

Rajendra Prasad Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Nov-27-1986

Reported in : (1987)20ITD596(Hyd.)

Judge : T R Rao, G Santhanam

Appellant : Rajendra Prasad

Respondent : inspecting Assistant

Judgement :

1. These are three appeals preferred against the order of the competent authority dated 31-3-1986 passed under Section 269F(6) of the Income-tax Act, 1961 ('the Act'), ordering acquisition of residential house property bearing D. No. 8-2-583/2 at Road No. 7, Banjara Hills, Hyderabad. The total area of the site was 2509 sq. yds. The built-up area in the said site covered by building with servants' quarters is 2122 sq. ft. The said building was built during 1971. These appeals were filed by the transferees, viz., S/Shri Rajendra Prasad, Roop Karan and Naresh Kumar who are brothers and are sons of one Shri Bajrang Prasad.

2. The facts or events leading to the present appeals now before us may briefly be stated as follows. The land under reference is part of 13,869 sq. yds. of land on which there used to be three buildings and the said extent was surrounded by Road Nos. 7, 8 and 9 of Banjara Hills. The said site originally belonged to HEH the Nizam of Hyderabad, Sir Mir Osman Ali Khan Bahadur. The late Nizam transferred this property to a trust known as 'Barkat Villa' ('the trust') on 21-3-1958 and the

value of the entire premises was shown in the trust deed at Rs. 1,74,000. One Dr. Zahir Ahmed purchased the whole property from the trust for a consideration of Rs. 2 lakhs under registered document No.2310 of 1967 dated 28-6-1967. Dr. Zahir Ahmed transferred portions of the site and houses therein to his wife and others from time to time.

Dr. Zahir Ahmed thus, alienated a major portion of the property already retaining only 2509.7 sq. yds. of land with a single-storeyed building with a built-up area of 2122 sq. ft. including servants' quarters, etc.

This property was purchased by the appellants herein from Dr. Zahir Ahmed for an apparent consideration of Rs. 4,50,000 under a registered sale deed dated 17-6-1983. The document was actually registered on 18-6-1983 in the office of the Joint Sub-Registrar and it was registered as document No. 3631 of 1983. A copy of the sale deed was provided at pages 1 to 11 of paper book No. 1 filed on behalf of the appellants who are the transferees under the sale deed. Out of the total consideration, Rs. 1 lakh was stated to have been paid on 6-5-1983. For the remaining amount of Rs. 3,50,000 the appellants obtained a demand draft No. DDL/760981 drawn on Central Bank of India, Charminar Branch, Hyderabad, and delivered the same to Dr. Zahir Ahmed, the transferor at the time of registration. According to the recitals of the registered sale deed referred to above, the sale was stated to have taken place in pursuance of an oral agreement between the vendor and the vendees. The vendees, who are the appellants before us, are the joint purchasers of the property under the sale deed dated 17-3-1983.

3. The Income-tax Inspector 'the inspector' purported to have made inquiries into the correct market value of this property and appeared to have submitted an inquiry report of June 1983, to the competent authority (IAC). In his report, the inspector was stated to have visited the property which is said to be one kilometer away from the bus road and this property was stated to be situated behind a mosque.

The inspector identified 10 ft. width of passage leading to the impugned property. He also found in his report that the house should have been constructed with bricks and cement mortar and it was having RCC roof. He also stated that the

house was having polished floor at the time of his inspection. He further stated that the appellants herein began constructing a multi-storeyed house and having regard to the age and type of construction of the house he estimated the value of the house at Rs. 40 per sq. ft. Thus, valued, the value of the house came to Rs. 88,000 (2200 sq. ft. x Rs. 40 per sq. ft.). The inspector at the same time estimated the value of the land at the rate of Rs. 200 per sq. yd. Thus, valued, it came to Rs. 5,01,800. Thus, the total value of the house and the site, according to the Inspector's report submitted to the competent authority, was put at Rs. 5,89,800.

4. The apparent consideration said to have been paid under the impugned sale deed was only Rs. 4,50,000 and, thus, the inspector found a difference of Rs. 1,39,800 between the apparent consideration stated in the impugned sale deed and the fair market value as on the date of sale. Only from the report of the Inspector the competent authority had derived 'reason to believe' that the apparent consideration is less than the fair market value of the property and the consideration agreed to between the two parties to the document had not been truly stated in the instrument of transfer. The competent authority thereupon initiated proceedings under Section 269C of the Act. Further, the competent authority also found that the difference between the apparent consideration and the fair market value as gathered from the inspector's report submitted to him was Rs. 1,39,800 or 31 per cent of the stated consideration in the impugned sale deed. The competent authority recorded in his order sheet dated 14-2-1984 that he had reason to believe that there is understatement of sale consideration in the impugned sale deed and such understatement has been prompted with the object of facilitating reduction or evasion of liability of the vendor or facilitating concealment of income or wealth of the vendees for purposes of their income-tax or wealth-tax assessments. He further stated in his order sheet referred to above that in view of the difference between stated consideration and fair market value being more than 31 per cent of the former, the statutory presumptions under Section 269C(2) read with Section 269C(1)(a)/(b) are squarely attracted. Perhaps, the competent authority had recorded his reasons as per the requirements under the first proviso to Section 269C(1)(b) in his order sheet dated 14-2-1984, a copy of which is furnished to us by the revenue. Having thus recorded the reasons the competent authority issued notice dated 14-2-1984 to the appellants under Section

269D(1) of the Act. The acquisition proceedings were published in the Official Gazette on 24-3-1984 at page 6669 in compliance with the requirements of Section 269D(1). In response to notices dated 14-2-1984 referred to above the appellants got filed preliminary information dated 3-3-1984 before the competent authority. Copy of the said information is now furnished at page 18 of the paper book No. 1 filed by the appellants.

In the said letter of information it was stated that the property is situated on the back side of a mosque, that a passage of 300 sq. yds.

was also there leading to this land adjacent to this mosque which could only be used as passage, that the shape of the land is rectangular, that there is no good elevation to the site, that the actual cost at which they have purchased the property was Rs. 4,97,675 including stamp duty and registration fee, etc. The competent authority gave a notice on 15-10-1984 fixing the date of hearing for acquisition proceedings under Section 269F on 26-10-1984. Copy of the said notice is provided at page 20 of the paper book No. 1. The competent authority referred the question of valuation of the impugned property to the valuation cell under Section 269L of the Act in RAC No. 879 of 1983-84 dated 15-10-1984 with a request to ascertain the fair market value of the impugned property on the date of sale. The Valuation Officer, Unit No.1 (Shri B.R. Rao), Income-tax Department, reported to have inspected the impugned property on 6-11-1984 and by his valuation report dated 20-11-1984 he had estimated the value of the impugned property at Rs. 12,34,195. His report was sent to the competent authority along with a covering letter and of even date. His valuation report is now furnished at pages 24 to 29 of paper book No. 1. The particulars of the valuation made by him formed part of his report and now given at page 28 of the paper book No. 1 are as follows : Determination of fair market value of the property bearing H.No.8-2-583/2 at Road No. 7, Banjara Hills, Hyderabad, by S/Shri Roop Karan, Naresh Kumar and Rajendra Prasad as on 17-6-1983 for acquisition purpose :1. Main building, load bearing structure, single- storeyed 175.50 sq. m. at Rs. 275.00 sq. yd.

48,2632. Services at 30 per cent 14,4793. Extra for superior quality fittings at 10 per cent 1,448 Rs. 235 per sq. m.

10,0425. Services at 10 per cent 1,0046. House (open tank) LS 3,0007. Compound wall 289 metres at Rs. 63.63/metre 18,3898. Add : For increase in cost index at 191 per cent 1,84,5549. Deduct: Depreciation _____ X 12= 18 per cent (--)50,61210. Net value of structures 2,30,56711. Land value : 2509.07 sq. yds. at Rs. 400 per sq. yd.

