

8/84

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 :

THOMSON HILL LIMITED Appellant

- and -

THE COMPTROLLER OF INCOME TAX Respondent

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CASE FOR THE APPELLANT

Record

1. This is an appeal from the judgment of the Court of Appeal of the Republic of Singapore given on 4th March 1982 and is brought with the leave of the Court of Appeal given on 1st September 1982.

Part 1, p.86

Part 1, p.97

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2. The substantive question raised in this Appeal is whether property tax paid by the Appellant in respect of properties currently under development and in its "land bank" is deductible for tax purposes in the year of payment or whether deduction is deferred until the development project on the relevant land is completed. It is common cause that properties acquired by the Appellant for development (including those in its "land bank") are its stock-in-trade and that property tax is a revenue expense properly deductible under Section 14 (1) of the Income Tax Act (Cap. 141) ("the Act"); the only issue is the time when property tax should be deducted for tax purposes.

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3. The Appellant was incorporated on the 15th April 1970 as a public company and at all material times has carried on business as a housing developer. From the time of its incorporation the Appellant purchased various parcels of land, some of which were developed immediately while others were held in its "land bank". In preparing its accounts for periods up to and including the year ended 31st December 1974, the Appellant has adopted the completed contract method. Under this method profit is recognised only when the contract or project is

Record

substantially completed: cost and progress payments received are accumulated during the course of projects and recorded not in the profit loss account but carried straight to the balance sheet, overall profit or loss being carried to the profit and loss account when the contract activity is substantially completed. So far as costs are concerned, the same result would have been achieved by first debiting them to profit and loss account and then crediting them in the profit and loss account as part of work in progress. 10

4. In the accounting periods of the Appellant up to and including the year ended 31st December 1973, property tax paid for those periods was not charged to the profit and loss account, but was instead included in the balance sheet as part of the overall development expenditure. This treatment of property tax paid was accepted by the Comptroller of Income Tax. In the accounting period ended 31st December 1974, which is the bases period for the Year of Assessment 1975 (see Section 2 and Section 35 (1) of the Act), the Appellant for the first time did not accumulate property tax paid in the accounting period as part of the overall development expenditure, but charged it in an amount of \$253,980 as an item of expenditure in the profit and loss account. Part 2, p.60 20

5. The Comptroller of Income Tax objected to the change of treatment of property tax paid on the grounds that the Appellant was a housing developer "... and as development projects are dealt with on a project basis, all direct expenses incurred in connection with the particular project have to be capitalised and allowed against the sale proceeds received on the completion of the project". Part 2, p.27 30

6. It is submitted that the issue of law raised in this appeal is whether, the change of treatment of property tax paid in the accounting period ended 31st December 1974 more accurately reflects for that period "the full amount" of the Appellant's income from the source comprising its profits or gains from its trade of housing developers (see Section 10 (1) (a) and Section 35(1) of the Act). It is common ground that the Act prescribes no particular method of computing income. The Appellant submits that in the absence of statutory guidance, the matter is governed by general principles as elaborated by the Courts for the purposes of ensuring so far as practicable profits shall be attributed to the year in which they were truly earned. 40 50

7. The first general principle in matters such as these is that revenue expenditure is deductible in the year in which it is incurred even though no profits in that year accrue from that expenditure: see Vallambrosa Rubber Company Limited v. Farmer 5 Tax Cas. 529. Since the property tax paid in 1974 is admitted to be a proper revenue expense, the treatment of it by the Appellant in 1974 does not offend this first general principle.

10 8. The second general principle in matters such as these is that established in Whimster & Company v. Commissioners of Inland Revenue 12 Tax Cas. 813. Broadly, the principle is that ordinary principles of commercial accounting must be applied to establish the balance of profits and gains, so far as such principles conform with the rules of the relevant taxing statutes, and subject to any express provision of those statutes. Further, and as an exception to the well-recognised rule against anticipating profits and losses, the ordinary principles of commercial accounting require that a trader take account of stock-in-trade at the lower cost of market value. Although Whimster's case does not refer to work in progress, it is well settled that similar considerations apply. In regard to work in progress Lord Reid in Duple Motor Bodies Limited v. Ostime 39 Tax Cas. 537 said (at page 569) as follows:

30 "Suppose that the manufacture of an article was completed near the end of an accounting period. If completed the day before that date, it was still work in progress on that date. The article if not already sold has become stock-in-trade; if completed the day after that date. It could hardly be right to take that article into account in the former case but not in the latter. I do not know when it became customary to take into account work in progress, but it appears that that has been customary for many years, and it is not disputed that, at least in all ordinary cases, that must now be done".

