Case No. D1/03

Profits tax – whether or not profits derived from trading were sourced outside Hong Kong – whether profits in question should be apportioned when the profits were derived partly from Hong Kong and partly outside Hong Kong – sections 66(3) and 68 of the Inland Revenue Ordinance (‘IRO’) – whether or not prejudice to respondent on the additional ground of appeal – burden of proof – frivolous and vexatious and an abuse of the process – order to pay costs.

Panel: Kenneth Kwok Hing Wai SC (chairman), Edward Cheung Wing Yui and Michael Littlewood.

Dates of hearing: 25, 26 and 27 November 2002.
Date of decision: 8 April 2003.

The appellant was a private company in Hong Kong carrying on the business of garment trading. In submitting its profits tax returns, the appellant has excluded the profits derived from the ‘offshore’ sale. This ‘offshore’ trading was in respect of the sales agreement entered into between the appellant and Company D, which had an address in the mainland of China. The appellant did not register its business in the mainland of China and did not pay any tax in the mainland of China in respect of the ‘offshore’ profits in question.

The Commissioner did not accept the appellant’s offshore claim and raised additional profits tax assessments. The appellant objected on the grounds that the profits derived from trading through its office in mainland China were sourced outside Hong Kong and hence, should not be chargeable to Hong Kong profits tax.

At the hearing of the appeal, the appellant relied on additional ground of appeal that ‘in the event that the Board finds that the profits in question were derived partly from Hong Kong and partly outside Hong Kong, the profits in question should be apportioned and that the Board should then remit the case to the Commissioner for both parties to agree on the proportion of profits which should be assessable, failing agreement, that the case be referred back to the Board for ruling’.

Held:

1. The Board refused the application to argue the apportionment point because it was silent on how or why the assessments were said to be incorrect or excessive. It did not state the extent to which the assessments were said to be excessive. The

apportionment point was not contained in any of the grounds of appeal. By virtue of section 66(3) of the IRO, the appellant may not rely on the apportionment point in the absence of the Board's consent.

2. In considering whether to permit the appellant to argue the proposed additional ground of appeal, an important factor was the question of prejudice to the respondent. There was no mention of apportionment in all the appellant's reply, correspondence between the appellant and the respondent, grounds of appeal, witness statements and written opening of the counsel representing the appellant at the hearing of the appeal. It was thus not possible for the respondent to investigate any factual basis for any possible apportionment. In particular the appellant had not made up its mind on how the profits were to be apportioned. The Board saw no reason why the appellant should be allowed to fish for a possible basis.

3. The onus of proving that the assessment appealed against is excessive or incorrect is on the appellant. Source of profits is 'always in the last analysis a question of fact depending on the nature of the transaction'. The broad guiding principle is that 'one looks to see what the taxpayer has done to earn the profit in question'. Having stated the broad guiding principle, Lord Bridge then went on to give a few examples. The first example was rendering a service or engaging in an activity such as the manufacture of goods. The second example was 'the exploitation of property assets as by letting property, lending money or dealing in commodities or securities by buying and reselling at a profit'. The next example was 'goods sold outside Hong Kong having been subject to manufacturing and finishing processes which took place partly in Hong Kong and partly overseas'. Lord Bridge's approaches on the second example and on goods sold outside Hong Kong were clearly different (CIR v Hang Seng Bank Limited [1991] 1 AC 306; CIR v HK-TVB International Limited [1992] 2 AC 397 and CIR v Magna Industrial Company Limited [1997] HKLRD 173 followed).

4. In the Board's decision, the appellant's case of 'offshore' trading was practically moonshine. Unless the appellant could tell the Board how the purchase orders came into existence by Company D, about the operations in relation to them, about who carried out the operations, and about where the operations were carried out, the appeal was bound to fail.

5. The Board was of the opinion that this appeal was frivolous and vexatious and an abuse of the process. If the Board had the jurisdiction it would have ordered the appellant to pay indemnity. Pursuant to section 68(9) of the IRO, the Board ordered the appellant to pay the sum of $5,000 as costs of the Board, which $5,000 shall be added to the tax charged and recovered therewith.

Appeal dismissed and a cost of $5,000 charged.

Cases referred to:

CIR v Hang Seng Bank Limited [1991] 1 AC 306
CIR v HK-TVB International Limited [1992] 2 AC 397
CIR v Magna Industrial Company Limited [1997] HKLRD 173

Yvonne Cheng Counsel instructed by Department of Justice for the Commissioner of Inland Revenue.
Ho Chi Ming Counsel instructed by Messrs Deloitte Touche Tohmatsu for the taxpayer.

