FACV No. 9 of 2000

IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

FINAL APPEAL NO. 9 OF 2000 (CIVIL)
(ON APPEAL FROM CACV NOS. 20 AND 21 OF 1999)

BETWEEN:

COMMISSIONER OF INLAND REVENUE	**Appellant (Respondent)**
- and -	
SECAN LIMITED	**Respondents (Appellants)**
RANON LIMITED	

Court:	Mr Justice Bokhary PJ, Mr Justice Chan PJ, Mr Justice Ribeiro PJ, Sir Alan Huggins NPJ and Lord Millett NPJ
Dates of Hearing:	13 – 15 November 2000
Date of Judgment:	8 December 2000

J U D G M E N T

Mr Justice Bokhary PJ:

I agree with the judgment of Lord Millett NPJ.

Mr Justice Chan PJ:

I agree with the judgment of Lord Millett NPJ.

Mr Justice Ribeiro PJ:

I agree with the judgment of Lord Millett NPJ.

Sir Alan Huggins NPJ:

I agree with the judgment of Lord Millett NPJ.

Lord Millett NPJ:

Introduction

The central question in these appeals, though not expressed in such terms in the courts below, is whether the Inland Revenue Ordinance, Cap. 112, ("the Ordinance") prohibits the capitalisation of interest for the purpose of computing the taxpayer's assessable profits and allowable losses. The resolution of that question depends on the proper accountancy treatment of capitalised interest, and this is the aspect of the case on which the argument has centred. Capitalisation of interest is so common, however, and the accountancy principles involved so well understood, that it is surprising that they should any longer be capable of dispute. The difficulties have arisen partly from the way in which the respondents have chosen to present their profit and loss accounts, and partly because attention below was directed almost exclusively to the wrong side of the account.

The facts

The respondents are members of the same group of companies and carry on the business of property development. Their cases are virtually identical, and for convenience I shall adopt the practice employed below and confine this judgment to the appeal in respect of Secan Limited ("the taxpayer").

The taxpayer's first year of trading ended on 31 December 1988. During the year it acquired a development site for HK$2,130,660,924 and incurred development costs of HK$147,272,472. As is common in Hong Kong, it met these costs by borrowing from financial institutions. It thereby incurred interest and financing charges of HK$130,607,084. It could have treated these charges as part of the general expense of carrying on the business unmatched by any corresponding increase in the value of the assets, thereby producing a substantial loss for the year which it could then carry forward for tax purposes to set against the profits of a future year. In accordance with normal practice, however, it elected to capitalise the interest charges by treating them as part of the cost of the development in the same way as it treated the cost of the site and the construction costs. The taxpayer brought its assets, including work in progress and completed properties held for sale (described as "property under development") into its balance sheet as it was required to do at the lower of cost or net realisable value. At all material times the value of these assets equalled or exceeded cost, and accordingly they appeared in the balance sheet at cost.

No sales took place during the year, so that the value of property under development at the end of the year was shown in the balance sheet at HK$2,408,540,480, being the aggregate of the costs of acquisition, development costs and interest charges. None of these figures appeared in the taxpayer's published profit and loss account, which was limited to professional fees, printing and stationery and general expenses and recorded a total loss before taxation of HK$31,300.

Similar accounting policies were adopted in the following two years during which no sales took place. In each of these years, further development costs and interest charges were incurred and carried to the balance sheet by adding them to the value of property under development. The profit and loss accounts were prepared on the same basis as before, that is to say they contained no entries for the costs of development and interest charges incurred during the year or for the matching increase in the value of property under development. Thus in the year ended 31 December 1989 the profit and loss account showed a net loss before taxation of HK$20,270, while a note to the accounts showed that interest of HK$250,484,062 had been capitalised and added to the value of property under development. The corresponding figures for the year ended 31 December 1990 were HK$552,564 (profit) and $274,725,465. At that date the value of property under development inclusive of capitalised interest was shown in the balance sheet at HK$3,480,840,161. The tax computations submitted by the taxpayer in each of its first three years were based on its published profit and loss accounts and reflected the figures shown therein with only minor adjustments. It is common ground that the taxpayer's financial statements, including its profit and loss accounts, gave a true and fair view of its profits or losses for each of these years. Any increase in the cost of work in progress, whether resulting from the incurring of further construction costs or the payment of interest, was matched by a corresponding increase in the value of property under development and gave rise to neither profit nor loss. Thus the exclusion of both figures from the profit and loss account did not affect the final balance on the account. The two figures would have cancelled each other out, reflecting the fact that the acquisition of an asset at a cost equal to its value produces neither a profit nor a loss.