40 9. Expenditure on the cost of stock-in-trade and work in progress necessarily falls within the principle of the Vallambrosa case. The manner in which the apparent conflict is resolved appears from the following passage in the speech of Lord Reid in the Duple case at page 571:

50 "Expenditure which it is permissible to include in the account is the whole general expenditure during the period, and it can only be said to have been spent to earn the profits of that year in the sense that it was all spent during that year to keep the business going and that, during that year, the business yielded the profit shown in the account. So the question

Record

is not what expenditure it is proper to leave in the account as attributable to goods sold during the year, but what expenditure it is proper in effect to exclude from the account by setting against it a figure representing stock-in-trade and work in progress. You must justify what you seek to exclude in this way as being properly attributable to, and properly represented by, those articles".

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The Appellant respectfully submits that the true question in this case is whether the property tax paid in 1974 was properly attributable to the cost of work in progress and/or, in the case of properties not currently under development, to the cost of the properties. If, as the Appellant contends, it is not, the property tax of \$253,980 charged in the profit and loss account for the year ended 31st December 1974 was a proper deduction in that year for the purposes of Section 14 (1) of the Act.

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Part 1, p.1

10. As appears from the Grounds of Decision ("the Decision") of the Income Tax Board of Review ("the Board"), not all the parcels of land purchased by the Appellant were under development. The Decision also records that several development projects were halted in mid-stream and delayed for about five years as a result of a slump in the Singapore property market. Although no finding was made by the Board, evidence was given that property tax is a recurring expense payable annually on the annual value of property. Accordingly, it follows that property tax is payable by the Appellant whether or not projects of development are undertaken. Approaching the matter as one of common sense, the Appellant contends that property tax is not part of the "cost" of properties nor can it be directly related to "work" in progress. Given that property tax is paid annually and has no lasting benefit beyond the year for which it is payable, it is submitted that property tax cannot be classified as enhancement expenditure on the properties and so added to the cost in that manner. So far as work in progress is concerned, it is submitted that the amounts paid bear no relation to the development activity which gives rise to the profits from the trade of housing developers. Put shortly, property tax is a general and inevitable expense of the whole trade of housing developers; the more land they acquire for the "land bank" so as to be able to continue to earn profit from the trade, the more property tax is payable. Indeed, if, as in the case of the Appellant, activity is depressed by reason of external commercial factors, the results of the trade will be further distorted

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Part 1
pps. 13 & 16

by the deferral of a general expense undiminished in amount by the reduced level of activity. Record
Similar considerations in relation to the "on-cost" method of accounting in the Duple case led Lord Reid to observe (at page 572) that:

"In costing for some purposes this may well be right, but it seems difficult to justify for Income Tax purposes".

10 Lord Guest in the same case said (at page 575) that:

"I cannot think that a method which leads to these absurd results is in accordance with the principles of Income Tax law or, I may add, with common sense".

20 The Appellant respectfully submits that the remarks of Lord Reid and Lord Guest in relation to the "on-cost" method are equally applicable to a method of accounting which defers deduction of property tax paid by the Appellants in the normal course of their whole trade as housing developers.

11. Expert evidence was given by Mr. Coomber for the Appellant to the effect that the Appellant's treatment of property tax for the year 1974 was consistent with ordinary principles of commercial accounting and that the omission of property tax from the cost of development in no way detracted from the completed contract method. Mr. Coomber, a partner in a well established firm of accountants in Singapore, Fellow of the Institute of Chartered Accountants and Chairman of the Financial Statements Committee of the Singapore Society of Accountants, found support for his opinion in the "Statement of Standard Accounting Practice No. 9" ("SSAP9"). The Board did not reject Mr. Coomber's evidence on these matters.

Part 1, pp. 4 & 5
Part 1, pps. 4 & 17
Part 1, p.28

12. Mr. Coomber stated in cross examination that he would only allow a client to defer property tax where it was formed only to develop one property. The Appellant submits that Mr. Coomber's exception for "single-development" companies is understandable on the basis that in such cases there can be no general expenses of the business as a whole, merely expenditure directed towards the carrying out of a particular project. For the Comptroller of Income Tax Mr. Yip Thin Peng, a Senior Assessment Officer at the Inland Revenue Department with no commercial experience, expressed the view that the practice of deferring property tax is in accordance with "normal accounting practice". In cross-examination he stated that he could say what is

Part 1, p.19
Part 1, pps. 5 & 19
Part 1, p.20
Part 1, p.21

Record

Part 1, p.43 the correct commercial accounting practice by
Part 1, reference to SSAP9 and Exposure Draft No. 12 of
pps. 6 & 7 the International Accounting Standard. The Board
held that deferral of property tax was not
inconsistent with ordinary principles of
commercial accounting where the completed
contract method is used and rejected Mr.
Coomber's opinion that such treatment would only
be proper in respect of the accounts of "single-
development" companies. Beyond pointing out that
Part 1, p.6 SSAP9 merely "seeks to define the practice, to
narrow the differences and variations in those
practices and to ensure adequate disclosure in
those accounts", the Board gave no reasons for
preferring the views of Mr. Peng to those of Mr.
Coomber. The appellant respectfully submits that
in rejecting the evidence of Mr. Coomber and
preferring that of Mr. Peng, the Board made a
finding against the weight of evidence.