Decision:

1. This is an appeal against the determination of the Commissioner of Inland Revenue dated 8 May 2001 whereby:

(a) Additional profits tax assessment for the year of assessment 1995/96 under charge number 1-3144734-96-7, dated 26 February 1999, showing additional assessable profits of $34,325,805 with additional tax payable thereon of $5,663,758 was confirmed.

(b) Additional profits tax assessment for the year of assessment 1996/97 under charge number 1-1140056-97-0, dated 26 February 1999, showing additional assessable profits of $58,602,702 with additional tax payable thereon of $9,669,446 was confirmed.

(c) Profits tax assessment for the year of assessment 1997/98 under charge number 1-1108172-98-7, dated 26 February 1999, showing assessable profits of $59,502,261 with reduced tax payable thereon of $8,836,085 was confirmed.

The agreed facts

2. The following facts were agreed and we find them as facts.

3. The Appellant was incorporated as a private company in Hong Kong on 26 February 1991. At all relevant times the Appellant carried on the business of garment trading. The following persons are directors of the Appellant:

(a) Mr A

(b) Ms B

(c) Mr C

4. On various dates, the Appellant submitted its profits tax returns with supporting accounts and proposed computations for the years of assessment 1995/96 to 1997/98. The returns and accounts showed, inter alia, the following particulars:

	1995/96	**1996/97**	**1997/98**
	$	$	$
Sale – on shore	964,112,241	824,314,489	188,403,686
Sale – offshore	222,500,432	424,825,249	658,998,331
	1,186,612,673	1,249,139,738	847,402,017
Gross profits on offshore sale	37,147,238	62,823,893	75,865,528
Profits per return	97,774,100	94,615,327	(12,327,321)

5. In arriving at the amount of profits per return, the Appellant has excluded the profits derived from the 'offshore' sale.

6. In respect of the alleged 'offshore' trading, the Appellant has only one customer, namely Company D which had an address in the mainland of China. A sales agreement dated 28 September 1995 was entered into between the Appellant and Company D.

7. In respect of the alleged 'offshore' trading, the Appellant has four suppliers in the mainland of China. Details of the four suppliers are as follows:

(a) Company E

(b) Company F

(c) Company G

(d) Company H

Purchase agreements all dated 28 September 1995 were entered into between the Appellant and each of the four suppliers.

8. The Appellant did not register its business in the mainland of China and did not pay any tax in the mainland of China in respect of the 'offshore' profits in question.

9. The titles of Mr I, Ms J and Mr K, the three staff alleged by the Appellant to have been seconded from Hong Kong to manage the trading operations in mainland of China, were respectively 'QC Manager', 'QC Supervisor' and 'Senior Quality Controller' according to their business name cards.

10. The assessor did not accept the Appellant's offshore claim and hence raised on the Appellant the following profits tax assessments:

(a) Year of assessment 1995/96 (Additional)	$	$
Profits per return		97,774,100
Add: 'Offshore' gross profits disallowed		37,147,238
		134,921,338
Less: Administrative expenses further allowed	2,692,165	
Depreciation and rebuilding allowance further allowed	129,268	2,821,433
Assessable profits		132,099,905
Less: Profits already assessed		97,774,100
Additional assessable profits		34,325,805
Additional tax payable thereon		5,663,758

(b) Year of assessment 1996/97 (Additional)	$	$
Profits per return		94,615,327
Add: 'Offshore' gross profits disallowed		62,823,893
		157,439,220
Less: Administrative expenses further allowed	3,851,147	
Depreciation and rebuilding allowance further allowed	370,044	4,221,191
Assessable profits		153,218,029
Less: Profits already assessed		94,615,327
Additional assessable profits		58,602,702
Additional tax payable thereon		9,669,446

(c) Year of assessment 1997/98	$	$
Loss per return		(12,327,321)

Add:	'Offshore' gross profits disallowed		75,865,528
			63,538,207
Less:	Administrative expenses further allowed	3,391,118	
	Depreciation and rebuilding allowance further allowed	644,828	4,035,946
Assessable profits			59,502,261
Tax payable thereon [Note]			9,817,873

Note: By virtue of the Tax Exemption (1997 Tax Year) Order, the amount of tax payable for the year of assessment 1997/98 was subsequently reduced to $8,836,085.