10,03,62812. Fair market value of the property 12,34,195 A copy of the above report of the Valuation Officer was forwarded to the appellants by the competent authority by his letter dated 19-2-1985 in which he had requested the appellants to file objections, if any, to the valuer's report on or before 4-3-1985. Copy of the said letter dated 19-2-1985 is furnished at page 22 of the paper book No. 1. The appellants filed their objections dated 18-3-1985 but they were received by the competent authority on 21-3-1985. Copy of the objections dated 18-3-1985 is provided at pages 30 to 35 of the paper book No. 1. In the said objections it was stated for the first time that the appellants got valued the impugned property by a registered valuer before their purchase and getting conveyance for the same and they purported to have enclosed a copy of the registered valuer's report along with their objections. Shri K.B. Subramaniam & Associates were stated to be the registered valuers. An illegible copy of the registered valuer's report is furnished from pages 36 to 39 of the paper book No. 1. From the copy furnished we are unable to gather the date of the registered valuer's report. However, from the index furnished along with paper book No. 1 we gather that the date of registered valuer's report is 15-5-1983. According to the registered valuer, the value of the building, servants' quarters, compound wall, etc. less depreciation was computed at Rs. 1,22,402. The value of the land which forms part of the sale deed was considered in 2 bits. The first bit consisted of the passage land of 400 sq. yards. It was valued at Rs. 75 per sq. yard and its value came to Rs. 30,000. The remaining extent of land was valued at Rs. 150 per sq. yd. Thus, the total value of the land was estimated at Rs. 3,46,500 whereas the total value of the land and building came to Rs. 4,68,902 and the registered valuer ultimately estimated the whole value of the impugned property at a round sum figure of Rs. 4,70,000. The objections filed by the appellants were forwarded to the departmental Valuation Officer for his comments by the competent authority under his D.O. letter in RAC 789/84-85 dated 20-5-1985 as the said letter was referred to in the revised

valuation report dated 12-7-1985. The departmental Valuation Officer purported to have met with every objection raised by the appellants and considered the impact of the cumulative effect of the defects/objections on the value of the impugned property, had chosen to issue a revised valuation report dated 12-7-1985. Copy of the said revised valuation report was furnished at pages 40 to 43 of paper book No. 1 and at page 43 the particulars of valuation of the building and the land in the impugned property were given along with their estimated values in the revised valuation report as follows : Revised Valuation Report of the property bearing No. 8-2-583/2 on road No. 7, Banjara Hills : Hyderabad as on 17-6-1983. Main building 2122 sq. ft. or 197.14 sq. ms. at Rs. 275 per sq. m. 3. Out-houses, garrages 42.75 sq. ms. at Rs. 235/m. 10,042 Add : For increase of cost index at 191 per cent 1,52,100 Deduct : Depreciation at $90 \times 13 = 19.5$ per cent 45 188 60 1,96,456 For 2129.07 sq. yds. at Rs. 150 per sq. yd.

3,19,360 For 380 sq. yds. (passage) at Rs. 100 per sq. yd. 34,000 Hyderabad (B.R. Rao) dated 12-7-1985 Valuation Officer, Unit I If the revised valuation report is taken to be representing the fair market value of the impugned property the difference between the stated consideration in the impugned sale deed and the fair market value estimated in the revised valuation report would be only Rs. 64,000 which would work out to less than 15 per cent of Rs. 4,50,000.

5. The competent authority in his impugned orders stated that as per the first report of the departmental Valuation Officer he found the valuer adopting the land value at Rs. 400 per sq. yd. whereas in his revised report he had adopted the land value at Rs. 150 per sq. yd. and also valued the passage land of 380 sq. yds. at Rs. 100 per sq. yd. The extent valued at Rs. 150 per sq. yd. is 2129 sq. yds. He further commented that the estimated value of the structures in the first report was Rs. 2,30,568 whereas in the revised report the departmental valuer had estimated the same structures at Rs. 1,56,546.

6. The competent authority did not accept the revised report of the departmental valuer. The competent authority held an inquiry under Section 269F. He rejected the registered valuer's report dated 15-5-1983 stating that the estimated value of the structures on the land adopted by him was incredibly low. The registered

valuer adopted the cost of construction at Rs. 60 per sq. ft. which is low. So also, the registered valuer estimated the value of the land covered by the passage at Rs. 75 per sq. yd. and the remaining land of 2110 sq. yds.

at Rs. 150 per sq. yd. which again is absolutely low. The estimation of the registered valuer was not supported by any evidence of comparable cases of sale. Ultimately, the competent authority commented that the estimation of the registered valuer looked as if he wanted to fall in line with the directions given by the transferees to put the estimate at a particular figure. To establish that the consideration paid for the impugned property was fair and reasonable the following sale instances were cited by the appellants before the competent authority : (a) Property H. No. 6-3-248/1/4, Road No. 1, Banjara Hills purchased by Jay Bee Hotels & Theatres (P.) Ltd. on 23-12-1982 :Cost of the building on date of sale 3,75,000Date of deed of conveyance : August 1982 purchased by Shri SureshIn this case the land rate works out to Rs. 100 per sq. yd.(d) Property H. No. 8-2-583/1, Road No. 8 7. The competent authority had considered the sale instances cited in support of the appellants' valuation. Taking the first of the sale instances cited above the competent authority found that the extent of the land sold was 2500 sq. yds. with a building constructed during 1967-71 and the consideration was Rs. 10 lakhs. Though the sale took place on 23-12-1982 an advance of Rs. 1 lakh was paid on 8-5-1982. The competent authority states that as per the version of the transferees the building was of no value for them and it had to be demolished the moment it was purchased. Therefore, the competent authority states that the entire sale consideration of Rs. 10 lakhs should be taken to be paid only towards the land and if so, the land rate works out to Rs. 400 per sq. yd. as on 8-5-1982 itself.

8. The competent authority further states the same vendees under the first sale instance cited on behalf of the appellants have purchased another piece of land measuring 2500.10 sq. yds. with a residential building under the sale deed dated 28-10-1982. This property was just abutting the first sale instance relied upon by the appellants. The consideration paid to this property was Rs. 14 lakhs. Out of the total consideration Rs. 1 lakh was paid by cheque as advance on 31-3-1982. As per the valuation report submitted by vendees under this sale deed the bifurcation

of the value of the structure as well as the land is shown as follows :for 2510 10,68,750 9. The second sale instance in the above table on which the appellants relied upon and which was taken up for scrutiny by the competent authority was the sale of property bearing D. No. 8-2-413 in Road No.5, Banjara Hills. The sale consideration is Rs. 5 lakhs. The Valuation Officer, however, estimated the value of the property as on 13-8-1982 at Rs. 6.16 lakhs. The Valuation Officer valued the building at Rs. 76,640. He valued the land at Rs. 165 per sq. metre (Rs. 135 per sq.

yd). At that rate the total extent of 3292 sq. metres comes to Rs. 5,43,221 and the total value of the property comes to Rs. 6,15,861 or Rs 6,15,000 in round figures. The competent authority states about this sale that though the sale deed was registered in August 1982 an agreement was entered into in October 1981 itself and an advance of Rs. 4 lakhs was paid on the date of the agreement. He further states that when the valuation cell estimated the value of the building at Rs. 72,640 the vendees under the sale deed put its value at Rs. 2 lakhs and revised the land rate correspondingly. The admitted land rate works out to Rs. 135 per sq. yd. in October 1981 and the competent authority states that it is too low to be accepted.

10. The third case relied upon by the appellants and taken up for consideration by the competent authority was a sale instance of the property situated at Road No. 4, Banjara Hills bearing D. No.8-2-316/3/12 for a consideration of Rs. 3,60,000. The sale deed was registered on 26-5-1984. The Valuation Officer estimated the land rate at Rs. 225 per sq. yd. Though the registration took place in May 1984 an amount of Rs. 1,80,000 was paid as earnest money on 9-9-1983 states the competent authority in his impugned orders. He did not further comment in his impugned orders whether the sale consideration was reasonable or high or low.