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13. Even if (contrary to the Appellant's
contentions) both treatments of property tax paid
complied with ordinary principles of commercial
accounting, it is necessary, as we have submitted,
to decide whether one method more accurately
reflects the full amount of profits and gains.
In BSC Footwear Limited v. Ridgway /1972/ AC page
544 Lord Morris of Borth-y-Gest, after observing
that there was conflicting expert evidence,
continued (at page 559) as follows:

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"If the Commissioners considered that
there were serious objections to the method
of accountancy adopted by the Company then
in spite of the fact that for a long period
it was not challenged I think that the
Commissioners were warranted in declining
to endorse it. Ultimately as between the
Crown's method and the company's method it
has to be decided which of the two is the
better calculated to show the full amount of
profits and gains".

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In the same case Lord Guest concluded his speech
with the following remarks (at page 563):

"It is not disputed that a consistent
practice over a number of years can be changed
if it does not accord with the principles of
income tax law. In my opinion, the Crown's
method more fairly and reasonably represents
the profit of the Appellant's business and
they have shown that the Appellants' method
is less preferable than their own".

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The Appellant submits that on the facts as found

10 by the Board, the Appellant's treatment of property tax paid in 1974 is to be preferred to the former treatment in that it is better calculated to show the full amount of profits and gains and thereby conforms with the principles of the Act. The Appellant further submits that an analysis of the speeches in the Duple and BSC Footwear cases show that a method of accounting applied consistently over a number of years must nevertheless give way to a new method of accounting, if that new method more accurately reflects the full amount of profits or gains of the trade.

20 14. In the present case the Board, having found that both methods complied with the ordinary principles of commercial accountancy, failed to consider whether one or other method more accurately reflected the full amount of profits and gains and thereby conformed with the rules of the Act. In failing to make that further enquiry, the Appellant submits that the Board did not apply the correct test and accordingly failed to find that the Appellant had discharged the onus of proof.

15. In the course of their judgment, upholding the decision of the Board and the High Court, the Court of Appeal said: Part 1, p.86
Part 1, p.90

30 "The dispute in this case is whether the property tax paid by the company in respect of its properties is part of their cost. If it is not then the treatment of property tax paid in the 1974 accounts would be in accordance with ordinary principles of ordinary accounting".

40 It is assumed that the reference to "ordinary accounting" is in fact a reference to "commercial accounting". The Appellant submits that this passage from the judgment of the Court of Appeal encapsulates the issue in this case. However, having stated the issue so succinctly, the Court of Appeal failed to deal with it. That they were entitled to deal with it is made clear by the following remarks of Viscount Simonds in the Duple case (at page 568):

"If in any particular case, there is in the opinion of the Crown some item of expenditure beyond wages and cost of material which ought for tax purposes to be attributed to stock in trade or work in progress and there is a dispute about it, that can be settled in the ordinary way".

50 16. The Appellant accordingly submits that the decision of the Court of Appeal should be reversed

Record

and that this Appeal should be allowed with the costs here and below for the following among other

R E A S O N S

1. BECAUSE the Appellants previous treatment of property tax payments was wrong
2. BECAUSE property tax is not part of the "cost" of stock-in-trade or work in progress and should not be attributed thereto
3. BECAUSE the deferral of property tax paid does not comply with ordinary principles of commercial accounting 10
4. BECAUSE the change in treatment for property tax paid more accurately reflected the profits and gains of the Appellants trade
5. BECAUSE the Court of Appeal incorrectly determined the question of onus of proof purely on the issue of ordinary principles of commercial accounting and without regard to the rules of the Act.
6. BECAUSE the decision of the Court of Appeal was wrong and ought to be reversed 20

SETTLED

STEWART BATES

JOHN CALBY.

2nd September, 1983.

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B E T W E E N :

THOMSON HILL LIMITED Appellants

- and -

THE COMPTROLLER OF INCOME
TAX Respondent

CASE FOR THE APPELLANT

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