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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE REPUBLIC
OF SINGAPORE

B E T W E E N :

CHING BOON HUAT Appellants

- AND -

COMPTROLLER OF INCOME TAX SINGAPORE Respondents

CASE FOR THE APPELLANTS

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RECORD

1. This is an appeal from a judgment dated the 22nd October 1981 of the Court of Appeal of the Republic of Singapore (Wee C.J. Lai Kew Chai and F.A. Chua J.J.) dismissing an appeal from the judgment dated the 25th June 1981 of the High Court of Singapore (Kulasekaram J.) dismissing an appeal of the Appellant from the Order of the Income Tax Board of Review dated the 15th July 1976 dismissing the appeal of the Appellant against the refusal of the Comptroller of Income Tax to amend the Notices of Additional Assessment for years of assessments 1966 and 1968 issued in the Appellant.

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2. The question raised by this appeal is whether the sale of two undeveloped pieces of land in 1965 and 1967 respectively by the Appellant constituted a sale in the course of a trade.

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3. The material facts and events began in 1949 when the Appellant, at the relatively young age of 27 years, bought 3.3 acres of land in Katong, Singapore ("the Katong Property") for the sum of \$113,168/-. The Appellant had never bought any land before. At the relevant time, the Appellant was dealing in commodities and the purchase price for the Katong Property came from his savings. A month later, he mortgaged the Katong Property to a bank to secure an overdraft of \$50,000/- for the purpose of his business. A

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year later, the Appellant purchased his residence No.24 Fort Road, Singapore, where he has stayed till the present day. Apart from the Katong Property and No.24 Fort Road, Singapore, the Appellant did not purchase any other property between 1949 and 1967.

4. Events Between 1949 and 1953

pg.17 Shortly after the purchase of the Katong Property, the Appellant instructed architects to submit plans to the planning authorities to construct houses. As part of the planning approval, the Appellant purchased a Crown reserve running through the Katong Property. Construction of 30 flats fronting Tanjong Katong Road were completed in 1953. The flats were rented out and remained in the ownership of the Appellant at all material times. 10

5. Events between 1953 to 1955

Nothing much happened during this period. 20

6. Events between 1955 and 1957

Pg.19 The Appellant submitted several planning applications to build houses. In May 1955 he submitted an application to build terrace houses in plot C (see Exhibit P.1 (c) on Page 94 of the Record herein) but there was no follow-up. In October, an application was approved for five 2-storey terrace houses in the north part of plot C. In December 1957, planning approval was given for terrace houses in the south side of plot C. In 1958 11 terrace houses were constructed. These were subsequently sold at a loss and the Comptroller of Income Tax allowed a tax loss in respect of this development for the years of assessment 1958, 1961 and 1962. The Appellant conducted the sale from his home. There was no company or organisation undertaking the sale. 30

In respect of plot B, the Appellant also submitted applications to build terrace houses and bungalows but did not proceed with the construction. 40

7. Events between 1958 and 1968

Pg.20 & 22 (a) During this period of 10 years the Appellant did not undertake any construction on the Katong Property. He did not undertake any other kind of development and the land was left as it was. The Appellant however, submitted various

applications for planning approval.

- (b) In respect of plot A, in June 1958 he submitted an application to build one bungalow but nothing was done.
- (c) In September 1961 he obtained in-principle approval for 2 semi-detached houses.
- 10 (d) In February 1964 he obtained approval to build 4-storey flats of 12 units but this application was withdrawn in late 1964. He again submitted plans to build flats. This application was again withdrawn. In July 1964 he submitted an application to build flats. This application was refused.
- 20 (e) In April 1965 he sold plot A to B.P. Malaysia Berhad and the profits for this sale was assessed for tax for year of assessment 1966. Pg.22
- (f) In respect of plot B, in August 1963, the Appellant submitted an application to build flats but this was refused. He tried again in April and August 1974 but again the applications were refused.
- (g) In April 1966 he submitted an application to build 6 terrace houses and 4 semi-detached houses but this application was withdrawn.
- 30 (h) In July 1966 an application for 5 terrace houses was approved but no construction took place.
- (i) In 1967 plot B was sold and the profits were assessed for tax for year of assessment 1968. Pg.21
- (j) There were several applications in respect of plot E but no construction took place.
- 40 8. The Comptroller of Income Tax raised an additional assessment on the Appellant for year of assessment 1966 in respect of a profit of \$117,174/- (being the sale price less the original 1949 cost) in respect of plot A.
9. The Comptroller also raised an additional assessment on the Appellant for year of assessment 1968 in respect of a profit of \$360,591 (being the sale price less the 1949 cost) in respect of plot B.

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10. The Appellant appealed to the Income Tax Board of Review against the Comptroller of Income Tax's refusal to amend the notices of additional assessment.

11. The Board of Review heard the appeal from 17th to 20th May 1976 at the conclusion of which the Board of Review dismissed the Appellant's appeal.