11. The fourth comparable case cited by the appellants and taken up for consideration by the competent authority was the property sold by Smt.

Razia Begum wife of the transferor under the impugned sale deed. She sold the abutting land to the impugned property with a building situated therein bearing D. No. 8-2-583/1 facing Road No. 8, Banjara Hills. She sold it by a deed of transfer

dated 7-3-1984. The purchasers in her case was Shri Ramesh Prasad and others. The amount of consideration stated in the sale deed was Rs. 4 lakhs. According to the recitals of the said sale deed the building value was shown at Rs. 2 lakhs whereas the value of the land of 1985 sq. yds. was shown at Rs. 2 lakhs. The land rate according to the recitals of the sale deed only works out to Rs. 100 per sq. yd. The competent authority merely mentioned in his impugned orders that this particular sale instance formed part of another subject-matter of acquisition in Reference Appeal No. 636 (Hyd.) of 1985 and, therefore, he did not consider the merits and demerits involved and the reasonableness or otherwise of the price stated in the document. In his impugned orders the competent authority held that in the first three cases cited as comparable cases by the appellants themselves, in the first case the land rate worked out, according to him, to Rs. 400 to Rs. 425 per sq. yd. in 1982. In the second sale instance admitted to be comparable the land rate worked out to Rs. 138 per sq. yd. in October 1982 and in the third comparable case the land rate worked out to Rs. 225 per sq. yd. as against the rate of Rs. 100/75 per sq. yd. under the impugned sale deed dated 17-6-1983. The competent authority next began discussing the sale of property bearing H. No. 8-2-588. The sale was in pursuance of an agreement dated 26-2-1984. However, registered document was executed on 22-8-1984 pursuant to the agreement dated 26-2-1984. The vendees under the sale deed is one Shri Kishore Kumar Bhatia. Shri JPL Gwynn was an Englishman who worked as a member of Board of Revenue in Government of Andhra Pradesh. After his retirement he wanted to go back to England, his native country, and settle down in London. Since the whole of the sale consideration received was to be repatriated to a foreign country a reference to the District Valuation Officer was made by the Controller, RBI, Exchange Department, Bombay, under Section 3(1) of the Foreign Exchange Regulation Act, 1947. The District Valuation Officer was requested to estimate the value of the property sold by Shri JPL Gwynn to Shri K.K. Bhatia. The stated consideration under the sale deed was Rs. 10.80 lakhs. However, the Valuation Officer valued the property at Rs. 11.81 lakhs which yielded a rate of Rs. 303 per sq. yd. The District Valuation Officer valued this property as on 25-2-1984. Shri K.K. Bhatia had submitted the valuation report by a registered valuer.

In the said valuation report the registered valuer valued the building at Rs. 4,45,873 and the land at Rs. 200 per sq. yd. valued at Rs. 4,48,666. Thus the total value of the property came to Rs. 8.95 lakhs.

It was the case of the appellants before us that Shri K.K. Bhatia paid a fancy price for the said property inasmuch as he had paid an extra amount of Rs. 3 lakhs as he was very much particular of purchasing the property of Shri JPL Gwynn. However, this contention was negatived by the competent authority and held that in the said case the land rate worked out to Rs. 303 per sq. yd. as on 25-2-1984.

12. The competent authority in his impugned order also considered another sale deed dated 18-7-1985 under which H. No. 8-2-583/1/1 in Road Nos. 7 and 9 of the Banjara Hills was sold for consideration of Rs. 9 lakhs to one Smt. Faizunnisa, daughter of Shri Akbar Ali Khan, the extent of land was 727 sq. yds. in which there was a house with a plinth area of 2180 sq. ft. The building was constructed in 1981 for an amount of Rs. 1,96,000 but its value worked out to Rs. 2,62,168. The land value comes to Rs. 6,37,832 or at Rs. 877 per sq. yd.

13. The competent authority duly took into consideration the search and seizure operations conducted by the income-tax officials in the residential premises of Dr. Zahir Ahmed, the vendor under the impugned sale deed on 24-3-1984 under Section 132 of the Act. The competent authority also took into consideration the affidavit of Dr. Zahir Ahmed dated 11-5-1984, a copy of which is now furnished at pages 46 to 50 of paper book No. 1. The competent authority also duly took into consideration the alleged agreement of sale dated 6-4-1983 entered into between Dr. Zahir Ahmed and Shri Naresh Kumar. This agreement is written on a slip of paper of a writing pad and the stipulations of the agreement were purported to have been signed both by Dr. Zahir Ahmed as well as Shri Naresh Kumar on 6-4-1983. The first of the stipulations in the agreement states that the sale consideration would be Rs. 12 lakhs, the store-house, the servants' quarters, have to be built at own cost of the purchaser. The second stipulation was that the first instalment of Rs. 7.50 lakhs will be paid on 20-5-1983 and the last instalment of Rs. 5 lakhs will be paid at the time of registration. The third stipulation of the agreement states that Rs. 65,000 should be paid on 15-3-1983 towards the price

of chandeliers and hundies. The signature of Shri Naresh Kumar was denied on the said agreement and his contention was that his signature was forged and in support of his contention he filed a report of one of the handwriting experts Shri N.A. Phiske dated 23-1-1986 wherein it is stated that the signature on the agreement was not that of Shri Naresh Kumar and it was forged. Copy of the report of the handwriting expert Shri Phiske is provided at pages 67-70 of paper book No. 1. The competent authority held that this argument of the appellants cannot be accepted for the reason that when the agreement was sent for examination of Government Examiner of Questioned Documents he had opined in his reports dated 15-7-1985 and 19-8-1985 that the signature of Shri Naresh Kumar on the agreement is genuine and not forged. It was argued before the competent authority that when raid took place on 24-3-1984 in the house of Dr. Zahir Ahmed the income-tax officials in the raid were not able to lay their hands on this alleged agreement and, therefore, in all probability this agreement was subsequently concocted. This argument was brushed aside by the competent authority stating that after all it may not be possible for the department to lay their hands on each and every paper which may be ultimately proved to be relevant. The competent authority also duly took note of the fact that after renovation and remodelling the building Shri Naresh Kumar disclosed the market value of his one-third share in the property at Rs. 7.50 lakhs as on 26-12-1984 when he applied for a bank loan to Andhra Bank Ltd. Accordingly, the total value of the property would come to Rs. 22.50 lakhs. This is possible only when the cost of reconstruction/remodelling is added to the fair market value of Rs. 12 lakhs but not to the stated consideration of Rs. 4.50 lakhs. Therefore, the competent authority in his impugned order states that even subsequent conduct of the appellants would amply prove that the market value of the impugned property should have been Rs. 12 lakhs but not Rs. 4.50 lakhs.

14. After keeping in mind all the above circumstances the competent authority estimated the value of the land as well as building as follows : He adopted the land rate which serves as passage at Rs. 200 per sq. yd. whereas the other land was valued at Rs. 400 per sq. yd.

The factors like the presence of mosque and irregular shape of the land were held not to be depressing factors at all but only factors which have got only marginal effects on the land value : Rs.2129.07 sq. yds. at the rate of Rs. 400 per sq. yd.

8,51,600380 sq. yds. at the rate of Rs. 200 per sq. yd.

76,000 The competent authority further states that he himself along with Shri B.R. Rao, Valuation Officer, visited the impugned premises on 20-10-1984. While valuing the building he took into consideration the two reports of the Valuation Officer about the value of the impugned property.

The competent authority states that in the revised report of the Valuation Officer the value of the compound wall was taken at Rs. 3,182 as against Rs. 18,389, treating the compound wall as belonging to Ramesh Prasad and others. Further, in the revised report of the valuation cell a deduction of Rs. 30,000 was given for immediate repairs. The competent authority states that for a structure which was remodelled/renovated at a cost of Rs. 10 lakhs as seen after purchase deduction of Rs. 30,000 towards immediate repairs appear to be superfluous. Therefore, he ignored the deduction of Rs. 30,000 and took the value of the structure at Rs. 1,86,546. While dealing with the determination of the land value the competent authority states that the Valuation Officer in his first report adopted Rs. 400 per sq. yd.

whereas he revised the rate to Rs. 100 to 150 per sq. yd. in his revised report. In the revised report the Valuation Officer states that the impugned land situated in Banjara Hills is predominantly a residential area except one or two star hotels and commercial pockets.