Prior to the year 1991 the taxpayer made no claim to deduct interest or to carry forward losses in excess of those shown in its tax computations. Indeed, it paid tax on the profits in 1990 after carrying forward the small losses from the two earlier years. In the year 1991, however, the taxpayer began to make sales of completed flats. Had it continued to adopt the same accounting policies as in previous years, it would have obtained relief for its interest payments by treating them as part of the cost of sales and deducting an appropriate proportion of the total from the proceeds of sales made in the current year. Instead it elected to rewrite its accounts retrospectively in order to set the whole of the interest charges for the earlier years (HK$662,918,728) as well as the interest charge in the current year (HK$210,750,568) against the proceeds of sales made in the current year. Recognising that the deduction of the aggregate of these two sums (HK$873,669,296) would give a double deduction for the cost of sales in the current year if this cost was taken from its books (where interest had already been taken into account as part of the costs of the development) the taxpayer reduced the figure of HK$873,669,296 by HK$63,205,546. By this process, for which there is no statutory authority, the taxpayer effectively recalculated the cost of sales in the current year by retrospectively adjusting its books to exclude capitalised interest from the calculation of the cost of sales.

The taxpayer claims that it was bound to calculate its assessable profits in this manner because the Ordinance requires interest to be deducted in the year in which it is incurred. It would be natural to suppose that this would preclude the taxpayer from deducting interest incurred in previous years from the sale proceeds of the current year, as it was seemingly seeking to do. The taxpayer, however, contends that, by failing to deduct interest in the years in which it was incurred, its tax computations understated the loss in each of those years. Insofar as its claim in the current year relates to interest incurred in earlier years, the taxpayer argues, it should be understood not as a claim to deduct interest but as a claim to carry forward the understated losses of those years and set them against the profits of the current year.

It is hardly necessary to observe that this is not how the claim was originally formulated nor how the tax computations were prepared. The sum of HK$662,918,728 representing interest incurred in the first three years was not brought forward as losses suffered in the earlier years to be set off against the assessable profit of the current year. It was deducted from the sale proceeds of the current year in order to calculate the assessable profit of the current year, a very different process. The objection is, perhaps, excessively formal; but it suggests that there is likely to be something wrong with a computation which produces the same result as would be produced by an impermissible one.

The Commissioner's response to the taxpayer's claim is straightforward. The taxpayer's financial statements for the first three years, which are agreed to have shown a true and fair view of the taxpayer's affairs, were correct. So were the tax computations. The Ordinance does not prohibit the capitalisation of interest. Interest *was* deducted in each of the years in which it was incurred but, because it was capitalised, the deductions did not give rise to any losses capable of being carried forward.

The Court of Appeal (Godfrey VP, Rogers and Woo JJA) held in effect that the Ordinance prohibits the capitalisation of interest, with the result that the tax computations must be redrawn to accord with the Ordinance. They treated the question whether interest had been deducted as a question of fact which could be determined simply by looking at the profit and loss accounts and tax computations prepared by the taxpayer. No figures for interest appeared there. They concluded that this "clearly" demonstrated that interest had not been deducted. With respect, this was to confuse presentation with computation. They held that this was confirmed by the evidence of Mr Fong Hup, the accountant who was responsible for drawing up the taxpayer's financial statements. He stated that he had charged interest (together with development costs) to the development account in the taxpayer's books and then carried the figure directly to the balance sheet without putting it through the profit and loss account. This merits further examination, but it is mere bookkeeping and should not be confused with the application of accounting principles to arrive at the true amount of the profit or loss for the year.