The grounds of appeal

11. The objection failed. By letter dated 7 June 2001, Messrs Deloitte Touche Tohmatsu gave notice of appeal on behalf of the Appellant on the following grounds:

'1. The assessments are excessive and incorrect;

2. The profits derived from trading through our client's office in Dongguan of the People's Republic of China ("PRC") were sourced outside Hong Kong and hence, should not be chargeable to Hong Kong Profits Tax on the following reasons:

(i) Our client had no PRC sales prior to the set-up of the China office. The China office was set up to cater for a new line of business.

(ii) There were operational reasons for our client to set up the office in China, such as:

- to facilitate the movement of goods as all the goods were acquired and delivered in China;
- to facilitate the communication with suppliers and customers;
- to obtain market and production data easier, in particular, there was a large number of product items requested; and
- to facilitate the product quality examination since all the manufacturing activities were conducted in China.

(iii) There was no commercial point for the trading contracts to be effected in Hong Kong by persons without the best knowledge in the market where the suppliers and customer were located.

(iv) The existence of the China office could be proved by the rental agreements and traveling records of staff.

(v) Different sets of documents were used by the China office and the Hong Kong office, in particular:

- Orders and invoices were of different serial numbers;
- No customer confirmations were required for PRC sales; and
- No director approvals were required for PRC sales.

(vi) The manager/supervisor in the China office were able to conclude contracts on the Company's behalf by reference with their experience and qualification.

(vii) Price lists were negotiated with suppliers and customers and were concluded by the PRC manager as a reference guide to facilitate the daily trading business.

Although the price lists were approved by the managing director as a matter of formality, they were not negotiated and in substance, concluded in Hong Kong. Given the number of products involved and the absence of market information, it was not commercially viable for the price negotiation activities to be handled by any person in Hong Kong.

All final negotiations of prices were conducted in China. [Mr I] and [Ms J] had general authority to negotiate the prices with suppliers and customer as and when necessary.

(viii) The customer orders were received in China from a PRC customer and the purchase orders were placed with PRC suppliers in China. The order processing activities were all conducted in China.

(ix) Preparation of invoices and arrangement of payment in Hong Kong are not relevant to the source of profits.'

The appeal hearing

12. At the hearing of the appeal, the Appellant was represented by Mr Ho Chi-ming and the Respondent by Ms Yvonne Cheng.

13. At the end of his opening, Mr Ho Chi-ming applied for permission to rely on the following additional ground of appeal:

> 'In the event that the Board finds that the profits in question were derived partly from Hong Kong and partly outside Hong Kong, (which is denied by the Appellant), the profits in question should be apportioned and that the Board should then remit the case to the Commissioner for both parties to agree on the proportion of profits which should be assessable, failing agreement, that the case be referred back to the Board for ruling.'

14. After hearing Mr Ho Chi-ming and Ms Yvonne Cheng, we refused Mr Ho Chi-ming's application and told the parties that our reasons would be given in our decision.

15. There is only one item on Mr Ho Chi-ming's list of authority for this case on the years of assessment 1995/96 to 1997/98, namely:

(a) Departmental Interpretation and Practice Notes No 2 (Revised 1998) Locality of Profits.

16. The following authorities were listed in Ms Yvonne Cheng's list of authorities:

(a) IRO, section 68(4);

(b) CIR v Hang Seng Bank Limited [1991] 1 AC 306;

(c) CIR v HK-TVB International Limited [1992] 2 AC 397;

(d) CIR v Magna Industrial Company Limited [1997] HKLRD 173.

17. Four witnesses were called by Mr Ho Chi-ming. The witness statements were supplied by three instalments, on 9 November 2001, 14 December 2001 and 28 February 2002. Much time was taken up at the hearing on examination-in-chief of these witnesses, on what was said to be corrections of errors in the witness statements and on matters not dealt with in the witness statements at all.

18. Mr I was a quality control manager who joined the Appellant in 1990. He was the person put forward by the management of the Appellant as the person who single-handedly

handled all 'offshore' trading orders, including accepting, following up and attending to every aspect of all purchase orders from Company D and sourcing suppliers, placing purchase orders, following up and attending to every aspect of all purchase orders. The only other persons said to be working on 'offshore' trading was a handful of quality controllers, a driver and a cleaner/cook. Contrary to what appears to be suggested in grounds 2(vi) and (vii) of the grounds of appeal, Ms J's only involvement in 'offshore' trading was quality control.

19. Mr A was the chairman of the Appellant. He said he was the person who decided on Mr I as the person in charge of 'offshore' trading.

