Case No. D12/18

Profits tax – sale of property – intention at time of acquisition – onus of proof on the appellants – sections 2(1), 14(1), 60(1) and 68(4) of the Inland Revenue Ordinance ('the IRO')

Panel: Cissy K S Lam (chairman), Lai Sze Wai Alex and Richard Zimmern.

Date of hearing: 15 May 2018.
Date of decision: 22 October 2018.

In respect of the Subject Property:

- The Appellants signed a provisional agreement dated 15 October 2009 for an acquisition price of $4,259,400.

- On 5 and 7 February 2010, the Appellants appointed Estate Agent G and F respectively to sell the Subject Property at $4.8 million.

- The Appellants sold the Subject Property as Confirmor on 9 July 2010 for $4.8 million.

The Appellants claimed that the profits in respect of the disposal of the Subject Property were not chargeable to tax under section 14(1) of the IRO.

Held:

1. The acquisition of the Subject Property was a trade and not a capital investment.

    - The acquisition and disposal of the Subject Property objectively depicts an opportune purchase and sale for a quick profit than a purchase for permanent investment.

    - The timing of sale is not connected with the finance of the acquisition of another property in face of the evidence from the estate agents.

    - The claim of absence of mortgage of the Subject Property by the developer delay cannot stand in light of documents obtained from the developer.

- The Appellants made a clear declaration on the Questionnaire that they did not use or intend to use the Subject Property as self-residence or for letting.

- The sale of the Subject Property was not an isolated incident in view of the fact that many properties under the Appellants' belt had been sold at one time or another.

- The professed intention that the Subject Property was for personal occupation in preparation for their daughters' schooling is unconvincing.

2. The sale and purchase of the Subject Property constituted a trade and the profits arising therefrom was subject to profits tax under section 14(1) of the IRO.

Appeal dismissed and costs order in the amount of $10,000 imposed.

Cases referred to:

Simmons v IRC [1980] 1 WLR 1196, (1980) 53 TC 461, H L
Marson v Morton [1986] STC 463
All Best Wishes Ltd v Commissioner of Inland Revenue (1992) 3 HKTC 750
Lee Yee Shing v Commissioner of Inland Revenue [2008] 3 HKLRD 51;
Real Estate Investment (NT) Ltd v Commissioner of Inland Revenue (2008) 1 HKCFAR 433
Shui On Credit Co Ltd v Commissioner of Inland Revenue (2009) 12 HKCFAR 392

Appellant in person.
Yu Wai Lim and Chan Wun Fai, for the Commissioner of Inland Revenue.

Decision:

1. The Appellants objected to the Profits Tax Assessment for the year of assessment 2010/11 ('2010/11 Assessment') raised on them in respect of the disposal of a Property P7 ('the Subject Property'). The Appellants claimed that the profits therefrom were profits arising from the sale of a capital investment and thus not chargeable to tax under section 14(1) of the Inland Revenue Ordinance, Chapter 112 ('the IRO').

2. The Appellants are husband and wife. We shall refer to them collectively as the Appellants and individually as A1 (the husband) and A2 (the wife).

The Facts

3. A1 attended the hearing and gave evidence on behalf of himself and A2. We were not impressed by his evidence. He was not forthright in his answers and in many parts his evidence was not consistent with the documents. In the event of any contradictions, we prefer the documents.

4. On the basis of all the evidence, including A1's testimony, the documents and the facts stated in the determination dated 22 December 2017 ('the Determination'), we find the facts as per paragraphs 0 to 25 below.

5. The Appellants were married on 27 April 2004.

6. They have two daughters born on 30 May 2006 and 14 September 2009 respectively.

7. (1) The elder daughter started Kindergarten B in September 2008, Kindergarten C (Kowloon Tong) in September 2009 and Primary School D1 (Hong Kong Island) in September 2012.

(2) The younger daughter started Kindergarten E Pre-School (West Kowloon Station) in September 2011 and Kindergarten D2 in September 2012.

8. The Appellants have owned, as well as purchased and sold, a number of properties jointly and severally over the years. A summary of their properties is attached as Schedule 1 hereof.

9. For the Subject Property, the Appellant purchased it directly from a friend who for personal financial reasons did not want to complete the purchase.