Accountancy evidence

A good deal of accountancy evidence was deployed before the Board of Review. The respondents called expert accountancy evidence as well as the evidence of their own accountants. It is, therefore, worth reminding oneself of the oft-quoted passage in the judgment of Sir John Pennycuick V-C in *Odeon Associated Theatres Limited v. Jones* 48 TC 257 at p. 273 in which he explained the relationship between accountancy evidence and the ascertainment of the taxpayer's assessable profits as follows:

> "The concern of the Court in this connection is to ascertain the true profit of the taxpayer. That and nothing else, apart from express statutory adjustments, is the subject of taxation in respect of a trade. In so ascertaining the true profit of a trade the Court applies the correct principles of the prevailing system of commercial accountancy. I use the word 'correct' deliberately. In order to ascertain what are the correct principles it has recourse to the evidence of accountants. That evidence is conclusive on the practice of accountants in the sense of the principles on which accountants act in practice. That is a question of pure fact, but the Court itself has to make a final decision as to whether that practice corresponds to the correct principles of commercial accountancy. No doubt in the vast proportion of cases the Court will agree with the accountants, but it will not necessarily do so. Again, there may be a divergency of view between the accountants, or there may be alternative principles, none of which can be said to be incorrect, or, of course, there may be no accountancy evidence at all. The cases illustrate these various points. At the end of the day the Court must determine what is the correct principle of commercial accountancy to be applied. Having done so, it will ascertain the true profit of the trade according to that principle, and the profit so ascertained is the subject of taxation."

The legislation

Three sections of the Ordinance are relevant to these appeals. Section 14 imposes a charge to tax on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits therefrom "as ascertained in accordance with this Part [of the Ordinance]". Losses, of course, are merely the mirror image of profits, and must be ascertained for tax purposes in the like manner. Both profits and losses therefore must be ascertained in accordance with the ordinary principles of commercial accounting as modified to conform with the Ordinance. Where the taxpayer's financial statements are correctly drawn in accordance with the ordinary principles of commercial accounting and in conformity with the Ordinance, no further modifications are required or permitted. Where the taxpayer may properly draw its financial statements on either of two alternative bases, the Commissioner is both entitled and bound to ascertain the assessable profits on whichever basis the taxpayer has chosen to adopt. He is bound to do so because he has no power to alter the basis on which the taxpayer has drawn its financial statements unless it is inconsistent with a provision of the

Ordinance. But he is also entitled to do so, with the result that the taxpayer is effectively bound by its own choice, not because of any estoppel, but because it is the Commissioner's function to make the assessment and for the taxpayer to show that it is wrong. Capitalisation of interest is not mandatory, but it is permitted in circumstances such as those as in the present case where it is in accordance with accepted principles of commercial accounting. The taxpayer elected to capitalise interest when preparing its financial statements, and accordingly its profits and losses must be assessed on the same basis unless this is prohibited by the Ordinance. The taxpayer contends that it is prohibited by section 16.

Thus section 16 of the Ordinance lies at the heart of this case. It provides that in ascertaining the assessable profits for any year of assessment:

> "there *shall* be deducted *all outgoings and expenses* to the extent to which they are incurred during the basis period for that year of assessment … including –
>
> (a) …interest …" (my emphasis).

Both parties agree that the section is mandatory, that is to say, that it positively compels the taxpayer to deduct outgoings, including interest, in ascertaining its assessable profits. But the profits of a business cannot be ascertained without deducting the expenses and outgoings incurred in making them, and the section is not needed to authorise them to be deducted. Sections 16 and 17 (which disallows certain deductions) are enacted for the protection of the revenue, not the taxpayer, and in my opinion section 16 is to be read in a negative sense. It permits outgoings to be deducted *only* to the extent to which they are incurred in the relevant year. In this respect there is no difference between the law of Hong Kong and the law of England. In both jurisdictions expenses and outgoings are deductible in the year in which they are incurred and not otherwise. Nothing, however, turns on this, for it is common ground that the taxpayer is entitled to re-open an assessment if an error, such as an accidental failure to make a deduction, is discovered in time.

Two observations are necessary at this point. First, the section is concerned solely with deductions, that is to say the *debit* side of the account. It says nothing about the *credit* side. Secondly, the section is not limited to interest. It applies to expenses and outgoings of all kinds, provided only that they are of a revenue and not a capital nature. Thus it applies to the original cost of the site and construction costs as it applies to interest. It is not clear why the taxpayer confined its claim to deduct the relatively modest amount of losses arising from the interest charges (HK$662,918,728). If its arguments are correct, it was entitled to deduct the whole HK$2,408,540,480 in the first year alone, and to carry forward losses totalling in excess of HK$3 billion at the end of 1990. The idea that the taxpayer in fact sustained such losses in its first three years is, of course, ridiculous. Any claim that it did must founder on the elementary principle that the acquisition of an asset at a value equal to its cost gives rise to neither profit nor loss.