20. Mr K owned the controlling interest in Company F. He said that all activities in respect of orders placed by the Appellant were carried out in the mainland and that negotiation was 'wholly', and not 'predominantly' as stated in his witness statement, conducted with Mr I.

21. Mr C was a professional accountant, the vice president and executive director of the plaintiff. He was the person who came up with the idea of an 'offshore' claim. He said that there were errors in the letters written by Messrs Deloitte Touche Tohmatsu to the Inland Revenue Department ('IRD') because he was the one who gave instructions to them and because, despite not having any personal knowledge himself of the 'offshore' operations, he had not consulted Mr I, the person said to have personal knowledge, before he gave the instructions which he said he gave.

22. No witness was called by Ms Yvonne Cheng.

23. At the end of his submission, we invited Mr Ho Chi-ming to address us on costs. After his submission on costs, we told the parties that we were not calling on the Respondent and that we would give our decision in writing.

Our decision

Application to add further ground of appeal

24. Mr Ho Chi-ming contended that he could argue the apportionment point under ground 1 of the grounds of appeal.

25. In our decision, he could not.

26. Ground 1 merely states what the Appellant must prove under section 68(4) of the IRO. It is silent on how or why the assessments are said to be incorrect or excessive. It does not state the extent to which the assessments are said to be excessive. Neither the source of profit point nor the apportionment point is raised. The source of profit point is covered by ground 2 and may be argued. The apportionment point is not contained in any of the grounds of appeal. By virtue of

section 66(3) of the IRO, the Appellant may not rely on the apportionment point in the absence of our consent.

27. In considering whether to permit the Appellant to argue the proposed additional ground of appeal, an important factor was the question of prejudice to the Respondent.

28. At the end of the letter dated 21 March 2001 signed by Mr C, the Appellant contended that its profits were subject to apportionment on 50:50 basis.

29. By letter dated 29 March 2001, an assessor stated that the IRD's view was that 'the question of apportionment does not arise in relation to trading profits'.

30. Whether the IRD's contention that there could be no apportionment for trading profits is correct is beside the point for present purposes. We have not gone into the question and have not heard any submission on it. It is not necessary for us to decide the point. We express no view on it and it should not be assumed that we agree or disagree with it.

31. What is relevant for present purposes is that there was no mention of apportionment in the Appellant's reply dated 9 April 2001 signed by Mr C. There was no mention of apportionment in any of the subsequent correspondence between the Appellant and the Respondent. There was no mention of apportionment in the grounds of appeal. There was no mention of apportionment in the witness statements. There was no mention of apportionment in the written opening of Mr Ho Chi-ming. There was no mention of it until the morning of 25 November 2002. We were told by Ms Yvonne Cheng that the Respondent had not considered and had not conducted any investigation on apportionment. The Appellant claimed that it had only kept such documents as it chose to have produced and that it had not kept any other document. It is thus not now possible for the Respondent to investigate any factual basis for any possible apportionment.

32. Even by the time of Mr Ho Chi-ming's application to add the proposed ground which was written out in manuscript, Mr Ho Chi-ming had not made up his mind on how the profits were to be apportioned. The approach of remitting the case to the Respondent for the parties to 'agree on the proportion', without any indication or direction on the basis for apportionment, did not commend itself to us. We saw no reason why the Appellant should be allowed to fish for a possible basis.

33. In the exercise of our discretion, we refused Mr Ho Chi-ming's application.

The law

34. Section 68(4) of the IRO provides that the onus of proving that the assessment appealed against is excessive or incorrect is on the Appellant.

35. The guiding principle laid down by Lord Bridge in CIR v Hang Seng Bank Limited [1991] 1 AC 306, as expanded and applied by Lord Jauncey in CIR v HK-TVB International Limited [1992] 2 AC 397 at pages 407 and 409 is as follows (emphasis added):

> ***'one looks to see what the taxpayer has done to earn the profit in question and where he has done it'***
>
> *'The proper approach is to ascertain what were the operations which produced the relevant profits and where those operations took place.'*
>
> *'In the view of their Lordships it can only be in rare cases that a taxpayer with a principal place of business in Hong Kong can earn profits which are not chargeable to profits tax under section 14 of the Inland Revenue Ordinance.'*

36. In paragraphs 6.1 and 6.2 of his written opening, Mr Ho Chi-ming wrote as follows (written exactly as it stands in the original):

> '**6. The Law**
>
> 6.1 This is a trading profits case. Per Lord Bridge in Hang Seng Bank (1991) 1 AC page 306 last line to page 323 line between B and C "the broad guiding principles ... if the profit was earned by dealing in commodities or securities by buying and reselling at a profit, the profit will have arisen in or derived from the place where ... the contracts of purchase and sale were effected".
>
> 6.2 It is the Appellant's case that all purchase and sale contracts were effected outside Hong Kong. Delivery was made in the Mainland. Therefore the profits should be offshore.'