12. In their oral grounds of decision dated 20th May 1976 the Board found that it did not believe the Appellant when he said that his intention from 1963 to 1966 "was that he was going to develop the land by constructing flats or terrace-houses in a way he has described, to rent them and therefore the whole purpose of the exercise was an investment. Consequently, the sale of the two properties in question was in the case of the Appellant, carrying out a trade of business in dealing in land."

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13. By Notice of Appeal dated the 29th May 1976, the Appellant appealed to the High Court of Singapore. The appeal came before Kulasekaram J. on 13th October 1977.

14. On 25th June 1981 Kulasekaram J. dismissed the appeal of the Appellant and said that after a careful consideration of the evidence and the grounds of decision of the Board, there was ample evidence before the Board of Review to justify its decision that the Comptroller was correct in raising the additional assessment for years of assessment 1966 and 1968.

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15. By Notice of Appeal dated 13th July 1981 the Appellant appealed to the Court of Appeal. The appeal came on before Wee C.J., Lai J. and Chua J. on 15th September 1981 when the Court of Appeal dismissed the appeal. The Court of Appeal gave their grounds of decision on 22nd October 1981.

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16. The reasons were given in the form of a judgment of the whole court and in it the Court of Appeal held that the Board as a whole had considered all the circumstances in which the land was acquired and that on the facts "it cannot be said that the Board's findings was erroneous in law or based on insufficient evidence and therefore, the Board's findings cannot be upset on appeal".

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17. The Appellant respectfully submits that the Court of Appeal was wrong in not finding that the Board of Review had not made any finding of fact as to the intention of the Appellant at the time he purchased the Katong Property in 1949. The circumstances of the purchase and the immediate events after 1949 cannot support any finding that the main or sole intention of the Appellant when he made the purchase in 1949 of the Katong Property was to trade in land or undertake a business of a property developer or a land speculator.

10 Pg.16-18
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18. The Appellant respectfully submits that the Court of Appeal was wrong in not taking into consideration the fact that the construction of the 30 flats in 1952, the first development on the Katong Property was wholly consistent with the Appellant's statement that he bought the Katong Property for purposes of investment. The Court of Appeal failed to take into consideration that an investment in land is not always an investment for purposes of producing income but also for capital appreciation. The construction and retention of the 30 flats for some 19 years is wholly consistent with such an intention.

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19. The Appellant respectfully submits that the Court of Appeal was also wrong in accepting the finding of the Board concerning the Appellant's intention from 1963 to 1966. The finding of the Board was that between 1963 and 1966, the Appellant formed the intention to construct flats or terrace houses on the Katong Property for purposes of trade. The fact remains that he did not carry out such intention as he did not construct any flat or houses between 1963 to 1966. As such intention if any, never materialised, the Appellant did not trade.

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40 Pg.28

20. The Appellant further submits that the Court of Appeal was wrong in finding that the Appellant was not holding the two pieces of land as investment from 1963 to 1966 and that the Appellant was in fact carrying on the trade of dealing with lands and was seeking planning permission to enhance the eventual realised prices of those parcels.

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21. On the 16th November 1981, the Court of Appeal of Singapore made an order granting the Appellant leave to appeal to the Judicial Committee of Her Britannic Majesty's Privy Council against the whole of the Judgment of the Court of Appeal.

The Appellant respectfully submits that the Judgment of the Court of Appeal of Singapore was wrong and ought to be reserved and its appeal allowed with costs for the following (amongst other):-

R E A S O N S

- (a) BECAUSE the Income Tax Board of Review did not make any finding of a trading intention when the Appellant purchased the Katong Property in 1949, and even if it can be inferred that the Board of Review did make a finding of a trading intention, such a finding is wrong and no reasonable body or tribunal could have reached such a decision. 10
- (b) BECAUSE if the Board of Review had made a finding that the Appellant had acquired the Katong Property in 1949 with the intention of disposing of it at a profit by way of trade, then it would not have been necessary for the Board of Review to make a further finding that from 1963 to 1966 the Appellant had changed his intention and was not holding the two pieces of land as investment. 20
- (c) BECAUSE the finding of the Court of Appeal that the Appellant had changed his intention and regarded the two parcels as trading stock as he did not have the financial capability nor any plans to develop the two parcels as investments, is inconsistent with the whole history and is illogical. 30
- A permanent investment may be sold by way of realisation, that does not involve an operation of trade, and the fact that an owner of land decides to realise his investment does not make the land into trading stock. The Court of Appeal and the Board of Review failed to consider that "frustration of a plan for investment, which compels realisation, even if foreseen as a possibility surely cannot give rise to an intention to trade". (See Simmons v IRC (1980) 2 All E.R. 798). 40
- (d) BECAUSE the Court of Appeal failed to consider that although the Appellant had plans to construct flats and terrace-houses, he decided to sell the two parcels 50

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when he received a good offer, an event which was never contemplated or foreseen in 1949, and even up to 1965.

LIM CHOR PEE

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