Inland Revenue Appeal 1996 No.1

IN THE SUPREME COURT OF HONG KONG

HIGH COURT

BETWEEN

CHANWAY INVESTMENT COMPANY LIMITED Appellant

and

COMMISSIONER OF INLAND REVENUE Respondant

Before: The Hon. Mr. Justice Keith in Court

Dates of Hearing: 13th-14th June 1996, 18th-19th November 1996 and 13th March 1997

Date of Handing Down of Judgment: 25th March 1997

JUDGMENT

INTRODUCTION

On various dates in March and July 1990, the Inland Revenue Board of Review ("the Board") heard an appeal by Chanway Investment Co. Ltd. ("the taxpayer") against an assessment to profits tax for the 1986/87 fiscal year. The Board dismissed the appeal on 17th July 1991. The taxpayer required the Board to state a case on a question of law for the opinion of the High Court. The Board agreed to do so, and the taxpayer's appeal by way of case stated is now before me.

However, the Case Stated was dated 20th December 1995, almost 4½ years after the decision of the Board. The delay cannot be laid at the door of the taxpayer. That

is because the taxpayer required the Board to state a case within the one month time limit laid down by section 69(1) of the Inland Revenue Ordinance (Cap.112) ("the Ordinance"). The reason for such inordinate delay is not relevant to any of the issues which I have to decide. Since it would be no more than idle curiosity for me to inquire what the cause of it was, I have not done so. For all I know, there may be a full explanation for what, on the face of it, looks like a blot on the administration of justice.

THE ISSUE BEFORE THE BOARD

During the 1986/87 fiscal year, the taxpayer sold its interest in a plot of land in Tai Po ("the Tai Po land") for the sum of $60,170,790.93. That sale resulted in a gain to the taxpayer of $42,495,157.00. This gain was not offered for assessment in the taxpayer's tax computations. That was because the taxpayer claimed that the Tai Po land had originally been acquired as a long-term investment, and not for resale in the course of trade. Accordingly, the gain on the sale of the Tai Po land arose from the sale of a capital asset (which was not liable to profits tax), and the gain did not amount to trading profits (which would have been liable to profits tax).

The assessor disagreed with the taxpayer. He took the view that the gain on the sale of the Tai Po land did constitute trading profits. His assessment of the taxpayer's liability for profits tax under section 14(1) of the Ordinance was therefore based on that premise. The Commissioner confirmed that assessment. Accordingly, the crucial question which the Board had to decide was a question of fact which focused on the taxpayer's intention when it acquired the Tai Po land: had the Tai Po land originally been acquired as a long-term investment, or had it been acquired for resale in the course of trade? No question of law arose, because it was common ground that (a) if the Tai Po land had originally been acquired as a long-term investment, the gain on the resale was not liable to profits tax, and (b) if the Tai Po land had originally been acquired for resale in the course of trade, the gain on the resale was liable to profits tax. The burden of proving that the assessment was incorrect was on the taxpayer: section 68(4) of the Ordinance. In the event, the Board concluded that the taxpayer had not discharged the burden on it of proving that the Tai Po land had originally been acquired as a long-term investment.

LETTERS B

An understanding of what are known as "Letters B" is crucial to an understanding of the Board's decision. The increase in urban development in the New Territories over the last 30 years has made it necessary for agricultural land to be resumed by the Government. However, resumption created social and financial problems for indigenous families whose land was being resumed. First, they had no guarantee that they would be granted other land to replace that which was being resumed. Secondly, the compensation which they received did not reflect the true value of the land which had been enhanced by its development potential. The solution adopted by the Government was to

offer to owners of agricultural land in the New Territories which was about to be resumed land exchange entitlements as an alternative to compensation.

Those entitlements took the form of letters of intent, which came to be known as Letters B. They offered the holders of the letters the grant of development land at some future date (when land became available) at a premium to be fixed at the value of the development land to be granted at the date of the surrender of the land to be surrendered. The value of the land to be surrendered, i.e. its agricultural value without its development potential being taken into account, was to be deducted from the premium payable.

Two additional points should be noted:

(i) The letters B were assignable. A considerable market in them came into being. Their marketability was attributable to two factors. First, when the Government released agricultural land for development, it was only prepared to accept Letters B for the land. Secondly, the holders of Letters B were entitled to a private treaty grant of development land at a premium applicable at the date of the Letters B, thereby avoiding having to purchase the land at public auction.

