petition have to be taken to be correct.

5. One of the conditions necessary for the assumption of jurisdiction u/s 269D/269C is that the apparent consideration is less than the fair market value of the property. No material in connection therewith is indicated in the impugned notice which could even *prima facie* show that the market value of the suit property was more than Rs. 30,00,000 as on the date of the agreement of sale. In the absence of affidavit-in-reply on behalf of the Department, no material has been made available to this court on the basis of which it could examine whether the material, if any, could justify the Competent Authority's even a *prima facie* belief that the apparent consideration was less than the fair market value of the property in question. This condition for assumption of jurisdiction u/s 269D/269C is, therefore, not satisfied.

6. Another condition for assumption of jurisdiction u/s 269D/269C is that the Competent Authority at least *prima facie* holds that the consideration agreed between the parties is not shown truly in the sale agreement with the object of facilitating the reduction or evasion of the liability of the transferor or facilitating the concealment of any income or assets of the transferee or both. In the present case, the Competent Authority has kept the words "and/or" between the two objects of understatement of consideration. This indicated that the Competent Authority had not applied his mind at all as to whether the understatement was with the first object or the second object or both the objects. A similar issue had come up before a Division Bench of this court in the case of All India Reported Ltd. and others Vs. Competent Authority, Inspecting Assistant Commissioner of Income Tax and others, . It was held that. In a case where the Competent Authority had not addressed itself to the question whether the object of understatement was the evasion of tax in the hands of the transferor or transferee or both, the proceedings require to be quashed for non-application of mind. Following the aforesaid judgment. Bharucha J. also took the same view in this judgment dated August 9, 1989, in Writ Petition No. 838, of 1983 Carmichael Shikarkunj Co-operative Housing Society Ltd. Vs. Union of India and others, . A similar view was taken by this court in the case of Malabar Hill Co-operative Housing Society Ltd. Vs. Union of India and another, . In view thereof, it has to be held that the second condition for the assumption of jurisdiction is also not satisfied. Thus, the Competent Authority did not assume valid jurisdiction u/s 269D/269C on this ground too.

7. Reliance is placed on Circular F. No. 316/100/87-OT, New Delhi, dated August 11, 1988, issued by the Central Board of Direct Taxes, by Shri Dilip Dwarkadas, for the petitioners. It is stated that, in view of this circular also. The Competent Authority could not have initiated the proceedings u/s 269D/269C. In this connection, the court's attention is invited to the "No objection" certificate dated February 16, 1987, issued u/s 269UL(3) in response to the petitioners' application in Form No. 37-I. The circular is clearly applicable in this case. The circulars issued by the Board are binding on the departmental authorities. In the circumstances, it will have to be held even on this score that the proceedings sought to be initiated by the Competent Authority u/s 269D(1) of the Income Tax Act, 1961, for the acquisition of the suit property are without jurisdiction.

8. Shri Dilip Dwarkadas raised a number of issues. In the view the court has taken on the three issues, as stated above, it is not necessary to refer to and/or deal with his other contentions.

9. In the above view of the matter, the petition is allowed. Rule is made absolute in terms of prayer clause (a).

10. No order as to costs.