10. They signed a provisional agreement dated 15 October 2009 which provided for payment of the purchase price as follows:

	HK$	
On signing the provisional agreement	137,400	366,400
On or before 30-11-2009	229,000	
Upon completion	3,893,000	
	4,259,400	

11. At the time of purchase, the Subject Property was under construction. Occupation Permit was issued on 29 January 2010. Consent to assign was issued on 30 July 2010.

12. As evidenced by letter dated 7 February 2018 from Estate Agent F, A2 appointed Estate Agent F on 5 February 2010 to sell the Subject Property at $4.8 million. A2 maintained the asking price of $4.8 million and the Subject Property was sold through

Estate Agent F at that price on 9 July 2010. At no time did A2 instruct Estate Agent F to let out the Subject Property.

13. As evidenced by letter dated 23 February 2018 from Estate Agent G, the Appellants likewise appointed Estate Agent G on 5 February 2010 to sell the Subject Property at $4.8 million. A2 maintained the asking price of $4.8 million. In addition, on 29 April 2010, the Appellants agreed to also put it on the rental market at an asking rent of $13,000.

14. The Land Register confirms that (1) one Ms H ('the 1st purchaser') bought the Subject Property on 5 August 2009 at $4,580,000; (2) she sold the Subject Property to the Appellants on 15 October 2009 for $4,259,400 (i.e. a discount of $320,600); (3) the Appellant sold the Subject Property as confirmor on 9 July 2010 for $4.8 million.

15. On 26 August 2010, the developer at the request of the Appellants assigned the Subject Property to the ultimate purchaser direct.

16. On 7 November 2016, the the Deputy Commissioner of Inland Revenue ('the Commissioner') referring to the sale of the Subject Property requested the Appellants to submit a Questionnaire (IR1215B) ('the Questionnaire') stating that : 'In order to determine whether the relevant transactions constitute a business, a trade or an adventure in the nature of trade, you are required to complete and return … the attached Questionnaire in respect of EACH property sold by you since 1 April 2010.'

17. The Appellants submitted the Questionnaire on 28 November 2016 and provided, *inter alia*, the following particulars:

(1)		Subject Property	Property P6[1]	Property P5[2]
(2)	Intended or actual usage of the property			
	(a) Occupation as self-residence	No	No	No
	(b) For letting	No	Yes	Yes
	(c) If neither, state the intended or actual usage	'It was sold as a pre-sale agreement'		
(3)	Reason(s) for selling the property			
	(a) Change of residence	Yes	Yes	No

[1] P6 in Schedule 1
[2] P5 in Schedule 1

	Subject Property	Property P6[1]	Property P5[2]
(b) Reason for changing to new residence	'Moved to Hong Kong side close to schools of their daughters.'	'Moved to Hong Kong side close to schools of their daughters.'	
(d) Location of new residence	'Current address'[3]	'Current address'	

18. Following the Questionnaire, by notice dated 27 January 2017, the assessor required the Appellants to submit Profits Tax Return for the year of assessment 2010/11 ('the Return').

19. The Appellants filed the Return on 3 March 2017 and declared that they did not have any Assessable Profits.

20. In a letter dated 27 February 2017 enclosed with the Return, they claimed that the sale and purchase of the Subject Property did not constitute a trade for the following reasons:

(1) They had stated in the Questionnaire that the reason for sale of the Subject Property was to move to Hong Kong Island in order to live close to the school where their two daughters currently went to Primary School D1 and Kindergarten D2 ('School D1 and D2').

(2) When they bought Property P8, they did not have sufficient finance and the bank suggested that they sold some of their properties. For this reason, they sold Property P6 as well during the same period of time. They did not have an alternative when the banks tightened their credit policy in Hong Kong.

(3) The sale of the Subject Property was a one-off transaction that they never did before. They bought the property for long term purpose. However, the handover of the property did not happen after nearly two years of holding period. They did not have a chance to mortgage it or to lease it out for rental purpose or moving in for their own use.

(4) They did not have an intention to trade as they never bought and sold in such a fashion without mortgage or leasing.

(5) They did not buy the Subject Property using a limited company or business registration.

[3] i.e. P8 in Schedule 1 – Property P8

(6) They invested in properties as long term investment for the purpose of retirement. They never speculated or traded in property market before.