(ii) From the developers' point of view, the older the Letters B were, the greater their value. That was because the difference between the premium payable by the developer and the actual value of the land would be larger. From the Government's point of view, though, it wanted the older Letters B to be redeemed first. Accordingly, after a while the Government introduced a system of tendering for land under which the land was granted to the applicant who submitted the oldest Letters B.

THE TAXPAYER'S USUAL PRACTICE

Since its incorporation in 1969, the taxpayer had been actively engaged in buying and selling properties (i.e. flats, houses and other buildings) and agricultural land in the New Territories. The Tai Po land was agricultural land, which had not yet been developed. Accordingly, an indicator as to whether the Tai Po land was acquired as a long-term investment or for resale in the course of trade was what the taxpayer usually intended to do with agricultural land which it acquired. If it usually intended to resell such land, it would be more difficult for the taxpayer to prove that when it acquired the Tai Po land it was intending to hold onto it as a long-term investment. Not suprisingly, therefore, much of the evidence which the Board considered, and many of the primary findings of fact which the Board made, related to what the taxpayer usually intended to do with agricultural land which it acquired.

The taxpayer's case was that the properties which it bought were intended for resale. However, different considerations applied to agricultural land which it bought. Its case was that in its first three years of business from 1969 to 1972, it had bought a considerable amount of agricultural land in the New Territories. It claimed that this land was intended for long-term investment. Occasionally, some of this land was sold to raise finance, but the taxpayer claimed that it never deviated from its original intention to hold onto as much land as it could for long-term investment. What the taxpayer principally relied upon to establish its long-term intention was that when this land began to be resumed by the Government, the taxpayer elected to receive Letters B rather than compensation. Occasionally, the taxpayer sold Letters B in the market to raise finance, but for the most part it held onto the Letters B. Thus, by June 1981, the taxpayer was the beneficial owner of the Letters B relating to over 370,000 sq. ft. of agricultural land, and these Letters B had a market value at the time in the region of $250m. Since the Letters B which it had obtained in exchange for land which it had surrendered had, for the most part, been retained by the taxpayer rather than sold in the market, that was strong evidence, so the taxpayer claimed, of its intention to retain any agricultural land still in its ownership for long-term investment.

The Board did not accept this part of the taxpayer's case. Its finding is at para. 20(h) of the Case Stated:

> "We therefore found that it was the Company's general practice to acquire land for the purposes of trade, and as a general rule, land acquired by the Company, constituted the trading stock of the Company. Consequently, profit upon sale of land would attract profits tax under the Ordinance."

That finding amounted to a finding that what the taxpayer <u>usually</u> intended to do with agricultural land which it acquired was to resell it in the course of trade, or (if the land had been exchanged for Letters B in the meantime) to redeem the Letters B for other agricultural land which the Government made available with the intention of selling that land in due course.

The finding of fact in para. 20(h) was attacked by Mr. Martin Lee Q. C. for the taxpayer. He maintained that some of the primary facts upon which the Board relied to make this finding were neutral and inconclusive. Accordingly, to the extent that the Board relied on neutral and inconclusive facts to conclude what the taxpayer really intended to do with undeveloped agricultural land, it is said that the Board's finding as to the taxpayer's usual intention constituted an error of law.

It is important to distinguish between those findings of fact which the Board made as part of the narrative, and those findings which caused the Board to make its finding of fact in para. 20(h). Take, for example, para. 20(a), which reads:

> "The Taxpayer's first object appearing in its Memorandum of Association was to 'purchase for investment or resale and to traffic in land and house and other property...' In its notification to the Inland Revenue Department of its commencement of business, it declared that it was '20th February 1969' when we first purchased land and buildings for re-development and for sales."

If the Board regarded the references to "resale" and "for sales" as indicating that the taxpayer's usual intention in relation to agricultural land was to resell it in the short term, the Board would have been wrong to do so. The references to "resale" and "for sales" could have referred to properties which the taxpayer had always intended to resell in the short term. As it is, I do not think that the Board regarded the language of the objects clause in the taxpayer's Memorandum of Association or its notification to the Inland Revenue Department as probative of anything. If it had, it would have said what it was probative of and why. I think that para. 20(a) appears in para. 20 because that was the para. in which the Board set out any findings of fact which it made, but which had not been agreed for inclusion as agreed facts in para. 10.

