
 IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA
 (APPELLATE JURISDICTION) CIVIL APPEAL No.
 109 of 1976

B E T W E E N :

TEOH CHAI SIOK Appellant

- and -

DIRECTOR GENERAL OF INLAND REVENUE Respondent

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 CASE FOR THE RESPONDENT

RECORD

1. In these proceedings the Appellant appealed to the Special Commissioners against a notice of additional assessment to income tax for the year of assessment 1974 dated 18th January, 1975, in which \$538,790.00 was included as trade income. The appeal was dismissed and the Appellant appealed by way of case stated to the High Court of Malaya (Syed Agil Barakbah, J.) and the appeal was, on 10th July, 1976, dismissed. The Appellant thereupon appealed to the Federal Court of Malaysia (S.S. Gill C.J. Malaya, Ong Hock Sim, and Raja Azlan Shah F.J.J.) and on 25th June, 1977, Gill C.J. having delivered a judgment with which all members of the Court agreed, the appeal was dismissed. p.1
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2. The Appellant now appeals to His Majesty the Yang Di-Pertuan Agong having been given final leave to appeal by the Federal Court on 3rd April 1978. p.50
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3. The primary facts are fully set out in the Case Stated by the Special Commissioners and may be summarized as follows -
- (1) On 3rd September, 1961, the Appellant, who at all material times was a sundry shopkeeper and a licensed money lender, entered into an agreement (the first agreement) with Madam Soh Juan (the vendor) for the sale by her to him of approximately five acres of padi land (the property) in the Alor Setah District, Kedah, for the p.52
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sum of \$31,500.00. The property was a long strip of land surrounded by residential development of semi-detached and terraced houses and was situated approximately 1½ miles from the centre of the town of Alor Setan. Apart from four houses on it the property was vacant land. The price that the Appellant agreed to pay was approximately three times the value of the land as padi land.

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(2) Under the first agreement the vendor undertook to apply for and obtain Government permission to use the property for the purpose of erecting dwelling houses on it, and thereafter to apply to the Town Council for approval to erect houses on the property in numbers of specification to be determined. The vendor further undertook within eight months from the date of the agreement to take steps to remove the four existing houses on the property. It was a term of the agreement that if the permission of the Government or the approval of the Town Council as above described were not obtained the agreement should be treated a void and as of no effect.

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(3) On 4th July, 1963, the solicitor acting for the vendor learned that permission to use the property for the purpose of erecting dwelling houses had been refused by the Government and the Appellant was so informed and told that the vendor would like to treat the agreement as null and void.

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(4) After correspondence had passed between the parties' solicitors a further agreement (the second agreement) dated 9th March, 1966, was entered into by the Appellant and the vendor. The second agreement contained the same terms as are set out in paragraph 3(2) above except that the period of 8 months there referred to was reduced to 3 months.

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(5) After the execution of the second agreement the vendor did not transfer the property to the Appellant and the Appellant brought an action (Suit No. 133 of 1966) in the High Court for specific performance of the second agreement. The Appellant during the hearing was given leave to discontinue the said proceedings. Thereafter the Appellant brought further proceedings in the High Court (Suit No. 114 of 1968) for specific performance and rectification of the second agreement.

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These further proceedings were concluded on 11th July, 1971, by an order, made by consent, ordering specific performance of the second agreement and payment by the Appellant of \$27,500.00 to complete the purchase of the property.

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In pursuance of the said order the Appellant became the registered owner of the property on 10th August, 1971, and accepted the transfer of the property to himself without the vendor fulfilling any of the terms of the second agreement referred to in paragraph 3(4) above. Before he had become the registered owner of the property the Appellant had himself paid compensation to the occupiers of the four houses standing on the property.

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- (6) On 13th September, 1971, the Appellant applied to the Government for alteration of the condition of tenure of the property and on 18th February, 1973, the Government approved his application, thus permitting use of the property for the purpose of erecting dwelling houses on it. Before he had been informed by the Government of its approval of his application the Appellant instructed Chartered Surveyors to prepare a report on and valuation of the property.

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- (7) On 15th April, 1973, the Appellant agreed to sell the property to a limited liability company, Chai Hugo & Sons Sendirian Behad, (the company) for \$580,000.00 and he was duly paid by the issue to him of shares in the company to the value of \$580,000.00. The Appellant subsequently transferred one half of the total number of shares which he had received to his wife, and one eighth of the total of the shares to each of his four children at \$1 per share. The Appellant became a director of the company without any shareholding qualification.