21. The Assessor considered that the gain on disposal of the Subject Property was chargeable to Profits Tax. She estimated the gain and on 14 March 2017 raised on the Appellants the following 2010/11 Assessment:

	HK$
Assessable profits	318,000
Tax payable thereon	47,700

22. The Appellants objected to the above assessment.

23. By a letter dated 27 July 2017 the Assessor requested the Appellants to provide further information and documents to substantiate their objection. The Revenue did not receive any reply from the Appellant.

24. By the Determination the Commissioner confirmed the assessment and rejected their claim.

25. The Appellants appealed to this Board by Notice of Appeal dated 18 January 2018.

Relevant IRO provisions

26. By section 14(1), '*...profits tax shall be charged for each year of assessment on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) ...*'

27. Section 60(1): '*Where it appears to an assessor that for any year of assessment any person chargeable with tax has not been assessed or has been assessed at less than the proper amount, the assessor may, within the year of assessment or within 6 years after the expiration thereof, assess such person at the amount or additional amount at which according to his judgment such person ought to have been assessed, and the provisions of this Ordinance as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder ...*'

The Law

28. We were referred to the following authorities:

(1) Simmons v IRC [1980] 1 WLR 1196, (1980) 53 TC 461, H L

(2) Marson v Morton [1986] STC 463

(3) All Best Wishes Ltd v CIR (1992) 3 HKTC 750

(4) Lee Yee Shing v CIR [2008] 3 HKLRD 51;

(5) Real Estate Investment (NT) Ltd v CIR (2008) 1 HKCFAR 433

(6) Shui On Credit Co Ltd v CIR (2009) 12 HKCFAR 392

29. It is clear from these authorities that a one-off transaction can be a trade, and a private individual selling a property for profits can be engaged in trade as much as a limited company or a registered business.

30. The issue is the intention of the Appellants when they purchased the Subject Property: '*Was it acquired with the intention of disposing of it at a profit, or was it acquired as a permanent investment?*' – Lord Wilberforce in Simmons v IRC [1980] 1 WLR 1196 at page 1199A-D.

31. It is trite law that if the intention was to purchase for resale at a profit, then it is a trade even though the property is rented out in the meantime – see e.g. Real Estate Investments paragraph 50.

32. The crucial question is the taxpayer's intention at the time of purchase, not the time of sale. The reason for sale is an aide to determine the original intention.

33. McHugh NPJ in Lee Yee Shing at paragraph 59:

> '*59. The intention to trade to which Lord Wilberforce referred is not subjective but objective: Iswera v. Commissioner of Inland Revenue [1965] 1 WLR 663 at 668. It is inferred from all the circumstances of the case, as Mortimer J pointed out in All Best Wishes Ltd v. Commissioner of Inland Revenue (1992) 3 HKTC 750 at 771.* ***A distinction has to be drawn between the case where the taxpayer concedes that he or she had the intention to resell for profit when the asset or commodity was acquired and the case where the taxpayer asserts that no such intention existed. If the taxpayer concedes the intention in a case where the taxing authority claims that a profit is assessable to tax, the concession is generally but not always decisive of intention****: Inland Revenue Commissioners v. Reinhold (1953) 34 TC 389. ...* .' (emphasis supplied)

The Grounds of Appeal

34. In brief, the Appellants' grounds of appeal are as follows:

(1) Ground 1: They did reply to the assessor's said letter of 27 July 2017 and they enclosed their reply dated 17 August 2017 ('the Reply').

(2) Ground 2: The Subject Property and Property P6 had to be sold in order to purchase Property P8.

(3) Ground 3: They refuted the Commissioner's finding that Property P8 was not used as their residence from 15 November 2010 to 31 May 2012 because it was leased out. The reason they did not move into Property P8 forthwith was because their daughters had not yet started school at School D1 and D2.

(4) Ground 4: They refuted the Commissioner's finding that no mortgage was obtained in respect of the purchase of the Subject Property. The reason no mortgage was taken out was because the developer delayed in handing over the development/Subject Property.

(5) Ground 5: They averred that they were confused by the questions when they answered in the negative in the Questionnaire. In their letters to the Commissioner, they had made clear that they purchased the Subject Property for long term investment.

(6) Ground 6: They disagreed with the rest of the Determination.

(7) In addition they complained that the enquiries were raised 7 years after the transaction and were unfair to them.