A fair reading of the Case Stated leads me to conclude that the primary facts upon which the Board based its finding in para. 20(h) are the facts set out in para. 20(b). That para. makes a number of points, and I shall deal with them separately.

(i) The taxpayer's accounts. The accounting treatment over the years of the agricultural land which the taxpayer owned (and the Letters B which it had been granted on the surrender of such land) was inconsistent with the land being capital assets. First, the land and the Letters B were invariably classified in the taxpayer's balance sheet as current assets, i.e. unlike fixed assets, likely to be held by the taxpayer in the short term only. Secondly, when the land and the Letters B which the taxpayer owned were sold, the gains were included as trading profits in the taxpayer's profit and loss account, and were offered for assessment in the taxpayer's tax computations. Moreover, the accounting treatment on two occasions of particular assets was highly significant:

> (1) In the balance sheet for the year ending 31st March 1991, the classification of three plots of land was changed from current assets to fixed assets. What is important is that the assessor was advised that this change did not reflect any change of intention on the part of the taxpayer. In other words, when the question of the taxpayer's plans for the land had to be specifically addressed, the taxpayer's auditors were accepting that the land remained part of the taxpayer's stock-in-trade rather than a capital asset for long-term retention, notwithstanding the balance sheet reclassification.

(2) In the balance sheet for the year ending 31st March 1993, the classification of two plots of land was changed from current assets to fixed assets. What is important is that the taxpayer's auditors did not respond to an inquiry from the assessor as to whether this change reflected any change of intention on the part of the taxpayer. In other words, the taxpayer's auditors were not suggesting that the land did not remain part of the taxpayer's stock-in-trade, rather than capital assets, notwithstanding the balance sheet reclassification.

Mr. Lee criticised the Board for giving undue weight to these considerations. He relied on the adoption by the Court of Appeal in *Commissioner of Inland Revenue v. Richfield International Land and Investment Co. Ltd.* [1989] 1 HKLR 125 at p.131C-D of a passage in *Lionel Simmons Properties Ltd. v. Commissioners of Inland Revenue* (1980) 53 TC 461 at p.488 which was subsequently approved by the House of Lords:

> "The question...whether an item is held as capital or as stock-in-trade is not concluded by the way in which it has been treated in the owner's books of account." (My emphasis)

Mr. Lee accepted that the Board did not regard the treatment of undeveloped agricultural land and Letters B in the taxpayer's accounts as conclusive, but he asserted that no inference adverse to the taxpayer could have been drawn at all. He relied on the evidence of Mr. Chan, the taxpayer's *alter ego*, to the effect that he had no knowledge of accounting principles, and left all accounting matters to the taxpayer's auditors. The classification of undeveloped agricultural land and Letters B as current assets and the inclusion of the proceeds of their sale in the profit and loss account were not things which he understood. Since the Board did not reject Mr. Chan's evidence on this topic, Mr. Chan's ignorance of the accounts neutralised their effect.

I cannot accept this submission. The taxpayer's auditors must have regarded the taxpayer's agricultural land and letters B as stock-in-trade. No explanation was offered as to why that was done if it was not the case. Auditors do not proceed by way of assumption. They act on the instructions of their clients. It was therefore open to the Board to assume, in the absence of an explanation from the taxpayer's auditors as to how it came about that capital assets were treated as stock-in-trade, that the accounting treatment in fact adopted was correct. The burden of proof was on the taxpayer. It was for the taxpayer to call the auditors to give evidence. It did not do so. In those circumstances, it was open to the Board to conclude that Mr. Chan's professed ignorance of the accounts did not neutralise their effect.

(ii) Capital base. The Board took the view that the taxpayer did not intend to build up "a capital base" for long-term investment. I take the Board to have meant by that

that the taxpayer did not have a large enough portfolio of revenue-producing assets to suggest that it was retaining its agricultural land and Letters B for long-term investment. That is why the Board referred in this context to the fact that the rental income recorded in the taxpayer's accounts over the years was grossly insufficient to service the interest on the taxpayer's borrowings. The taxpayer could only have hoped to service the interest by selling off its assets.