He further states that Road No. 1 is more important than other roads in Banjara Hills area except that it is main road with plenty of future commercial potentialities. In fact, Road No. 12 is considered much more posh residential locality and had gained prominence over the years because the earliest construction activity of that area started there.

The competent authority further stated as follows : Even after the State Government have revised the land rates as on 1-5-1985, except Road No. 1 where the rate has been increased to Rs. 600 from Rs. 150, and in Road No. 12 after the house of one Shri Prasad where the rate is increased to Rs. 160 from Rs. 40, the rate that is fixed for all the roads in Banjara Hills is only Rs. 225.

This fact shows that the land value in Banjara Hills is generally the same, even after the revision, on all the roads.

The competent authority took into consideration the District Valuation Officer's report while valuing Shri JPL Gwynn's property and arrived at the land value of Rs. 303 per sq. yd. or Rs. 360 per sq. metre as on 25-2-1984. The competent authority states that even after giving due concession for the time lag between the impugned sale and the sale instance in Shri Gwynn's case and even if he were to adopt a rate of Rs. 250 per sq. yd. for other land and Rs. 100 per sq. yd. for the passage land, the total value of the land would come to Rs. 5,70,267 and the value of the building already estimated at Rs. 1,86,546. Both put together the value would be Rs. 7,56,860 and the difference between the stated consideration and the fair market value would be Rs. 3,06,813 which is 68 per cent over the admitted consideration. The following four salient points were taken into consideration by the competent authority to fix the value of the impugned property at Rs. 12 lakhs : 1. Considering the sale agreement dated 6-4-1983 fixing a consideration at Rs. 12 lakhs 2. The admission by the transferor that he had received Rs. 12 lakhs for the sale of the property.

3. The value of the property after renovation/remodelling admitted at Rs. 22.50 lakhs while applying for loan to Andhra Bank by Shri Naresh Kumar.

4. Coupled with the admission of the transferor, his wife Smt. Razia Begum gave an affidavit dated 11-5-1984 that she received Rs. 11,75,000 toward the sale of her land of 1980 sq. yds. with a house in it bearing House No. 8-2-583/2 facing Road No. 9, Banjara Hills, Hyderabad as against the apparent consideration at Rs. 4 lakhs recited in the sale deed. A copy of which is furnished at pages 73 to 80 of the paper book No. 1. It is dated 5-3-1984.

16. The competent authority also stated that inasmuch as the difference between the fair market value and the apparent consideration cited in the sale deed being more than 20 per cent of the latter, the presumption under Sub-section (2) of Section 269C will come into play and the fact of payment of extra consideration over and above the declared consideration, in the absence of proof to the contrary, stands conclusively proved. The competent authority further stated that from the material on record he was satisfied that the fair market value of the impugned immovable property exceeded Rs. 1 lakh, that the fair market value exceeded the apparent consideration by more than 15 per cent of the admitted consideration; that the true consideration was not stated in the registered sale deed with the object of facilitating the reduction or evasion of the tax liability of the transferor to pay and facilitating concealment of any income of the transferee. Ultimately he had held that he was satisfied that this was a fit case where the provisions of Chapter XX-A which dealt with acquisition of immovable properties are squarely attracted and, therefore, while exercising his powers as competent authority he ordered acquisition of this impugned property under Section 269F(6). The competent authority passed his impugned order on 31-3-1986.

16. The present appeals are filed against the orders of acquisition passed by the competent authority. The contentions raised by these appellants are common and they may be stated as under : 1. The initiation of acquisition proceedings themselves was bad in law as there was no material whatsoever which could have prompted the competent authority to believe that the fair market value of the impugned property was higher than the apparent consideration and that the stated consideration was not a true consideration.

2. The Inspector's report dated June 1983 does not form a valid basis for initiating the acquisition proceedings, inasmuch as, it is not sufficient material in the eye of law to clothe the competent authority with jurisdiction to issue notices under Section 269C. 3. The presumptions under Section 269C(2) are not available at the initiation of the proceedings.

4. Without prejudice to the above contentions the competent authority went wrong in fixing the fair market value at Rs. 12 lakhs.

5. The competent authority went wrong in relying upon the affidavits of the transferor Dr. Zahir Ahmed and his wife Smt. Razia Begum.

Their affidavits were self-serving statements the main purpose of which is to explain the cash found in their possession.

6. The alleged agreement dated 6-4-1983 should have been held as a subsequent concoction. Firstly, for the reason that such an important document was never found by the income-tax officials when they have conducted the raid upon the house of Dr. Zahir Ahmed on 24-3-1984. Secondly, no mention of it was made under the sale deed.

Thirdly, it was never produced or any information was given about it in the affidavit of Dr. Zahir Ahmed or his wife.

7. The competent authority erred in disregarding the first statement given by Dr. Zahir Ahmed at the time of search operations on 24-3-1984 wherein he categorically affirmed that in the impugned sale deed the consideration for the transfer had been correctly stated.

8. The competent authority ought to have found that the signature of Shri Naresh Kumar found on the agreement dated 6-4-1983 was forged in view of the report of the Handwriting Expert Shri N.A. Phiske dated 23-1-1986.

9. The stipulations in the agreement were never acted upon and it was a strong circumstance to show that the said document was not a genuine one.

10. The basic condition to discharge the burden which lay upon the revenue, viz., that the fair market value of the impugned property was higher than the apparent consideration by more than 15 per cent was not discharged by the revenue in this case.

11. The details of the comparable sale instances relied upon by the appellants were not taken into consideration but they were brushed aside for no valid ground.

12. The revised report submitted by the departmental valuer was brushed aside without any valid ground or proper reasons.

13. So also, the disadvantages attached to the property in question were not properly appreciated and therefore the impugned order passed by the competent authority ordering acquisition of the impugned property should be set aside and the appeals should be allowed.

17. We have heard Shri C.S. Aggarwal and Shri N. Laxminarayan, the learned advocates appearing for the appellants and Shri C.Satyanarayana, the learned senior departmental representative. On behalf of the appellants two paper books, one containing 164 pages and the second containing 29 pages were filed. On behalf of the department, copy of the statement of Dr. Zahir Ahmed recorded on 24-3-1984, copy of the alleged agreement of sale dated 1-5-1985 entered into by Jay Bee Hotels and Theatres (P.) Ltd. in favour of Venkatarama Hotels Ltd., copy of the inspector's report dated June 1983, extract of the order sheet of the IAC (competent authority) dated 14-2-1984, extract of the Commissioner's note file dated 27-3-1986 and the order dated 19-6-1984 passed by the ITO against Dr. Zahir Ahmed under Section 132(5) of the Act and the list of articles sold by Shri J.P.L. Gwynn for Rs. 61,000, were filed.

18. Now let us take up for consideration the question whether acquisition proceedings under Section 269C were validly started.