35. Regarding ground 1, as pointed out in the Ground itself, the assessor sent the Appellants a letter dated 9 October 2017 informing them that she had not received their reply and asked them to 'please look into the matter and let me have your reply on or before 30 October 2017'. It is unfortunate that despite such notice, they did not resend the Reply to the assessor. In any event, we note that the Reply did not raise any new arguments, but largely reiterated the points made in their 27 February 2017 letter. Further, we are not bound by the Commissioner's assessment of the facts or the determination. The fact that the Reply was not before the Commissioner is of little consequence. The Reply is before us and we take it into account in our decision.

Our Decision

36. Having examined the evidence carefully, in particular, the objective facts, the Questionnaire and the inconsistency in the Appellants' stated intention, we find that the transaction was a trade and not a capital investment.

37. Objective Facts consistent with a quick sale for profits: The Appellants were presented with a real bargain:

(1) The 1st purchaser bought the Subject Property on 5 August 2009 for $4,580,000. She sold it to the Appellants on 15 October 2009 for $4,259,400. This happened in the aftermath of the 2008 financial crisis. So the Appellants was given the opportunity to buy the Subject Property at a discount of $320,600.

(2) As the sale was from one friend to another, there was no estate agency fee.

(3) Under the provisional agreement, the Appellants were required to pay a total down payment of less than 10% of the purchase price ($137,400 + $229,000 = $366,400).

38. The Appellants put up the Subject Property for sale on 5 February 2010, less than 4 months after the purchase.

39. The Appellants sold the Subject Property as confirmor on 9 July 2010, before the consent to assign was issued on 30 July 2010.

40. The plain facts were that the Appellants were presented with an opportunity to buy the Subject Property at a discount with minimum cost and a low down payment. They took the opportunity. Within less than 4 months, they put up the property for sale. They maintained their asking price of $4.8 million and sold the Subject Property at that price as confirmor.

41. These objective facts are more consistent with an opportune purchase and sale for a quick profit than a purchase for permanent investment.

42. Timing of sale unconnected with the finance of Property P8: In the 27 February 2017 letter enclosed with the Return, the Appellants claimed that they did not have sufficient money to finance the purchase of Property P8 because the bank tightened their credit policy and were advised by the bank to sell some of their properties. It was for this reason that they sold the Subject Property as well as Property P6.

43. Grounds 2 and 4 of the Grounds of Appeal repeated this claim. Ground 4 averred: 'The holding period was short solely because once we got the mortgage for Property P8, we had to sell this Property as advised by the bank that further mortgage would not be extended to us based on our income status'.

44. This claim cannot stand in face of the evidence from the estate agents – Although the Subject Property was eventually sold on 9 July 2010, the Appellants put it up for sale with the two estate agents on 5 February 2010 – 2 months before they purchased Property P8 (see provisional agreement dated 24 April 2010), and well before they applied to Bank J for mortgage of Property P8 (see application dated 15 July 2010).

45. According to the record of Estate Agent G, they gave additional instructions to rent out the Subject Property on 29 April 2010, 5 days after the provisional agreement for the purchase of Property P8. This too was inconsistent with the averred need to sell the Subject Property in order to finance the purchase of Property P8.

46. Their instructions to Estate Agent F and Estate Agent G were to sell at HK$4.8 million. A1 agreed that he set this price. There were counter-offers which he declined. Estate Agent G's records show that an offer of $4.6 million on 27 May 2010 was rejected and the asking price of $4.8 million was maintained. Such facts were likewise inconsistent with the averred urgent need to sell the Subject Property in order to finance the purchase of Property P8.

47. The instructions to sell, and subsequently to let out as an alternative, were more consistent with an intention to purchase for resell at a profit, with the option of putting the property into good use in the meantime.

48. A1 disputed the evidence regarding the estate agents. His answers were not clear. He said he did not approach Estate Agent F but left the matter to the agent he knew, namely Agent K. He thought that perhaps Estate Agent G got the information from Agent K.

49. We see no cause for doubting the evidence obtained from the two estate agents. But even if A1 was right, the fact remains the same – whether they appointed just Agent K, or whether A2 approached Estate Agent F and Estate Agent G does not matter, it does not change the fact that the Subject Property was put up for sale on 5 February 2010, well before the purchase of Property P8.