Section 19C(4) of the Ordinance enables a corporate taxpayer which has sustained a loss in any year of assessment in a trade, profession or business to set off the amount of that loss against any of its assessable profits for that year of assessment and to the extent not so set off to carry them forward and set them off against its assessable profits in subsequent years. It is not disputed that the taxpayer is entitled to carry forward the losses which it incurred in its first three years and set them off against its assessable profits in the current year. What is disputed is the true amount of those losses.

Capitalisation of interest

Capitalisation of interest is justified only in certain circumstances. This is explained in Statement of Accounting Practice No. 2.205 (Accounting Guideline on Capitalisation of Borrowing Costs) published by the Council of the Hong Kong Society of Accountants. The Statement was produced in evidence given to the Board of Review on behalf of the taxpayer by Mr Fong Hup.

The Statement distinguishes between two different situations. Normally borrowing costs are essentially period costs and are charged to income without any contra credit regardless of how the borrowing is applied. The interest is treated, like rent or office overheads, as part of the general costs of carrying on the business. In certain specific instances, however,

> " the borrowing costs can be regarded as forming part of the cost of the asset with which they can be identified and can be capitalised as part of the carrying amount of the asset".

The justification for this treatment is stated as follows:

> "(a) Borrowing costs incurred as a consequence of a decision to acquire an asset are not intrinsically different from other costs which are commonly capitalised. If an asset requires a substantial period of time to bring it to the condition and location necessary for its intended use, the borrowing costs incurred during that period as a result of expenditures on the asset are a part of the cost of acquiring the asset.
>
> (b) Failure to capitalise the borrowing costs associated with the acquisition of assets reduces earnings merely as a consequence of the acquisition of assets."

Thus capitalisation of interest has nothing to do with the *debit* side of the account. Whether interest is capitalised or not, it represents an outgoing and must be deducted in ascertaining the taxpayer's profits or losses. When it is capitalised, however, it is treated as part of the cost of acquiring an asset, in this case the property under development. Since assets are valued at the lesser of cost and net realisable value, the cost of an asset is normally the same as its carrying amount or value in the balance sheet. Any increase in its cost is reflected by a corresponding increase in its value. The amount or value of an asset is, of course, a *credit* on the asset side of the balance sheet. Provided that the directors are satisfied that the value of the asset is not less than its increased cost, they are entitled to increase the carrying value of the asset in the balance sheet by an amount equal to the interest, exactly as if the interest represented the cost of an additional asset. This eliminates any reduction of earnings consequent on the payment of interest, not by omitting to debit the outgoing (representing the *cost* of the asset), but by bringing in a corresponding credit (representing its *value*) on the other side of the account.

There can be no inconsistency between section 16 of the Ordinance, which is concerned with debits, and the capitalisation of interest, which is concerned with credits. This is sufficient to dispose of the appeals, since there is no basis on which a taxpayer can challenge an assessment based on its own financial statements, so long as these are prepared in accordance with ordinary accounting principles, show a true and fair view of its affairs and are not inconsistent with a provision of the Ordinance.

It only remains to explain what at first sight appears to be a paradox. How can the taxpayer's financial statements be prepared in accordance with ordinary accounting principles if they omit to deduct interest charges (or for that matter other outgoings such as the cost of the site and construction costs)? On the other hand, how can the deduction of these costs give a true and fair view of the taxpayer's affairs if it produces accrued losses in excess of $3 billion at the end of the third year, when the taxpayer obviously did not sustain losses of this magnitude? The answer can be found by considering how a trader's profits or losses are ascertained and how the taxpayer's accounts were in fact prepared.

The ascertainment of profits or losses

A trader's profits or losses must be ascertained separately for each year of account. For this purpose an account, customarily called a profit and loss account, is prepared in which the receipts and outgoings incurred during that year are entered. The expressions "receipts" and "outgoings" are somewhat misleading, for they are a relic of the days when accounts were drawn on a cash basis. In *Naval Colliery Co. Ltd v. C.I.R.* 12 TC 1017 at 1027 Rowlatt J observed:

> "It is quite true and accurate to say, as Mr Maugham says, that receipts and expenditure require a little explanation. Receipts include debts due and they also include, at any rate in the case of a trader, goods in stock."