According to the assessee except the inspector's report of June 1983, there is no material on record on the basis of which the competent authority issued notice under Section 269C(1) to the appellants. The inspector argues that Shri C.S. Aggarwal, the learned Counsel for the appellants, is not an expert in the field of valuation of immovable properties. He did not gather any sale instances of the neighbouring lands or properties before adopting the rate of Rs. 200 per sq. yd. or adopting the rate of Rs. 40 per sq. ft. for valuing the house sold. In his report the inspector did not state that the consideration agreed to between the parties is something different from the stated consideration and that the agreed consideration has not been truly stated in the instrument of transfer with the object of facilitating reduction or evasion of liability of the transferor to pay tax under this Act in respect of capital gains or facilitating the concealment of any income or moneys or any assets which have not been or which ought to have been disclosed

by the transferees either under this Act or under the Wealth-tax Act, 1957. It is further contended that no neighbour to the impugned property or any person connected with the transfer of the property was examined by the inspector before submitting his report. It is further contended that the competent authority must have reason to believe that the fair market value of the property of more than Rs. 25,000 exceeds the apparent consideration stated in the instrument of transfer and the parties have agreed to make the untrue statement with the ulterior motive of tax evasion or concealment. The satisfaction of the competent authority for initiation of the acquisition proceedings is a subjective satisfaction of the objective facts secured into the record. The reasons for the formation of the belief must have rational and direct connection with the material coming to the notice of the competent authority, though the question of sufficiency or adequacy of material is not open to judicial review. He relied upon the following decisions for his submissions : CIT v. Smt. Vimlaben Bhagwandas Patel [1979] 118 ITR 134 (Guj.), Sarabhai M. Chemicals (P.) Ltd. v. P.N. Mittal, Competent Authority, IAC [1980] 126 ITR 1 (Guj.), Unique Associates Co-operative Housing Society Ltd. v. Union of India [1985] 152 ITR 114 (Bom.), Tube Mill (India) (P.) Ltd. v. IAC [1980] 122 ITR 72 (Cal.), Jai Kumar Kankaria v. Competent Authority [1981] 130 ITR 593 (Cal.) and CIT v. Madho Properties Ltd. [1981] 131 ITR 380 (Cal.).

19. Shri C. Satyanarayana, the learned departmental representative strongly contended firstly that the inspector who had submitted his inquiry report in June 1983, is a well experienced officer and his estimation of immovable properties should be given due credit and cannot be brushed aside easily. Further, he contended that the inquiry report is supplemented by the valuer's report, the affidavit of Dr.

Zahir Ahmed the agreement dated 6-4-1983 and the affidavit of Smt.

Razia Begum dated 11-5-1984 which all go to prove that the initiation of proceedings under Section 269C(1) is quite valid and cannot be questioned. He admits no doubt that all the material is subsequent to initiation of proceedings but still all the said material can be relied upon. Shri C.S. Aggarwal strongly opposed this contention and submitted that no fresh material which was not existing at the

time of initiation of proceedings but which was later secured into the record can be looked into for purposes of determining whether initiation of proceedings in the first instance is justifiable on the part of the competent authority or not and in support of his contention he invited our attention to the Calcutta High Court decision in *East Coast Commercial Co. Ltd. v. ITO* [1981] 128 ITR 326.

29. The first of the cases cited before us is *Smt. Vimlaben Bhagwandas Patel's* case (supra) the following is held by their Lordships of the Gujarat High Court : ... In the process of prima facie determining the fair market value of a property, it is implicit in the very nature of the process that he has to obtain relevant and cogent material of comparable properties and unless he has got the statements of persons who may be the owners, lessees or occupants of such properties, or the report of the Valuation Officer opining about the excess of the fair market value by a prescribed margin, or any other reliable relevant material such as in the nature of sale deed, lease deed, etc., he cannot prima facie satisfy himself about the first condition precedent for initiation of the proceedings" (p. 182) However, in this case the inspector did not try to obtain any sort of information contemplated by the Hon'ble Gujarat High Court adverted to above as essential to be gathered before initiation of proceedings except ipso dixit of the income-tax inspector's information about the valuation of the house as well as the land there is no material before the competent authority to initiate the proceedings. The Gujarat High Court in the first of the two cases held that the acquisition proceedings under Chapter XX-A are quasi-criminal proceedings and the principles of natural justice should always be complied with. What are the principles of natural justice cannot be listed out and they depend upon the facts and circumstances of each case. *Smt. Vimlaben Bhagwandas Patel's* case (supra) the essential requisites for initiation of proceedings are stated to be as under : The Legislature has adopted a known and recognised phraseology for describing the condition precedent for initiating acquisition proceedings under Section 269C. The competent authority must have reason to believe that the fair market value of the property of more than Rs. 25,000 exceeds the apparent consideration stated in the instrument of transfer and the parties have agreed to make the untrue statement with the ulterior motive of tax evasion or concealment of income. The satisfaction of the competent authority for initiation of acquisition proceedings is a subjective satisfaction of the objective

facts stated above. The reasons for the formation of the belief must have a rational and direct connection with the material coming to the notice of the competent authority, though the question of sufficiency or adequacy of the material is not open to judicial review." (p. 135) Even assuming for a while that the inspector who visited the place was competent to say about the estimated value of the impugned property still he did not say even one word about the intention of the parties or the motive of the parties in making untrue statements about the sale consideration in the deed of sale. However, from the order sheet of the competent authority he stated as follows : I have reason to believe that there is an understatement of the sale consideration in the sale deed and that such an understatement has been prompted by the object of facilitating the reduction or evasion of tax liability of the vendor or facilitating the concealment of the income or wealth of the vendee for the purpose of their income-tax or wealth-tax assessments. It is also worth noting that the estimated fair market value of Rs. 5,89,800 exceeds the total apparent consideration of Rs. 4,50,000 by a margin of more than 31 per cent of the latter. In view of this, the statutory presumptions under Section 269C(2) read with Section 269C(1)(a) and (b) of the Income-tax Act, 1961, are squarely attracted.

21. Firstly, we have to state that the inspector who had submitted his report in June 1983 is not a qualified engineer. We do not know how much experience he had put up and what is his educational qualification. We also do not know how the revenue can credit him with sufficient knowledge in estimating the values of immovable properties.

In the absence of any evidence in this regard we have to hold that his valuation of immovable properties is more subjective than the objective material spoken of as essential by the Gujarat High Court in Smt.

Vimlaben Bhagwandas Patel's case (supra). Further, not even one of the essential objective material which is listed by the Gujarat High Court has been secured so as to uphold the initiation of proceedings under Section 269C. Further there is no objective material whatsoever present before the competent authority to come to the conclusion that the understatement of consideration was prompted by the object of facilitating the reduction or evasion of tax liability of the vendor or

facilitating the concealment of the income or wealth of the vendee for purposes of their income-tax or wealth-tax assessments. Copy of the notice under Section 269D(1) was issued on 14-2-1984 itself. Even the gazette notification was made on 24-3-1984. The competent authority sent a letter to the valuation cell to value the impugned property only on 15-10-1984 which is long after the initiation of proceedings. The raid on Dr. Zahir Ahmed's house was on 24-3-1984. The affidavits of Dr.

Zahir Ahmed and Smt. Razia Begum were dated 11-5-1984. Thus it can be seen that by the date of initiation of proceedings except the inspector's report there was no other material available for the competent authority which serve as an objective fact for the formation of his subjective belief about the initiation of acquisition proceedings. We feel that there is no objective material at all to initiate acquisition proceedings.

22. Now let us consider whether the subsequent material which was gathered by the competent authority after the initiation of proceedings can be made use of in order to validate the otherwise defective proceedings. The appellants' contention is that no such subsequent material can be looked into and relied upon the Calcutta High Court decision in East Coast Commercial Co. Ltd.'s case (*supra*), In the said decision the following is held : .. . Thus, if any additional reasons were disclosed by the ITO in his affidavit before the Court in support of his action in reopening the assessment on which the Court might be satisfied as to the validity of the proceedings, that would not, in our opinion, validate the proceedings, if the reasons recorded under Clause (iii) of the first proviso to Section 34(1) of the old Act or Section 148(2) of the new Act were not sufficient for the initiation of the proceedings or for the grant of a sanction by the Board or the Commissioner, as the case might be. . . ." (p. 356) Therefore, in view of the above, we hold that the subsequent material gathered by the competent authority to justify the acquisition cannot be made use of for initiating the acquisition proceedings themselves.