50. Further, the Appellants have produced no evidence to substantiate their claim that the bank had tightened their credit policy at the time they purchased Property P8. Press Releasees from the Hong Kong Monetary Authority indicate otherwise.

51. No delay by developer of completion of Subject Property: Ground 4 further sought to explain the absence of mortgage of the Subject Property by alleging delay by the developer. A1 told us that he was told by the 1st Purchaser and Agent K that the Subject Property would be completed within 2 months of his purchase. However, the developer kept on delaying the completion.

52. This claim equally cannot stand in light of documents obtained from the developer. The sale brochure of the development specified the 'Anticipated Date for Completion' as 30 June 2010. The sale and purchase agreement between the developer

and the 1st Purchaser stipulated likewise. If when the 1st Purchaser sold the Subject Property to the Appellants in October 2009 she had told them that completion would be within 2 months, then she would have made an unwarranted misrepresentation. We see no reason for the 1st Purchaser or the estate agent to do so.

53. In any event, mortgages are generally arranged after sale and purchase agreement but before assignment. We fail to see what was stopping the Appellants from arranging the mortgage after they had signed the sale and purchase agreement with the 1st Purchaser.

54. The truth of the matter is that they put up the Subject Property for sale in February 2010, less than 4 months after they bought the property and well before the anticipated completion date.

55. At the hearing A1 further claimed they sold because with the repeated delay they had no confidence in the development, in particular they had heard of instances of '爛尾樓' – uncompleted developments.

56. But the developer was MTR Corporation. To allege fear of '爛尾樓' seems to us far-fetched. It is allegations like these which make us lose confidence in the credibility of A1's evidence.

57. The Questionnaire declared an intention contrary to long term investment: We repeat paragraph 17 above. By answering in the negative under the heading 'Intended or actual usage' and stating that they sold the property as a pre-sale agreement, the Appellants made a clear declaration that they did not use or intend to use the Subject Property as self-residence or for letting, inconsistent with an intention for permanent capital investment.

58. Ground 5 of the Grounds of Appeal claimed that the questions were confusing. A1 said the answers were a mistake. Since the property was still under construction, they could neither live in it nor let it out, and that was what they meant by their answers.

59. This explanation was unsound. The Questionnaire asked the Appellants to state 'Intended or actual usage'. There was no ambiguity.

60. The Questionnaire was in both English and Chinese. Likewise the notice to the Appellants enclosing the blank Questionnaire was also bilingual, and it stated in clear terms that the purpose of the Questionnaire was to determine whether the sale of the Subject Property constituted a business, a trade or an adventure in the nature of trade.[4] The Appellants were well aware of the implications of their answers.

61. It is not without significance that A1 was a full time law student at the Chinese University at the time he completed the Questionnaire. At the hearing, he told us

[4] See paragraph 16 above

it was a Professional programme and he would be sitting for Professional Law examination in mid-July this year. With this background, profession of misinterpretation or ignorance is hard to accept.

62. In this regard, we note the dicta of McHugh NPJ in Lee Yee Shing (see paragraph 33 above). A concession or declaration against self-interest (as opposed to self-serving statements) '*is generally though not always decisive of intention*'.

63. Professed intention unconvincing: At the hearing, A1 told us that when they bought the Subject Property, they also had in mind that there were good primary schools on the east side of Kowloon (like Primary School L) and Tseung Kwan O fell within the school bus network of schools on the east side of Hong Kong. They intended to move into the Subject Property if their daughters got into a school in that area or within that school bus network.

64. We do not understand the argument about school bus network. He has not provided us with any evidence that a school on the east side of Hong Kong would only provide school bus to the east side of Kowloon and vice versa. General knowledge tells us that this is unlikely to be the case.

65. We are not persuaded by their professed intention. A2 was an Old Girl of Primary School D1. The Appellants themselves stated in the Ground 3 of the Grounds of Appeal (and A1 repeated this at the hearing) that they were certain that their daughters would be able to follow their mother's footsteps and study at Primary School D1. Of course, there was no guarantee and they might want to keep their options open. At the Hearing, A1 told us that they eventually applied for 10 schools, but of the schools that he named, only Primary School L was on the east side of Kowloon. It is not difficult to understand why despite their confidence with Primary School D1, they would also want to try their chances with these elite schools. With no disrespect to Primary School L, one would not put it on a par with these elite schools, which are all on Hong Kong Island (except one in Jordan). To claim that they bought the Subject Property two years beforehand in case their daughters got into Primary School L is hardly convincing.