Mr. Lee criticised this approach. He claimed that the interest on the taxpayer's borrowings did not have to be serviced by the sale of assets. It could have been serviced (a) from further loans obtained on the strength of the agricultural land and Letters B owned by the taxpayer, and (b) from the additional rent which further development of the taxpayer's agricultural land generated. I cannot evaluate that argument on the material before me. It assumes (a) that the agricultural land and Letters B owned by the taxpayer was sufficiently unencumbered to be available as security for further borrowings, and (b) that the additional rent which further development of the taxpayer's agricultural land generated would be sufficiently large to assist in the service of interest in a significant way. Since Mr. Lee did not submit that findings on those lines should have been made by the Board on the evidence which it had, I cannot assume that the Board erred in the inference which it drew from what it referred to as the taxpayer's lack of intention to build up a capital base for long-term investment. Indeed, such evidence as the Board had confirmed it in its view: that evidence suggested that term loans granted to the taxpayer for working capital rarely extended beyond 12 months, from which the Board inferred (and Mr. Lee did not argue against this inference) that the taxpayer had to finance repayment from sales.

(iii) Centre of gravity. The Board noted that in all the years (but one) in which the taxpayer traded profitably, its gross profits "far" exceeded rental receipts. It also noted that in the two years in which the taxpayer traded at a loss, its losses were far in excess of the modest income received as rent. The Board concluded that this state of affairs suggested that "the centre of gravity" of the taxpayer's business lay in the sale of land and not in the receipt of rent. I agree with Mr. Lee that this does not "rule out" long-term investment in agricultural land, but to the extent that this evidence was relevant only to what the taxpayer usually intended to do with agricultural land which it acquired, it was less consistent with the taxpayer's intention to retain agricultural land for long-term investment.

In the light of all these considerations, my conclusion is that the Board did not err in law in finding as a fact that what the taxpayer usually intended to do with agricultural land was to resell it in the short term, or (if the land had been exchanged for Letters B) to retain the Letters B only for a short time and either to redeem them for other undeveloped agricultural land which the Government made available or sell them in the market.

THE LETTERS B USED FOR THE TAI PO LAND

The Tai Po land was acquired by the taxpayer (and other developers) with Letters B. Accordingly, another indicator as to whether the Tai Po land was acquired by the taxpayer as a long-term investment or for resale in the course of trade was what the taxpayer had originally intended to do with the Letters B which it had used to acquire the Tai Po land. And if those Letters B had been granted to the taxpayer on the surrender to the Government of undeveloped agricultural land (rather than having been bought by the taxpayer in the market), a further indicator as to what the taxpayer intended to do with the Tai Po land was what the taxpayer had originally intended to do with the agricultural land which it had surrendered in exchange for Letters B which were used to acquire the Tai Po land .

There is nothing in the Case Stated which tells me that the Letters B which were subsequently used to acquire the Tai Po land had been obtained by the taxpayer in return for land which it had surrendered rather than having been bought in the market. But even if one assumes that the Letters B which were subsequently used to acquire the Tai Po land had been obtained by the taxpayer in return for land which it had surrendered, that does not assist the taxpayer, in view of the Board's finding as to what the taxpayer usually intended to do with agricultural land which it owned.

As for the Letters B which the taxpayer had used to acquire the Tai Po land, the Board regarded two matters of particular significance. They are set out in paras. 20(c) and 21(vi) of the Case Stated:

(i) Para. 20(c). In para. 20(c), the Board made the point that the Letters B which the taxpayer used to acquire the Tai Po land were part of a large batch of Letters B which had come from one lot. A sizeable chunk of Letters B from that lot which the taxpayer had not used to acquire the Tai Po land were sold. The proceeds of sale were offered for assessment to profits tax in the year ending 31st March 1982. Mr. Lee attacked the weight which the Board attached to that finding on the basis that a holder of Letters B is entitled to use some of them for one purpose, and to use others from the same batch for another purpose. That is true, but it misses the point that the Letters B which were sold would not have been offered for assessment by the taxpayer's auditors if the auditors had believed that the taxpayer's intention with regard to the Letters B had been to retain them for long-term investment.

(ii) Para. 21(vi). I cannot improve on the clear language of the Board in para. 21(vi). It reads as follows:

> "Although Letter B's are shown in the Land Register as having been derived from the lots which were surrendered in exchange for them, they represent (as can be clearly seen from their terms) no more than a contractual right to an

> entitlement to future exchange of land in the New Territories. As such, they are not land, and one square foot of exchange entitlement in a Letter B is indistinguishable from another square foot. In the light of the Company's general practice (as found by us) of treating its land as trading stock, one would expect, if exceptional treatment was indeed intended, the Company to have set aside an identifiable portion of the original agricultural land intended for such exceptional treatment and segregated this portion from the general pool of land and Letter B's which it traded until it was time to exchange this portion for the [Tai Po] Land. No such evidence was put before us. Indeed, the Company had so far as we can see treated all agricultural land and Letter B's as a pool of interchangeable commodities."