23. Now let us come to the next contention whether the presumptions under Section 269C(2) can be availed of at the time of initiation of proceedings. There is a catena of decisions stating that it is not permissible. The Gujarat High Court in

Smt. Vimlaben Bhagwandas Patel's case (supra) held that the presumptions prescribed in Clause (a) of Sub-section (2) of Section 269C are clearly rebuttable presumptions.

The competent authority can initiate proceedings for acquisition on the conditions precedent being satisfied only by an appropriate notice in the Official Gazette to that effect. It follows that till the appropriate notice in the Official Gazette is published the proceedings for acquisition are not initiated. Therefore, the presumptions prescribed in Clauses (a) and (b) of Section 269C would not operate at any stage prior to the decision of the competent authority for initiation of the proceedings. Therefore, in view of the above decision which was mostly followed by the same High Court as well as other High Courts there is no need for us to deal with the same topic at any great length. It is enough if we hold that the presumptions under Clauses (a) and (b) of subsection (2) of Section 269C are not available before initiation of proceedings or for purposes of initiation of proceedings.

24. Shri Aggarwal also argued that even principles of natural justice were not complied with in this case inasmuch as before the inspector visited the place he had not given any notice to the appellants and his valuation more or less depended upon theoretical considerations.

Determination of market value on the basis of adopting theoretical calculations is illegal in view of the Delhi High Court decision in CIT v. Arun Mehra [1986] 157 ITR 308. In the said decision the Delhi High Court held as follows : Another important aspect in this matter is the fact that when the initiation proceedings depend on the market value of the plot, such initiation should not depend on a theoretical calculation. The market value is not determined by theoretical considerations. What has to be seen is the value in the market and not the value calculated in an abstract manner by applying a multiplier to some unknown sale in July 1981. Neither the nature of the sale nor the nature of the property is mentioned in either of the valuation reports. It is also not clear as to why any multiplier at all has been applied to the said valuation of Rs. 2,500 per sq. yard. The basis of the calculation is, therefore, not apparent at all." (p.

313) As is clear from the above, at least, the Valuation Officer in that case had cited one sale instance, applied a multiplier in order to arrive at the fair market value of the impugned property in that case.

However, as can be seen from the inspector's report of June 1983, there is not even one sale instance cited and, therefore, the value arrived at by the inspector in his report should be stated to be based upon theoretical considerations, if we are permitted to use the language of the Delhi High Court decision. Therefore, that is another additional reason to hold that there is no objective material available with the competent authority before starting acquisition proceedings.

25. Now let us consider the merits of the case. Whether there are any valid ground on which the agreed consideration was Rs. 12 lakhs but not the stated consideration of Rs. 4.50 lakhs. In order to substantiate this contention the first piece of evidence relied upon by the department was the agreement dated 6-4-1983. This agreement was found to have been written on a writing pad. Copy of the agreement is provided at pages 44-45 of the paper book. Though it was stated to be dated 6-4-1983 it was said to have been filed before the competent authority on 2-9-1985--almost one year and seven months after the initiation of the proceedings. There are strong indications to show that this agreement must have been false. In the first instance, if the said agreement is true it ought to have been mentioned in the sale deed dated 17-6-1983 or at least it ought to have been mentioned in the sale deed that the sale was in pursuance of an agreement oral or written reached earlier between the parties. Unfortunately, the sale deed states that the sale is in pursuance of an oral agreement but not a written agreement. According to the terms of the agreement the first instalment should be of Rs. 7 lakhs and it should be paid by 20-5-1983.

However, the fact remains that only Rs. 1 lakh was paid on 6-5-1983.

According to another term Rs. 5 lakhs should be paid at the time of registration. However, according to the recitals of the sale deed an amount of Rs. 3.50 lakhs was paid to Dr. Zahir Ahmed not in cash but by a demand draft drawn on Central Bank of India, Charminar Branch.

Therefore, the stipulations of the agreement did not appear to have been acted upon and there is no believable evidence to show that the stipulations were acted upon. The statement of Dr. Zahir Ahmed on the date of raid, i.e., 24-3-1984, is that he had sold his house for Rs. 4.50 lakhs to Shri Naresh Kumar about four or five months back and the said recital is correct. In fact, if the agreement was in existence then the officials who raided the house of Dr. Zahir Ahmed would certainly seize the so-called agreement. But they did not do so. Dr.

Zahir Ahmed himself would have handed over the agreement at the time of search. Dr. Zahir Ahmed came with a story that he was under shock when income-tax raid took place in his house. But on 11-5-1984 when he filed an affidavit certainly he was not under a shock. If the agreement is true then certainly he would have made a mention of it in his affidavit. But we read his affidavit dated 11-5-1984 in vain and we do not find any mention of the agreement. If really the consideration was Rs. 12 lakhs instead of Rs. 4.50 lakhs Dr. Zahir Ahmed would have invested something more than Rs. 3 lakhs in the National Rural Development Bonds or would have intimated the Income-tax Department about the construction of a new house with the sale consideration received by him from the sale of his residential house in order to get exemption from income-tax. But no reason is forthcoming when Dr. Zahir Ahmed's version was that the excess of Rs. 7.50 lakhs went into construction of his house what prompted him to state a false figure of consideration in the sale deed. Had he constructed the house or purchased rural bonds with the same consideration, in either case he would have got exemption from income-tax. On 15-6-1983 Dr. Zahir Ahmed filed an affidavit before the Income-tax Department stating that the real consideration was only Rs. 4.50 lakhs for obtaining a clearance certificate under Section 213A of the Act. The order passed against Dr.

Zahir Ahmed under Section 132(5) dated 19-6-1984 was filed before us.

As can be seen from the said order that by 11-5-1984, i.e., the date of his affidavit 132 proceedings were pending before the ITO and the ITO himself found that for the purposes of getting clearance certificate under Section 213A Dr. Zahir Ahmed filed another affidavit dated 15-6-1983 and he found a direct conflict between the

affidavits dated 15-6-1983 and 11-5-1984. Shri Naresh Kumar, one of the appellants before us was also examined in the proceedings under Section 132 before the ITO. He denied having paid any 'on money'. The ITO held as follows : Denial of the vendee about the payment of 'on money' coupled with the failure of the assessee to disclose the advance in the wealth-tax return for the assessment year 1983-84 proves that the cash found in the house and locker cannot be tagged on to the sale transaction. The cash of Rs. 3,35,000 found in the residence and locker of Dr. Zahir Ahmed is unexplained money and as such has to be assessed under Section 69A for the assessment year 1984-85.

Therefore, it is clear that the affidavit of Dr. Zahir Ahmed dated 11-5-1984 is a self-serving document intended to protect his interest to the maximum extent in the proceedings under Section 132 started against him.

26. There is another angle wherefrom we can look at the facts of the case in order to come to the conclusion that in all probability the affidavit of Dr. Zahir Ahmed dated 11-5-1984 is a self-serving document. In the raid that took place in the residential premises of Dr. Zahir Ahmed on 24-3-1984 there arose a necessity to him to explain the source of income for the following amounts : Rs. Investment in Rural Development Bonds 3,00,000 Construction of a house, out-house and Shri Anjiah, contractor for the above 3,60,000 (construction) Deposits in the banks 2,50,000 Cash found at the residence 3,35,000 12,45,000 If Dr. Zahir Ahmed admits Rs. 12 lakhs as consideration received from the sale of his house to the appellants herein and if his version is believed by the department then he would be obliged to pay tax on the long-term capital gains involved in the transaction. Exemption under Section 80T of the Act would also be available on almost whole amount for which he was to account for. But suppose, he does not raise any such plea and does not prove it to the satisfaction of the revenue then the whole of the amount for which he is to account for has to be dealt with under Section 132(5) and the whole of the amount seized, the value of the assets seized, etc., would be deemed to be the income of the assessee of that financial year and he is obliged to pay tax on the whole income. Thus, we can very easily see the benefit involved to Dr.