66. Furthermore, their property portfolio had always been in the same Tai Kok Tsui/Olympic Station area, which is on the west side of Kowloon (see properties P3 to P6 of Schedule 1). Before School D1 and D2, the daughters went to Kindergarten B and Kindergarten E Pre-School in the same Tai Kok Tsui/Olympic Station area. The elder daughter also went to Kindergarten C in Kowloon Tong, to which, as A1 told us, the Olympic Station has good access. To now argue that they were also looking at schools on the other side of Kowloon is clearly an afterthought.

67. We further note that whereas their 1st matrimonial home (purchased in December 2006) was 66.5 sq.m. (=715.8 sq.ft.), the Subject Property (purchased in October 2009) was only 679 sq.ft.. By October 2009, both daughters were born. It was most improbable that they would be buying an even smaller property. Property P8, on the other hand, at 97.7 sq.m. (=1,051.6 sq.ft.) was a much bigger property and much more suitable for the enlarged family.

68. One-off transaction not established: The Appellants between themselves have had many properties under their belt as demonstrated by Schedule 1. Properties P1 and P3 are co-owned with their respective families and so are not for them to sell. Property P4 was their first matrimonial home which they still keep. Property P8 is their current matrimonial home. Of the rest of the properties, they had all been sold at one time or another. These other properties are not the subject of the present appeal and we have not examined in detail the nature of these transactions. Nonetheless, in light of these facts, the argument that the sale of the Subject Property was an isolated incident is not established.

69. Badges of Trade[5]: We do not think we need to examine the badges of trade as a checklist in this case, save to point out that:

(1) The Appellants held the Subject Property for less than 4 months before putting it up for sale.

(2) The Appellants decided to sell the Subject Property before they purchased Property P8. The assertion that the Subject Property had to be sold in order to finance the purchase of Property P8 is not borne out by the facts.

(3) The Appellants made a clear declaration in the Questionnaire of an intention inconsistent with permanent capital investment.

(4) We are not persuaded that they bought the Subject Property for personal occupation in preparation for their daughters' schooling.

70. Complaint of delay not justified: The Appellants complained that it was unfair to them that the assessor raised the assessment 7 years after the transaction. We do not find this complaint justified.

71. First of all, it was not 7 years because the Questionnaire was issued to them in 2016 – the Subject Property was sold in August 2010 which fell within the 2010/2011 year of assessment.

72. Section 60(1) of the IRO allows the assessor to make additional assessment within 6 years after the expiration of the relevant year of assessment. The Questionnaire was issued well within the assessor's statutory authority.

73. Besides, it is not the duty of the assessor to make enquires. Rather, it is primarily the duty of a taxpayer to submit relevant tax returns and timely inform the Revenue of all income and profits chargeable to tax.[6] The Appellants here failed to do so.

[5] Lee Yee Shing v CIR [2008] 3 HKLRD 51, at 73

[6] See also section 50(2) of the IRO

74. Further, given the statutory power contained in section 60(1) of the IRO, it is for his own benefit and protection that a taxpayer should keep all relevant proofs of his tax liability until the end of 6 years after the expiration of the relevant year of assessment. If a taxpayer fails to do so, it is unfortunate, but it is not the responsibility of the Commissioner.

75. The Questionnaire was sent to the Appellants on 7 November 2016. Once that was received, the Appellants should have been put on alert that enquiries would be made and should, not only keep all relevant records, but also start to gather proof themselves.

76. Section 68(4) of the IRO lays the burden of proof squarely on the Appellants. It is up to them to make available all material evidence.

77. Summary: In all the circumstances, we find that the Appellants purchased the Subject Property with an intention to sell. The facts are consistent with an opportune purchase and sale for a quick profit. We reject the Grounds of Appeal. We find that the sale and purchase of the Subject Property constituted a trade and the profits arising therefrom was subject to profits tax under section 14(1) of the IRO.

78. Further, or alternatively, we find that the Appellants have failed to discharge their burden of proof under section 68(4) of the IRO that they purchased the Subject Property for permanent capital investment and that the 2010/11 Assessment was excessive or incorrect.

