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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 :

CHNG BOON HUAT Appellant

- and -

COMPTROLLER OF INCOME TAX SINGAPORE Respondent

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CASE FOR THE RESPONDENT

RECORD

1. This is an Appeal brought by leave from the Judgment and Order of the Court of Appeal of the Republic of Singapore (Wee Chong Jin C.J. Lai J. and Chua J.) dated 22nd October, 1981 dismissing an Appeal by the Appellant from an Order of the High Court of Singapore (Kulasekaram J.) dated 25th June 1981 by which Order the Appellant's Appeal against a decision of the Income Tax Board of Review of Singapore dated 15th July, 1976 was dismissed. By its decision, and on grounds given orally on the 20th May, 1976, the Board of Review had upheld assessments to Income Tax on the Appellant for the years of assessment 1966 and 1968.

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2. The substantial question raised by the Appeal is whether the Income Tax Board of Review erred on any question of law or mixed question of law and fact in holding that the sale of two properties by the Appellant was effected in the course of his carrying out a trade or business of dealing with land, with the result that his profit on sale was income chargeable to Income Tax under the Income Tax Act of the Republic of Singapore.

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3. The facts are set out in the oral grounds of decision of the Income Tax Board of Review and are clearly summarised in the judgment

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of the Court of Appeal. The following is a summary of some of the more significant facts found.

- (1) In 1949 the Appellant purchased land being six plots, an area of about 3.3 acres, for a sum of \$113,168. He immediately sought advice for the purpose of developing the land. In 1951 the Appellant purchased from the Crown a strip of land that abutted on part of the land earlier purchased, and had previously been reserved for a road. The Appellant had previously mortgaged the land to raise money. Between 1951 and 1953 the Appellant built 30 flats on part of the land, and rented them out to the public. As regards some of the flats, he obtained lump sum payments. Until the flats were sold in 1972, they produced nil income. 10
- (2) In 1957 and 1958 the Appellant constructed 11 terraced houses on part of the land, and during construction advertised them for sale. In 1963 the Appellant unsuccessfully applied for Planning Permission to construct a further 24 flats. In 1964 he applied for Planning Permission to construct 56 flats and four shops; but did not proceed. 20
- (3) In 1965 the Appellant sold a part of his land for \$193,000; he thereby realised a profit of \$177,174, the subject matter of the assessment for the year of assessment 1966. In 1967 the Appellant sold another part of his land for \$400,000 yielding a profit of \$360,591; which was the subject matter of an assessment for the year of assessment 1968. 30

The Appellant was not believed by the Board when he said that his intention from 1963 to 1966 was that he was going to develop the land by constructing flats or terraced houses to rent them, and therefore, the whole exercise of development was an investment. 40

4. In the Republic of Singapore, Income Tax is charged upon the income of any person accruing in Singapore, inter alia, in respect of: "Gains or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised": Income Tax Act Section 10 (1)(a). The Act contains no definition of "trade". The Respondent is responsible for the 50

assessment and collection of tax.

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10 5. The Board of Review is established for the purpose of hearing Appeals by any person aggrieved by an assessment made upon him. It is provided by Section 81(1) that save as provided in that Section the decision of the Board shall be final. An Appellant may appeal to the High Court from the decision of the Board "upon any question of law or of mixed law and fact".

6. It is submitted that in the High Court Kulasekaram J. applied the correct test and came to the correct conclusion. At the end of his judgment, he stated the following:

20 "In my judgment, after a careful consideration of the evidence and the grounds of decision of the Board, there was ample evidence before the Board to justify its decision that the Comptroller was correct in raising the additional assessment for the years of assessment 1966 and 1968."

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line 6

The test is the same as that applied by the Court of Appeal, who stated :

30 "The proper test to apply in this Appeal is to ask ourselves whether the Board had misdirected itself in law, or had proceeded without sufficient evidence in law to justify its conclusion."

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line 41

The Court of Appeal then approved and applied the well known statement by Lord Radcliffe in Edwards v. Bairstow /1955/ 36 Tax Cases, 207, at page 229; this is also reported in /1956/ Appeal Cases 14 at page 36.