Today the rule applies generally to every kind of trade, profession or business which draws its accounts on an accruals basis, and receipts include work in progress as well as goods held for sale. In what follows I shall use the expression "stock" to include not only property held for sale (i.e. completed flats awaiting a purchaser) but also work in progress (i.e. uncompleted parts of the development).

The first step is to ascertain the trading profits or losses for the year. This is done by debiting the opening stock (which is a purchase from the previous year of account) and purchases during the year and crediting the closing stock (which is a sale to the next year of account) and sales made during the year. The balance represents the trading profit or loss for the year. The figures are sometimes entered directly in the profit and loss account ("above the line") and sometimes in a separate trading account with only the net balance taken to the profit or loss account ("below the line"). Other receipts and outgoings, such as rents and interest receivable and payable, wages and salaries and office overheads, are then credited and debited in the profit and loss account. The balance represents the net profit or loss for the year and is taken to the balance sheet. Interest payable is normally treated as an overhead and debited below the line. When it is capitalised, however, it is treated as a purchase and debited above the line or in the separate trading account.

The need to enter the opening and closing stock is well established by the authorities: see *Whimster & Co. v. I.R.C.* (1925) 12 TC 813; *I.R.C. v. Cock Russell & Co. Ltd* (1949) 29 TC 387; *Patrick v. Broadstone Mills Ltd* (1953) 35 TC 44; *Duple Motor Bodies v. Ostime* (1961) 39 TC 537; *B.S.C. Footwear Ltd v. Ridgway* (1971) 47 TC 495; *Gallagher v. Jones* [1994] Ch 107. In *Duple Motor Bodies v. Ostime* at p. 569 Lord Reid explained:

> " It appears that at one time it was common to take no account of the stock-in-trade or work in progress for Income Tax purposes; but long ago it became customary to take account of stock-in-trade, and for a simple reason. If the amount of stock-in-trade has increased materially during the year, then in effect sums which would have gone to swell the year's profits are represented at the end of the year by tangible assets, the extra stock-in-trade which they have been spent to buy; and similar reasoning will apply if the amount of stock-in-trade has decreased. So to omit the stock-in-trade would give a false result. It then follows that some account must be taken of work in progress …".

In *Patrick v. Broadstone Mills Ltd* at p. 68 Singleton LJ laid it down as a general proposition that

> " You cannot arrive at the profits of the year without taking into account the value of the stock you have at the beginning of, and at the end of, the accounting year."

In *I.R.C. v. Cock Russell & Co. Ltd* at p. 392 Croom-Johnson J said:

> " There is nothing in the relevant legislation which indicates that in computing the profits and gains of a commercial concern the stock-in-trade at the start of the accounting period should be taken in and that the amount of the stock-in-trade at the end of the period should also be taken in. It would be fantastic not to do it; it would be utterly impossible accurately to

> assess profits and gains merely on a statement of receipts and payments or on the basis of turnover. It has long been recognised that the right method of assessing profits and gains is to take into account the value of the stock-in-trade at the beginning and the value of the stock-in-trade at the end as two of the items in the computation.”

On the taxpayer’s behalf it was submitted that the purpose of entering the opening and closing stock is to ascertain the cost of sales and that there is no need to do so if there are no sales. I do not accept this proposition. The process is undertaken for the purpose of ascertaining the trading profits or losses for the year. The cost of sales is merely one element in the computation. But in any event there are always some sales, for the stock is carried forward in the balance sheet from year to year and is treated as a sale by one year to the next. But I can accept the taxpayer’s argument to this extent, that if there are purchases during the year but no sales to third parties, the cost of the purchases (the debit) is normally matched by the increase in the value of the stock (the credit). Since the figures cancel each other out, they do not affect the profits or losses for the year. In these circumstances it does not matter whether they are entered and set off against each other in the profit and loss account itself or whether this is done in the trading account or elsewhere. This is merely a matter of presentation.