Revised Assessment

79. Section 68(8)(a) of the IRO empowers this Board to confirm, reduce, increase or annul the assessment appealed against.

80. The assessor made the aforesaid 2010/11 Assessment (see paragraph 21 above) based on figures supplied by the Appellants in the Questionnaire which were incorrect and incomplete.

81. Now that the Commissioner has obtained the correct figures, Mr Yu representing the Commissioner has prepared a revised assessment. A1 agree with the figures in the revised assessment. We agree that the assessment should be revised accordingly:

		$
Sales consideration		4,800,000
Less:	Purchase consideration	4,259,400
Gross profits		540,600
Less:	Commission on purchase	0
	Commission on sale	48,000
	Stamp duty	115,940
	Legal fee on purchase (estimated)	5,700

	$
Legal fee on sale	5,700
Assessable Profits	365,260
Profits Tax payable ($365,260 x 15%)	54,789

Conclusion

82. In conclusion, we dismiss the appeal and under section 68(8)(a) of the IRO increase the 2010/11 Assessment as per the revised assessment above.

83. This appeal has little merits. Under section 68(9) of the IRO, we order the Appellants to pay as costs of this Board the sum of $10,000.

Schedule 1

	Property	Ownership	Purchase (i) Date of provisional agreement (ii) Date of formal agreement (iii) Date of assignment (iv) Purchase Price		Sale (i) Date of provisional agreement (ii) Date of formal agreement (iii) Date of assignment (iv) Sale Price	
P1	[A1's home with his family before marriage]	A1 (25%, increased to 50% since 15-02-2013)	(i)		(i)	N/A
			(ii)	11-06-1997	(ii)	
			(iii)	14-07-1997	(iii)	
			(iv)	$2,488,000	(iv)	
P2		A2 (100%)	(i)	28-07-1997	(i)	16-09-2010
			(ii)	07-08-1997	(ii)	
			(iii)	25-08-1997	(iii)	08-11-2010
			(iv)	$590,000	(iv)	$498,000
P3	[A2's home with her family before marriage]	A2 (33.34%)	(i)	04-02-2000	(i)	N/A
			(ii)	15-02-2000	(ii)	
			(iii)	30-05-2000	(iii)	
			(iv)	$4,065,000	(iv)	
	Appellants got married on 27 April 2004. Their elder daughter was born on 30 May 2006.					
P4	[1st matrimonial home] [Let out from Sep 2010 to 31-03-2014]	A1(50%) A2(50%)	(i)	03-12-2006	(i)	N/A
			(ii)	15-12-2006	(ii)	
			(iii)	15-03-2007	(iii)	
			(iv)	$5,930,000	(iv)	
P5	[Let out from 1.6.2008 to 31-03-2014]	A1(50%) A2(50%)	(i)	27-10-2007	(i)	15-07-2016
			(ii)	09-11-2007	(ii)	25-07-2016
			(iii)	18-12-2007	(iii)	22-09-2016
			(iv)	$3,660,000	(iv)	$7,630,000

	Property	Ownership	Purchase (i) Date of provisional agreement (ii) Date of formal agreement (iii) Date of assignment (iv) Purchase Price		Sale (i) Date of provisional agreement (ii) Date of formal agreement (iii) Date of assignment (iv) Sale Price	
P6	[Let out from 02-02-2009 to 08-06-2010]	A1(50%) A2(50%)	(i)		(i)	23-04-2010
			(ii)		(ii)	
			(iii)	31-01.2008	(iii)	08-06-2010
			(iv)	$5,880,000	(iv)	$6,380,000
P7	[Appellants put property up for sale on 05-02-2010 and sold as confirmor]	A1(50%) A2(50%)	(i)	15-10-2009	(i)	09-07-2010
			(ii)		(ii)	
			(iii)		(iii)	26-08-2010
			(iv)	$4,259,400	(iv)	$4,800,000
P8	[Appellants' current matrimonial home] [Let out from 15-11-2010 to 31-05-2012]	A1(50%) A2(50%)	(i)	24-04-2010	(i)	
			(ii)	10-06-2010	(ii)	
			(iii)	05-08-2010	(iii)	
			(iv)	$17,850,000	(iv)	