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4. In addition to the above primary facts the Special Commissioners made the following inferences of fact as a result of having seen and heard the Appellant give evidence -

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- (1) That from 30th September, 1961, the Appellant had had no doubt that the property had great development potential.
- (2) That the Appellant was very keen to buy the property and resell it as soon as he could.

RECORD

(3) That he had had such an intention since 1961 and that had the vendor succeeded in her attempt to obtain permission to change the condition of tenure the Appellant would have acted in 1963 as he did in 1973 and would have immediately developed the property.

(4) That it was not the Appellants intention to purchase the property and keep it for his old age and in the meantime collect such income from the property as he could until he himself had sufficient funds to develop the property.

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5. It is the Respondent's submission that the issue which arises upon this appeal is whether, on the facts found by them, the Special Commissioners could properly decide that the profit arising to the Appellant on the sale of the property to the Company was chargeable to Income Tax under Section 4(a), Income Tax Act, 1967, as gains or profits from a business, the word "business" being defined in Section 2(1) as including "profession, vocation and trade and every manufacture, adventure or concern in the nature of trade".

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6. It was common ground that the purchase and sale of the property was, for the Appellant, an isolated transaction in land. The Special Commissioners considered that the paramount question for them to consider was, "what was the Appellant's intention at the time when he entered into the first and the second agreement?" and they reached the conclusion on this point that "the Appellant was very keen to buy the property and resell it as soon as he could at a great profit".... They considered that there was abundant evidence all pointing one way, namely to the conclusion that this, although an isolated transaction, was an adventure and concern in the nature of trade.

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7. In the High Court Syed Agil Barakbah J. having reviewed the authorities, said that he considered that two of the four indicia which it had been suggested in Leeming v. Jones [1930] A.C. 415 might indicate that a transaction was an adventure in the nature of trade were present in this case, namely, firstly activities by the Appellant which led to the maturing of the asset sold, and, secondly, the nature of the asset sold was such that it lent itself to commercial transactions. He formed the view that the only conclusion in the facts found by the Special

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Commissioners was that the Appellant acquired the property with the expectation and intention of selling it at a profit and that it was an adventure in the nature of trade.

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10 8. In the Federal Court Gill C.J. indicated that the main contention of the Appellant in that court had been that both the Special Commissioners and the learned judge in the High Court had erred by concerning themselves exclusively with the question as to what the intention of the Appellant was at the time that he entered into the agreements for sale, and in failing to consider whether the solitary transaction, if it was an adventure, was an adventure in the nature of trade.

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20 The learned Chief Justice pointed out that the mere fact that there is only one transaction does not preclude the possibility that that transaction is in the nature of trade and he went on to consider whether any of the four indicia referred to in Leeming v. Jones (supra) were present. In his view it was not necessary for the Appellant to set up an organisation for trading in land, and that there was evidence that the Appellant had engaged in activities which led to the maturing of the asset to be sold, and he considered that the nature of the property lent itself to commercial transactions.

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30 On the question of the Appellant's intention he adopted the approach of Lord President Clyde in Rutledge v. C.I.R. 14 T.C. 490 at 496 who, when considering whether a particular isolated transaction was an adventure "in the nature of trade" indicated that when there was evidence that the purchase was made for no purpose except that of resale at a profit, there seemed little difficulty in reaching the conclusion that the deal was "in the nature of trade".

p.48

40 He concluded that both the Special Commissioners and the learned Judge had been right.

p.48

50 9. The Respondent will submit that the Appellant can only succeed in this appeal if he shows that the only reasonable conclusion that can be reached on the evidence contradicts the decision of the Special Commissioners. (See Edwards v. Bairstow [1956] A.C. 14).

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It will be the Respondent's submission that the primary facts found and the inferences of fact drawn by the Special Commissioners, and set out in paragraphs 3 and 4 above amply justified their conclusion that this transaction was an adventure in the nature of trade rather than, as was contended by the Appellant, the purchase and sale of an investment by the Appellant.

10. The Respondent will, therefore, respectfully submit that this appeal should be dismissed with costs for the following among other 10

R E A S O N S

- (1) BECAUSE on the facts found by them the Special Commissioners were entitled to decide that the Appellant had engaged in an adventure in the nature of trade.
- (2) BECAUSE the profit arising to the Appellant on the sale of the property was chargeable to Income Tax under Section 4(a), Income Tax Act, 1967, as gains or profits from a business. 20
- (3) BECAUSE the decision of the Federal Court was correct and should be affirmed.

PATRICK MEDD

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CASE FOR THE RESPONDENT

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