Even more remarkably it was submitted on the taxpayer’s behalf that if it is treated as having deducted interest in each of the first three years by setting it against the increase in the value of property under development then it cannot deduct it again from the sale proceeds in the current year. The argument is misconceived, and is based on a confusion between the *cost* of an asset (which is a debit) and its *value* (which is a credit). The fact that they may have the same monetary value does not mean that they are the same thing. When interest is capitalised it is treated as part of the *cost* of an asset. Since the asset is brought into the accounts at the lower of cost and net realisable value, both its *value* and its *cost* are increased by the same amount. There is thus no net impact on the profit and loss account. But the cost of the asset as well as its value is carried forward from year to year (hence the expression “the carrying amount”) by the annual process to which I have already referred. In order to ascertain the profits or losses of each year of account separately, each year is treated as if it were a different trader. The *value* of the closing stock of one year is treated as sold to the next year and becomes the *cost* of purchasing the opening stock of that year. Any increase in the cost of an asset (including capitalised interest) debited in one year is set off against the corresponding increase in the value of the asset during that year, but the increased cost is carried forward to the following year and is ultimately available to be deducted from the sale proceeds. The effect of the process is not to allow the trader a double deduction, but to defer the deduction until the asset is realised by sale to a third party.

The preparation of the taxpayer’s accounts

Mr Fong Hup explained how he prepared the taxpayer’s accounts. He said that he debited the interest payable to the development cost account and took the figure directly into the balance sheet without putting it through the profit and loss account.

The Court of Appeal took this to confirm what they could see with their own eyes, viz. that the interest had not been deducted in the profit and loss account.

In fact this evidence established that the interest *was* deducted in computing the taxpayer's financial results. It was debited, not to the profit and loss account, but to the development cost account, another revenue account, in which the costs of the development including interest were duly entered. Mr Fong Hup's statement that he took the figure straight to the balance sheet is an abbreviated version of the truth. It is true in the trivial sense that the development cost account was the source of the figure which he entered in the balance sheet for the value of property under development. But, as I have explained, although the two figures are the same they do not represent the same thing. The cost of the development is a *debit:* "property under development" in the balance sheet is an *asset.* Accountants do not possess a philosopher's stone which can turn a debit into an asset. The figure which Mr Fong Hup took from the development cost account represented the *cost* of the development; the figure which he entered in the balance sheet represented the *value* of the development. In the process he must be taken mentally to have set them off against each other, and because they cancelled each other out there was no net balance to bring into the profit and loss account.

The taxpayer's accounts contain a note explaining the treatment of interest. This is required by the Companies Ordinance. Shareholders are entitled to be told whether interest has been capitalised and if so how much. They are entitled to know how much of the value of the assets shown in the balance sheet is attributable to capitalised interest, since this is a very weak indication of value. It is dependent on the directors' belief that the market value of the asset has appreciated since its purchase by an amount at least equal to the amount of interest which the company has incurred, and this may be optimistic. In the present case the note correctly shows the amount of interest payable as a debit and a like sum of capitalised interest as a credit. One figure represents the cost of interest taken from the development cost account. The other figure represents the matching amount of value taken to the balance sheet.

Conclusion

In my judgment the taxpayer's accounts in each of the first three years of trading were properly prepared in accordance with ordinary accounting principles and in conformity with the Ordinance and showed a true and fair view of the taxpayer's losses. In the computation of these losses interest was properly deducted by being debited and then set off against the corresponding increase in the value of property under development. The taxpayer now claims to bring forward losses which, because it capitalised the interest, it did not sustain. These fictitious losses arise from double counting. The process involves charging the interest to the development cost account in order to prevent the increased value of property under development creating a trading profit for the year to be carried into the profit and loss account, and at the same time charging it to the profit and loss account in order to increase the loss for the year.

I would allow both appeals and restore the orders of the Board of Review. It was accepted by both sides that costs here and in the courts below should follow the event. Accordingly I would award the Commissioner his costs here and below.

Mr Justice Bokhary PJ:

The Court unanimously allows both appeals, restores the orders of the Board of Review, and awards the Commissioner his costs here and the courts below.

(Kemal Bokhary) Permanent Judge	(Patrick Chan) Permanent Judge	(R A V Ribeiro) Permanent Judge	(Patrick Chan) Permanent Judge

(Sir Alan Huggins) Non-Permanent Judge	(Lord Millett) Non-Permanent Judge

Mr David Goldberg QC (instructed by the Department of Justice) and Miss Jenny Fung (of that department) for the appellant

Mr John Gardiner QC and Mr John Swaine (instructed by Messrs Woo, Kwan, Lee & Lo) for the respondents