Zahir Ahmed in putting forward the plea that the real consideration was Rs. 12 lakhs under the impugned sale transaction. The story put forward in his affidavit that he was in a psychological shock, that he made a statement before the department while he was in a state of shock and he still did not recollect what he actually stated before the department appears to be a mere make-believe statement and devoid of truth. Dr.

Zahir Ahmed was examined as well as cross-examined and the particulars of his examination and cross-examinations were furnished at pages 55 to 66 of the paper book No. 1. From the answers given to the questions in the cross-examination made on behalf of the appellants herein he himself admitted that he was a Secretary to the Government of Nizam in Home Department before Police Action in 1948. Later he worked as a Development Commissioner in 1952 and he retired in 1957. Questioned, whether he held the post of High Commissioner in UK on behalf of the Government of India, he answered that he was deputed as a Special Officer on behalf of the Government of Hyderabad after Police Action and he was also an Ambassador of Government of India in Saudi Arabia.

He also worked in United Nations Organisation. For a person who held such high posts for a very long time in his career we fail to understand how the presence of income-tax officials for search and seizure would almost produce a psychological shock in him. We can understand such a psychological shock having been produced in an ordinary businessman who does not hold any official position. But for a person who worked as an Ambassador to Saudi Arabia it is our understanding that there was no occasion to create a psychological shock so as to disturb his mind, make him a man out of gears and prompt him to make a statement in utter shock. If his version that he was shocked and dazed by the presence of income-tax officials is correct then in our opinion all the positions he held both under the Nizam and the Government of India as well as in UNO would make him bold enough to say that he was under a shock and he is not in a fit condition to make a statement on the date of search and seizure, i.e., 24-3-1984.

However, no such statement is found in his sworn statement recorded on 24-3-1984. Further a person who was in shock would give a statement incoherently and

unintelligibly. However, the sworn statement given by Dr. Zahir Ahmed on 24-3-1984 does not appear to be given by a person under a state of shock as none of his statements were found to be false. In his sworn statement Dr. Zahir Ahmed stated that he was a retired civil servant, he retired as an Indian Ambassador to Saudi Arabia in 1975, that he is getting pension of Rs. 1,200 per month, that he is also getting Rs. 1,800 per month from Nizam's Miscellaneous Trust to which he was a trustee that he does not remember how much he was getting towards retirement benefit from the UNO, that he was author of books on rural developments, etc., that he has got only one immovable property at Road No. 9, Banjara Hills, that he does not have any other immovable property, that he was having bank accounts in various banks as per the list given by him, that he had a locker in Central Bank of India, Bank Street, Hyderabad, that he will not be able to tell how much cash will be available with him by the date of search, i.e., 24-3-1984, that he sold house for Rs. 4.50 lakhs to Shri Naresh Kumar about four or five months back, that during the course of search the authorised officer found a cash of Rs. 90,000 in his almirah, that this belongs to him, that he had old furniture, lamps, equipments, chandeliers, etc., that he sold chandeliers and lamps (hundies) for Rs. 75,000 about two or three months ago to Shri Naresh Kumar, that he was paid in cash only when he had sold furniture, etc., to the tune of Rs. 30,000 and the vendees of the furniture paid him in cash and that all the cash was kept in one place that he did not have any other cash except what he stated above and what the authorised officers found in his almirah. Therefore, it is seen that the cash of Rs. 90,000 found in his almirah, according to his earliest version, was traceable to the sale of gold ornaments, chandeliers and hundis as well as to the sale of furniture. In the cross-examination of Dr. Zahir Ahmed he stated that the price declared in Form No. 34A was Rs. 4.50 lakhs. A specific question was asked to Dr. Zahir Ahmed and the answer to the said question is as follows : Question : The sale deed was executed by you on 17-6-1983 and the raid was conducted on 24-3-1984 and during this 9 months' period why did you not approach the taxation authorities to make it clear that you have received a sum of Rs. 12 lakhs and not Rs. 4.5 lakhs Why did you keep quiet for 9 months Answer : Shri Naresh Kumar has stated that he has accounted only Rs. 4.50 lakhs and requested me to wait for the due date for the filing of the return before which time he would allow me to

deposit the moneys in my bank.

It may be noted from the particulars that he had deposited Rs. 2.50 lakhs in the Central Bank and Canara Bank before raid took place and also invested Rs. 3 lakhs in National Rural Development Bonds apart from the amount spent for construction of his house. In answer to another question Dr. Zahir Ahmed stated that the money paid by Shri Naresh Kumar in excess of what was declared in the sale deed of Rs. 7.50 lakhs was used in the completion of the construction. According to him the construction started in second half of 1982 and went on till the first half of 1983 during which time Shri Naresh Kumar came to him for purchase of his property. He also admitted that the house of his daughter at Bombay was also searched simultaneously and Rs. 1,50,000 were found in her possession unexplained. He said that the money found in possession of his daughter has nothing to do with the sale consideration. He had received the order under Section 132(5) but he had filed an appeal against the same under Section 132(11). If the story of Dr. Zahir Ahmed is correct or if the real consideration of Rs. 12 lakhs is to be believed then instead of Rs. 3.50 lakhs he would have purchased National Rural Development Bonds for Rs. 7.50 lakhs also as the said amount would have earned him exemption from capital gains under Section 54E of the Act. The very fact that no such purchase of bonds was made by Dr. Zahir Ahmed would go against his version that the real consideration was Rs. 12 lakhs.

27. Further, no doubt, the provisions of the Indian Evidence Act, 1872 cannot be strictly applied to the income-tax proceedings. But, in our opinion, they can be applied as rules of justice, equity and good conscience. Section 92 of the Indian Evidence Act states as under : When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its term : In Sarkar on Evidence at page 840 under the authority of famous Madras case in Adityam Ayer v. Rama Krishna Ayer AIR 1915 Mad. 868, K.S.Narasimhachari v. Indo Commercial Bank Ltd. AIR 1965 Mad. 147, followed in Lala Singh v. Basdeo Singh

AIR 1923 All. 429 as well as the Calcutta High Court decisions in Annada v. Hargobinda 27 CWN 495, etc., the law is stated as under : Evidence cannot be admitted to vary the provisions of the sale and as to the amount fixed as consideration, e.g. where the price as fixed in the deed is Rs. 35,000 evidence of an oral contract that the amount was really Rs. 36,000 cannot be given. Though want of consideration or failure of consideration or difference in the kind of consideration may be proved, evidence to vary the amount of consideration in a registered sale deed is inadmissible.

In view of the above, we hold that the affidavit version of Dr. Zahir Ahmed dated 11-5-1984 is not a believable or permissible version inasmuch as there was no reason to hold that his earlier version on the date of raid, i.e., 24-3-1984 was vitiated for allegedly giving the statement in a confused state of mind. Further, we also hold that the later version of Dr. Zahir Ahmed was a self-serving statement and it is a statement which secures him more profit when believed. Further his version was never believed in the proceedings under Section 132(5) and lastly the stated consideration in the registered sale deed cannot be allowed to be varied under Section 92.

28. Now let us examine whether the sale instance under which Shri JPL Gwynn sold his property is a comparable sale with the impugned sale and if so, whether the resultant price of land under that sale instance can be made applicable to the land under the impugned sale. We have already given the particulars of sale under which Shri Gwynn sold his property to Shri K.K. Bhatia for a recorded consideration of Rs. 10.80 lakhs, which was revalued by the valuation cell at Rs. 11.81 lakhs which gave the land rate of Rs. 360 per sq. metre and Rs. 303 per sq. yd. From the impugned order it is not known on which Road No. in Banjara Hills Shri Gwynn's property is situated. But at page 26 of the paper book No. 1 it is seen that this property is situated at Road No. 8 whereas the impugned property is situated at Road No. 7. The total area of the land which Shri Gwynn sold was 2243 sq. yds. Admittedly, there was a building in Shri Gwynn's property. However, the value of the building is not known. The plinth area of the building, type of construction of the building is also not known. Whether the disadvantages which are present with the impugned property are present or not with the comparable

sale of Shri Gwynn are also not known. Further, Shri K.K.Bhatia was examined in the case of Shri Ramesh Prasad. While completing the assessment for the assessment year 1984-85 in the case of Shri Ramesh Prasad the ITO had the occasion to consider the allegation of Smt. Razia Begum in her affidavit dated 11-5-1984 that the consideration for the sale which she had executed in favour of Shri Ramesh Prasad was Rs. 11.75 lakhs but not only Rs. 4 lakhs mentioned in the sale deed. Shri K.K. Bhatia was, examined on 14-2-1985. He stated that he wanted to acquire a house property in Banjara Hills. He had paid an advance of Rs. 50,000 to a Muslim lady for purchase of a house in that area. Later on other persons claimed ownership of the property.