37. In answer to the question on the relevance of the proposition on dealings in commodities or securities to this case, Mr Ho Chi-ming insisted that:

(a) 'Commodities, that means purchasing, buying and selling of goods. It is not investment. It is buying and selling of goods. It is not only talking about investment.'

(b) '... the broad guiding principle according to Hang Seng is, the law is that the broad guiding principle in relation to the sale of goods, not only commodities.'

(c) 'I say that this [that is, paragraph 6.1] is the broad guiding principle, yes, that is the law relating to the broad guiding principle.'

38. We reject Mr Ho Chi-ming's contentions.

39. The Hang Seng Bank case was a case on certificates of deposit, bonds and gilt-edged securities. What Lord Bridge said at pages 322 to 323 was:

> '*Their Lordships were referred in the course of the argument to many authorities on different taxing statutes in different common law jurisdictions raising a variety of questions as to the geographical source to which income or profits should be ascribed. But the question whether the gross profit resulting from a particular transaction arose in or derived from one place or another is always in the last analysis a question of fact depending on the nature of the transaction. It is impossible to lay down precise rules of law by which the answer to that question is to be determined. The broad guiding principle, attested by many authorities, is that one looks to see what the taxpayer has done to earn the profit in question. If he has rendered a service or engaged in an activity such as the manufacture of goods, the profit will have arisen or derived from the place where the service was rendered or the profit making activity carried on. But if the profit was earned by the exploitation of property assets as by letting property, lending money or dealing in commodities or securities by buying and reselling at a profit, the profit will have arisen in or derived from the place where the property was let, the money was lent or the contracts of purchase and sale were effected. There may, of course, be cases where the gross profits deriving from an individual transaction will have arisen in or derived from different places. Thus, for example, goods sold outside Hong Kong may have been subject to manufacturing and finishing processes which took place partly in Hong Kong and partly overseas. In such a case the absence of a specific provision for apportionment in the Ordinance would not obviate the necessity to apportion the gross profit on sale as having arisen partly in Hong Kong and partly outside Hong Kong. But the present case was a straightforward one where, in their Lordships' judgment, the decision of the Board of Review was fully justified by the primary facts and betrayed no error of law.*'

40. It is clear from the above that the source of profits is 'always in the last analysis a question of fact depending on the nature of the transaction'. The broad guiding principle (before expansion by Lord Jauncey in the TVBI case) is that 'one looks to see what the taxpayer has done to earn the profit in question'. Having stated the broad guiding principle, Lord Bridge then went on to give a few examples. The first example was rendering a service or engaging in an activity such as the manufacture of goods. The second example was 'the exploitation of property assets as by letting property, lending money or dealing in commodities or securities by buying and reselling at a profit'. The next example was 'goods sold outside Hong Kong [having] been subject to

manufacturing and finishing processes which took place partly in Hong Kong and partly overseas'. Lord Bridge's approaches on the second example and on goods sold outside Hong Kong were clearly different.

41. Moreover, Mr Ho Chi-ming's paragraph 6.1 ignored what Lord Jauncey said in the TVBI case at pages 407 and 409:

> '*Further their Lordships have no doubt that when Lord Bridge, after quoting the guiding principle, gave certain examples he was not intending thereby to lay down an exhaustive list of tests to be applied in all cases in determining whether or not profits arose in or derived from Hong Kong.*'

> '*Their Lordships consider that it is a mistake to try to find an analogy between the facts in this appeal and the example given by Lord Bridge in the Hang Seng Bank case. The circumstances in that case involving, as they did, buying and selling in well defined foreign markets were very different from those in the present and the examples were never intended to be exhaustive of all situations in which section 14 of the Ordinance might have to be considered. The proper approach is to ascertain what were the operations which produced the relevant profits and where those operations took place.*'

The 'offshore' transactions in this case

42. Mr I was the person put forward by the management of the Appellant as the person who single-handedly handled every aspect (except on quality control on which he was assisted by a handful of quality controllers) of all 'offshore' trading orders.

43. In our decision, the Appellant's case of 'offshore' trading is practically moonshine.

44. The 'offshore' sales amounted to $222,500,432 for the year of assessment 1995/96, $424,825,249 for 1996/97 and $658,998,331 for 1997/98 and gross profits on 'offshore' sales amounted to $37,147,238, $62,823,893 and $75,865,528.