7. The Court of Appeal stated, at the end of their judgment, as follows :

40 "In our opinion on these facts it cannot be said that the Board's finding was erroneous in law or based on insufficient evidence and therefore, the Board's finding cannot be upset on appeal."

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line 3

It is submitted that the Court of Appeal came to the correct conclusion for the correct reasons.

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8. Apart from the reasoning in the Board of Review and in the Courts below, the following considerations support the Respondent's contention that this Appeal should be dismissed.

- (1) The law of Singapore both generally and in respect of the Income Tax Act is so founded upon the law of the United Kingdom that United Kingdom principles provide valuable guidance.
- (2) It is trite law in the United Kingdom that buying, developing and disposing of land, or simply buying and selling land, can properly be found to constitute a trade of which the land is trading stock. Admittedly, under the law of Singapore a single isolated transaction is not included in the concept "trade" (although it is expressly included under United Kingdom law by reason of the statutory interpretation of the word "trade"). Nevertheless, this is not a case of an isolated transaction: there were at least two acquisitions, and various disposals. 10 20
- (3) Admittedly, intention at time of purchase is an important consideration, in determining whether land is held as trading stock, or as an investment. It does not follow from that, however, that the Board of Review, the High Court or the Court of Appeal was in error in that their judgments contain no express finding as to the intention of the Appellant at the time of purchase. The function of the Board of Review was to make a single finding, a mixed finding of law and fact, from the evidence or the primary facts found, and that single finding was whether or not the land disposed of was trading stock. In any event, intention is something to be gathered not merely from protestations of intention, but from the consideration of all the facts. It is clear from the judgments below (and also, if it would be proper to look at the evidence, from the evidence) that so many factors pointed towards a commercial undertaking of buying, developing and disposing of land, as opposed to investment of capital for the production of income, that an express finding as to the Appellant's intentions in 1949 when he first acquired land, would have been merely a formality. 30 40 50
- (4) Admittedly, the Appellant held the land for a

long time. Nevertheless, a dealer in land has frequently to wait many years in order to get his profit; and the Appellant did indeed acquire some lump sums on disposing of the flats in 1953, and again acquired a lump sum on sale of the part in 1965. That is trade albeit extended over many years.

10 (5) In order to establish that he held land as an investment, not as trading stock, the Appellant would have had to show that he had substantial capital to invest, and the prospect of retaining the investment indefinitely for the enjoyment of the income thereof. That he failed to do. The onus was on him.

20 (6) Although there is no single reported case in the United Kingdom (or so far as is known, elsewhere) that summarises the constituent features of trade as opposed to investment, it may be helpful to consider the judgments in Edwards v. Bairstow, above, and those of the English Court of Appeal in Rellim Limited v. Vise 32 Tax Cases 254, especially page 260 and Pilkington v. Randall /1966/ 42 Tax Cases 662.

30 9. Applying the test in Edwards v. Bairstow, the question for your Lordships is not, how they would have decided the case at first instance, but whether the decision of the Board of Review contradicts the true and only decision possible on the facts found by the Board or perhaps on the evidence accepted by the Board. That is indeed the test applied in the High Court and in the Court of Appeal. Applying that test, the same result must ensue for your Lordships as in the High Court and Court of Appeal. Furthermore, even if a wider
40 view were taken of the case, and the evidence accepted by the Board considered entirely afresh, that evidence justifies the Board deciding as they did, but would not justify the contrary conclusion.

10. The Respondents respectively submit that the Appeal ought to be dismissed with costs, for the following among other

R E A S O N S

(1) BECAUSE the Appellant cannot upset the

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decision of the Income Tax Board of Review save by demonstrating that the Board's conclusion (that the Appellant's disposals were disposals of trading stock in the course of trade) contradicts the true and only reasonable conclusion from the facts found by the Board; which the Appellant cannot demonstrate.

- (2) BECAUSE the High Court and the Court of Appeal correctly applied the test annunciated by Lord Radcliffe in Edwards v. Bairstow. 10
- (3) BECAUSE (if it were legitimate to reconsider afresh the evidence) the only reasonable conclusion is that the Appellant made realisations of trading stock.
- (4) BECAUSE the Board of Review, the High Court and the Court of Appeal all came to the correct conclusion for the correct reasons.

D.C. POTTER, Q.C.

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Respondent

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