Hence, he could not get the house property and to recover the advance money he had to go to the Court spending a lot of money. Then he was scared of purchasing from Muslim people. He came to know that the house property of Shri Gwynn, ex-ICS officer was available for purchase from the GPA Shri Krishnaswamy, IAS. He agreed to purchase the house property for Rs. 10.80 lakhs in March 1984. He knew that he was paying excess price of Rs. 2-3 lakhs. But in view of his earlier unhappy experience in the purchase of house property in the Banjara Hills area and in view of urgency to purchase the property for residential purpose with a clear title and good location (being a corner plot and large area of 2,243 sq. yds.). He purchased the property though by paying higher price of Rs. 2.50 lakhs when compared to similar property. Shri Bhatia filed a valuation report by the valuer Shri T.K. Mohan Rao who valued the property at the instance of Shri Gwynn. The valuer estimated the property as on 25-2-1984 as follows :Value of the building 4,45,873Value of land of 2,243.33 sq. yds.

4,48,666 8,94,539 It is no doubt true that this property was valued under Section 131(1) of the Foreign Exchange Regulation Act, 1947 and the Valuation Officer valued it at Rs. 11.81 lakhs. Therefore, it could easily be seen that there is excess price of 2-3 lakhs involved in this purchase from Shri Gwynn. Further the Urban Land Ceiling clearance was also available with Shri Gwynn. Even according to the purchaser the plot is a nice plot, being a corner plot adjoining two roads. Therefore, having regard to all these particulars in respect of this property it cannot be said that it is comparable to the impugned property before us.

29. Now let us consider whether the rate of Rs. 150 per sq. yd. for 2,129 sq. yds. and a rate of Rs. 100 per sq. yd. for 380 sq. yds. which is being used as a passage represents the fair market value as on the date of sale. Firstly, there are several disadvantages to this property. There is a mosque in front of the property. The approach to this plot is from the road through a passage of 380 sq. yds. which cannot be developed in any other way except being used as a passage.

The land is irregular in shape. The land was sloping from centre to road and centre to the other end. It is purely a residential locality.

The building is situated in a corner. Except 100 ft. length of wall other boundary walls belonged to others. When the first valuation was done by the departmental valuer whose copy is furnished at pages 24 to 29 no notice was issued to the transferees or transferor to be present at the time of inspection and thus principles of natural justice were not complied with and, therefore, the first valuation report, inter alia, suffered for want of non-compliance of principles of natural justice. Perhaps, realising this fatal mistake the competent authority might have invited the objections from the appellants to the first report and he might have forwarded the first report along with the objections of the appellants again to the Valuation Officer and asked his comments on them. The Valuation Officer instead of merely sending comments sent a revised valuation report dated 12-7-1985 in which the fair market value of the property was estimated at Rs. 5.14 lakhs. In our view, it is the revised valuation report dated 12-7-1985 which should be considered as a valid report which can withstand the scrutiny under the provisions of law. If so, the difference between the stated consideration and the fair market value as on the date of sale does not exceed 15 per cent of the stated consideration and hence even the initiation of acquisition proceedings would become bad. The requirements of Section 69F(6) are also not fulfilled.

30. Smt. Razia Begum's property was situated just adjacent to the property in question. Copy of the sale deed is dated 5-3-1984. It is 1,980 sq. yds. of land with a house bearing Municipal No. 8-2-583/2.

The stated consideration of that sale was Rs. 4 lakhs. The said sale almost took place one year after the sale under consideration before us. It is no doubt true that

the sale of Smt. Razia Begum's property also is the subject-matter of acquisition. According to Smt. Razia Begum and her affidavit dated 11-5-1984 the sale consideration was Rs. 11.75 lakhs but not Rs. 4 lakhs as stated in the sale deed. For the assessment year 1984-85 the ITO in the case of Shri Ramesh Prasad, one of the vendees from Smt. Razia Begum thoroughly gone into the question whether the stated consideration was true consideration and whether there was any necessity to add the difference between Rs. 11.5 lakhs and Rs. 4 lakhs as unexplained income of Shri Ramesh Prasad and others.

In that connection the affidavit of Smt. Razia Begum, the statement given by her at the time of search of her premises and lot of other evidence were examined. As already stated the assessment order is provided from pages 93 to 157. At page 154 he held that for the reasons discussed above the fair market value of the property sold by Smt.

Razia Begum to Shri Ramesh Prasad does not exceed Rs. 4.56 lakhs as on 5-3-1984. Thus the allegation that there was an extra consideration of Rs. 7.75 lakhs in the transaction was negatived by the ITO. This is a strong piece of evidence which goes to prove that in the impugned sale also the real consideration only was stated and no extra consideration was involved in it. Further Dr. Zahir Ahmed in his sworn statement on 24-3-1984 admitted that the sale consideration received by him from the appellants was only Rs. 4.50 lakhs. We have already given our decision that his first statement was not vitiated by any confused or agitated mind. Therefore, the version given on that day should be taken to be true. If that were taken to be true then the consideration stated under the sale deed is the correct consideration. The question whether we have got the right and jurisdiction to appraise the same material which the competent authority already appraised on which he ordered acquisition of the property is answered by a recent decision of the Karnataka High Court in IAC v. N. Vajram Setty, as follows : The jurisdiction of the Tribunal is co-extensive with that of the IAC and, therefore, it was open to the Tribunal to reappraise the very evidence on which the IAC had decided the question of fair market value and came to a different conclusion. But in so doing, it must do so as an appellate authority is required to do." (p. 155) Having regard to all the above we hold that the stated consideration in the sale deed must have

been the real consideration or represented the fair market value of the property on the date of sale.

31. The learned counsel for the appellants also raised the question that while giving approval for initiation of acquisition proceedings the learned Commissioner did not exercise his mind but was simply led away by the office note put before him and, therefore, on that ground also the acquisition proceedings are vitiated. In support of this contention he relied upon the decision in Smt. Vimlahen Bhagwandas Patel's case (supra) at page 199 and Chhugamal Rajpal v. S.P. Chaliha [1971] 79 ITR 603 (SC) at page 608. The extract from the order sheet of the Commissioner's note file dated 27-3-1986 is as follows : IAC's draft order under Section 269F(6) is received and put up for kind perusal.

The property in question is transferred on 23-6-1983 for an apparent consideration of Rs. 4,50,000 and the Gazette publication under Section 269D was made on 24-3-1984, i.e. within the statutory time limit. The case was referred to the valuation cell and the value was reported at Rs. 12,34,000 by the Valuation Officer vide his letter dated 20-11-1984. Objections have been called for from the transferees and they have all been met in the draft order. In the course of search and seizure, it came to light that the real consideration for transfer of the property in question was Rs. 12,00,000. The secret sale agreement, dated 6-4-1983 to this effect has also come to light. The IAC has also worked out the fair market value on the basis of comparable cases and arrived at the fair market value at Rs. 11,15,000. As the fair market value is far more than 15 per cent of the apparent consideration proceedings initiated by the IAC are in order.

Approval may therefore be accorded under Section 269F(6). For orders. .

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In view of what we have held on the main issue which is a question of fact we feel it is unnecessary to give any decision on this point.

32. In the result, we set aside the impugned orders and cancel the acquisition proceedings. The appeals are allowed.