Mr. Lee attacked this reasoning on the basis that there was no need for the taxpayer to identify which Letters B it intended to trade with and which Letters B it intended to keep. "It's like money in the bank", said Mr. Lee. I see the force of that point, but I do not think that Mr. Lee can go so far as to say that the failure to stipulate the different purposes for which particular Letters B were going to be used was completely neutral. It was a point which the Board was entitled to take into account. The weight of the point was a matter for the Board, and I cannot say that the weight which the Board gave to it was so outrageous in its defiance of logic that it constituted an error of law.

For these reasons, my conclusion is that the Board did not err in law in finding as a fact that the taxpayer had not originally intended, when it obtained the Letters B which were subsequently used to acquire the Tai Po land, to retain those Letters B for long-term investment.

THE TAI PO LAND

It is in the light of the Board's findings as to (a) the taxpayer's usual intention in relation to undeveloped agricultural land which it owned, and (b) its actual intention relating to the Letters B which it used to acquire the Tai Po land, that I turn to the primary facts which the Board found relating to the Tai Po land itself. In March 1981, the taxpayer and three other companies agreed to pool their Letters B, and to tender for the grant of two lots of land. One of those lots was the Tai Po land. Formal heads of agreement were drawn up. The tender succeeded in respect of the Tai Po land. Accordingly, in June 1981, the four companies (who I shall refer to as "the developers") entered into supplemental heads of agreement. They obliged the developers to develop and sell the Tai Po land in accordance with the original heads of agreement. The extent of the taxpayer's interest in the land was in the region of 54%.

The development of the Tai Po land ran into problems. The taxpayer's case was that a firm of architects was appointed to prepare plans for the construction of "residential/commercial buildings." Site formation and piling took place in 1982, but the developers were not happy with the plans, and they decided to engage another firm of architects. They also decided to apply for a bank loan to finance the construction costs. However, a difference of opinion between the developers meant that a bank loan was not forthcoming, and finally in July 1985 the developers decided to finance the construction costs "on a flat sharing basis with the building contractor".

In November 1985, the taxpayer's bankers called in various loans they had made to the taxpayer. To avoid the immediate calling-in of the loans, the taxpayer signed a letter of intent under which it confirmed that it would accept any offer for the Tai Po land at or about $103m. The difficulty for the taxpayer was that it could not sell the Tai Po land unless the other three developers agreed. It meant that the other three developers could dictate the terms of the sale. In fact, the Tai Po land was sold in July 1986 to a party approved by the three other developers, even though the taxpayer had obtained a better offer from other interested purchasers. The sum which the taxpayer realised on the sale was $60,170,790.93, which represented its 54% interest in the Tai Po land.

Although there were aspects of this narrative which the Board doubted, the Board did not express any doubt as to whether the sale of the taxpayer's interest in the Tai Po land was a forced sale. The significance of the sale being a forced one was to neutralise any inference which might otherwise be drawn from the fact of the sale about the taxpayer's original intentions for the Tai Po land. The fact that the sale was a forced one meant that the Board could not infer from the fact of the sale that the taxpayer had all along intended to sell the units in the development represented by its 54% interest. Mr Lee did not suggest that the Board fell into that error.

The evidence as to what the taxpayer originally intended to do with the Tai Po land came from Mr. Chan. He said that he intended to retain the units in the development. He did not intend to sell the units off when the development was completed. He wanted to hold on to the units as a long-term investment, retaining the income generated by the rent payable by the tenants of the units. But for the forced sale of the taxpayer's interest in the land, that is what would have happened. However, the Board found as a fact that that was not the taxpayer's intention when it acquired the Tai Po land. The Board must, I think, be treated as having found that the taxpayer had intended to sell the units when the development was completed. Accordingly, the Tai Po land had been acquired for resale in the course of trade.