45. The income of Mr I, as reported by the Appellant in its returns as his employer, amounted to $274,210 for the year ended 31 March 1995, $295,899 for the year ended 31 March 1996, $301,000 for the year ended 31 March 1997 and $316,400 for the year ended 31 March 1998.

46. So far as the 'China office' was concerned, it was situated at an alley for two years and at another alley for the third year. None of the leases was taken out by the Appellant. The first two leases were for residential purposes and the third lease was for office and residential purposes.

47. The Appellant's case was that there was no computer in the 'China office'. There was only one electric typewriter at the 'China office'.

48. By letter dated 6 September 1999, Messrs Deloitte Touche Tohmatsu wrote to the IRD stating that:

> ' A complete set of offshore trading documents for the year 1996/97 are enclosed in Appendix 9 for your reference. The purchase orders were issued by [Mr I]/[Ms J] in China and delivered by hand to suppliers.'

49. In her cross-examination of Mr I, Ms Yvonne Cheng confronted him with a copy of this set of documents.

50. For the year of assessment 1996/97 alone, there were more than 800 purchase orders. None of them was signed by Mr I.

51. This set of copy documents is fatal to the Appellant's case of offshore trading.

52. For the purpose of our decision, we assume in favour of the Appellant that this set of documents is a true copy of the contemporaneous purchase orders, despite the fact that we do not think they are. On a large number of these purchase orders, there is a cross 'x' in the space intended for the signature of the supplier. This suggests that the set sent under cover of the letter dated 6 September 1999 by Messrs Deloitte Touche Tohmatsu was subsequently printed so that the suppliers could sign or chop on the new printouts and the Appellant could chop on the new printouts.

53. The words 'FOB Hong Kong' appear on this set of documents. They belied the Appellant's assertion that deliveries took place outside Hong Kong.

54. Mr I could not possibly have handled every aspect (except on quality control on which he was assisted by a handful of quality controllers) of all these 800 plus purchase orders all by himself. Typing all these 800 plus purchase orders on the lone electric typewriter in the 'China office' defies belief. We reject the suggestion made in response to questioning that they were typed and printed using the suppliers' computers. The format appears to be the same on all the purchase orders and there is no evidence on the identity or identities of the person or persons supplying the data and of the person or persons doing the clerical work at the suppliers' premises. In fact, there was no evidence that the suppliers were better equipped than the Appellant's 'China office' in terms of office automation.

55. It goes without saying that Mr I could not possibly have handled every aspect (except on quality control on which he was assisted by a handful of quality controllers) of all corresponding purchase orders by Company D. In this connection, we do not accept that R26 to R29 is a

purchase order by Company D. In view of the set of 800 plus purchase orders to the suppliers, we do not think that Company D would only place one large order each month. In our decision, Company D placed various purchase orders in the course of the month, and, on receipt of each order, the Appellant sourced a supplier and placed a purchase order with such supplier to fulfil Company D's order.

56. Contrary to the case put forward by the management (see paragraph 48 above), Mr I said that he himself had not seen any of these 800 plus purchase orders before.

57. Unless the Appellant could tell us how these purchase orders came into existence, about the operations in relation to them, about who carried out the operations, and about where the operations were carried out, the appeal was bound to fail.

58. The Appellant made no attempt to adduce any evidence on who, and more importantly where, the following acts were performed:

(a) negotiated and agreed these purchase orders;

(b) prepared, printed and checked the accuracy of the printed copies;

(c) checked them against Company D's orders;

(d) chopped the purchase orders;

(e) arranged the deliveries of the purchase orders to the respective suppliers;

(f) attended to receiving the duly signed purchase orders returned by the suppliers;

(g) followed up on each and every purchase order, including attending to variations and complaints;

(h) attended to deliveries; and

(i) liaised with Company D throughout.

59. Persisting in continuing the appeal in these circumstances is a sheer waste of public resources, both of the Board of Review and of the IRD.

Disposition

60. We dismiss the appeal and confirm the assessments as confirmed by the Commissioner.

Costs order

61. We are of the opinion that this appeal is frivolous and vexatious and an abuse of the process.

62. If we had the jurisdiction we would have ordered the Appellant to pay indemnity costs.

63. Pursuant to section 68(9) of the IRO, we order the Appellant to pay the sum of $5,000 as costs of the Board, which $5,000 shall be added to the tax charged and recovered therewith.