The criticism of the Board is that although it realised that the appeal turned on what the taxpayer had originally intended to do with the Tai Po land, the Board regarded as decisive what the taxpayer usually intended to do with undeveloped agricultural land which it owned, and what it was actually intending to do with the Letters B which it used to acquire the Tai Po land. For that reason, the Board. it is said, did not actually address the

question whether the taxpayer's intentions with regard to the Tai Po land represented a departure from its previous practice. Its previous practice meant that it must be presumed to have intended to sell the units which were to be built on the Tai Po land when they were completed.

Mr. Lee claimed that the Board's approach is apparent from para. 21(v) of the Case Stated. The Board said:

> "...to secure exemption from the charging provisions of the Ordinance, the Company will have to show that all the acts which found the Company's case are of such 'quality and characteristics' as will prove the company's alleged intention to acquire for the purpose of long term investment the portion of the agricultural land whose Letter B's were used to exchange for the [Tai Po] Land".

However, looking at the Case Stated as a whole, I have reached the conclusion that the Board was doing no more in this passage than stating that the taxpayer's intention with regard to the land which had been surrendered in exchange for the Letters B which were used to acquire the Tai Po land was a factor to be taken into account in deciding what the taxpayer originally intended to do with the Tai Po land. If the Board had regarded the taxpayer's intentions with regard to the original agricultural land as decisive, it would have been unnecessary for the Board to analyse the evidence relating to the taxpayer's intentions with regard to the Tai Po land. And yet that is precisely what the Board did.

One of the matters which the Board regarded as particularly significant were the terms of the original and supplementary heads of agreement. The Board's observations in para. 21(vii) of the Case Stated are worth setting out in full:

> "Further, the joint development agreement signed on 12th March 1981 is more consistent with the Company's general practice of trading in land than with an exceptional practice of retaining land for long term investment. Clause 3(1) of the agreement states that 'the parties shall hereto participate in a joint venture to tender...for exchange, development and sale...' Clause 3(2) sets out the shares of the parties and states that the said shares shall be the share of the parties hereto... and all profits and losses shall be shared accordingly'. Clause 4 requires unanimous agreement for, inter alia, 'the prices of the units of the new building'. The Supplementary Agreement dated 22nd June 1981, reaffirms that the 'parties hereto shall proceed to develop and sell' the land. When the joint venture ran into difficulties in obtaining a building mortgage, the method agreed upon was to allocate flats in the

> new building to the contractor in order to finance development. But otherwise, there was no other variation to the common intention of selling the flats."

Mr. Lee contended that the terms of the agreements were not inconsistent with Mr. Chan's evidence. The individual units in the development would belong to the individual developers, the number and sizes of the units reflecting the size of their individual investments. Accordingly, the reference in the agreement to the units being sold was a reference to the sale of such individual units in the development which individual developers chose to sell, and was not a statement of the intention of any particular developer. I agree with Mr. Lee that that is a possible reading of the terms of the agreements, but the fact remains that there is no reference in any of the extracts of the agreements reproduced in the Case Stated to any of the developers intending to retain the units for their rental income and for their increase in value in the course of time. The only references are references to the sales of the units. In those circumstances, I cannot criticise the Board for relying on the terms of the agreements to support its ultimate conclusion that the Tai Po land had been acquired for resale in the course of trade. In addition, the opening sentence in para. 21(vii) (as does para. 21(vi)) shows that the Board was clearly alive to the crucial question whether the taxpayer's intentions with regard to the Tai Po land constituted an exceptional departure from its usual practice.

Finally, the language which the Board used in para. 21(v) of the Case Stated enabled Mr. Lee to take a point about the standard of proof: to require the taxpayer to prove that "all" the acts relied upon established what the taxpayer's intention had been was to impose too high a standard of proof on the taxpayer. I reject that argument. I regard the words "all the acts" in para. 21(v) as meaning "the acts when taken as a whole". On that basis, no criticism can properly be made as to the standard of proof which the Board imposed on the taxpayer.

CONCLUSION

For these reasons, I have not discerned any error of law on the part of the Board which vitiates its decision. This appeal must accordingly be dismissed. At present, I see no reason why the costs of the appeal should not follow the event, and I therefore make an order nisi that the taxpayer pays to the Commissioner his costs of the appeal to be taxed if not agreed.

(Brian Keith)
Judge of the High Court

Mr. Martin Lee Q. C. and Mr. Dennis Law, instructed by Messrs. Charles Yeung Clement Lam & Co., for the Appellant.

Mr. Robert Andrews, instructed by the Attorney-General's Chambers, for the Respondent.