

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D124/99

Profits Tax – acquisition and sale of property – intention at time of purchase – burden of proof on purchaser to establish that property purchased for long term investment – credibility of the taxpayer before the Board.

Panel: Ronny Wong Fook Hum SC (chairman), Thong Keng Yee and Yeung Kwok Chor.

Date of hearing: 29 December 1999.

Date of decision: 23 February 2000.

The taxpayer had purchased and sold a number of residential properties between 1986 and 1994. He argued that they were all intended to be, at each time of purchase, the family home.

Held by the Board :

1. The actions of the taxpayer at the time of purchase and sale of the particular properties indicated that his intention was all along to hold each property as the family home.
2. The fact that he paid a high deposit and drew a substantial home loan was consistent with the intention to purchase the property as a family home.
3. All the factors in relation to Properties 1,2 and 3 pointed to the intention of the taxpayer to use each one as the family home.

Appeal allowed.

Cheung Mei Fan for the Commissioner of Inland Revenue.

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Taxpayer in person.

Decision:

Background

1. On 29 November 1986, the Taxpayer and his wife purchased a unit in Private Housing Estate A in District B [' Property 1 '] for \$625,000. Property 1 was initially charged in favour of Bank C to secure general banking facilities to the extent of \$470,000. This was subsequently replaced on 2 December 1991 by a charge in favour of Bank D to secure \$400,000. The Taxpayer informed the Revenue that he effected alterations to Property 1. The balcony was converted into an additional washroom. His neighbour complained about water seepage. He decided to move in order to avoid the expenses involved in restoration.

2. By an agreement for sale and purchase dated 14 January 1992, the Taxpayer and his wife purchased another unit in Private Housing Estate A [' Property 2 '] for \$1,620,000. They managed to obtain in February 1992 a 10.32 year home loan of \$1,100,000 from Bank E to support this purchase. That loan was repayable by 269 fortnightly instalments of \$6,493 each. By a provisional agreement dated 8 June 1992, the Taxpayer and his wife disposed of Property 2 for \$2,048,000. In his correspondence with the Revenue, the Taxpayer maintained that Property 2 was purchased with the view of using the same as the family residence. After completion of renovation the views of a fung shui expert were sought. They were advised that the flat was most unsuitable for the Taxpayer's wife. There was a high risk of miscarriage. They therefore decided to look for alternative accommodation.

3. By an agreement for sale and purchase dated 8 September 1992, the Taxpayer and his wife purchased a unit in District F [' Property 3 '] for \$1,792,000. The purchase was supported by an equitable mortgage dated 17 September 1992 in favour of Bank C to secure facilities to the extent of \$1,254,400. The occupation permit in respect of Property 3 was issued on 8 March 1993. This flat was sold by the Taxpayer and his wife on 26 September 1994 for \$2,175,000. The Revenue was informed that Property 3 was purchased with the view of using the same as the family residence. It was subsequently discovered that the flat was too far away from the schools of his two daughters. Attempts to seek suitable tenant failed. Property 3 was therefore sold.

4. On 5 February 1994, the Taxpayer and his wife purchased a unit in District G [' Property 4 '] for \$4,805,000. This flat was subsequently disposed of by them on 10 January 1996 for \$4,220,000.

The hearing before us

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5. The Taxpayer and his family emigrated to Country H in August 1996. The Taxpayer specifically returned to Hong Kong to attend the hearing before us.

6. The Taxpayer gave the following sworn testimony during the hearing:

- a) Before leaving Hong Kong he was an engineer with Company I. His wife did not hold any job after their marriage.
- b) He converted the balcony of Property 1 into an additional washroom. The residents in the flat below voiced their complaints. His wife unwittingly permitted those residents to inspect Property 1 during his absence. He said he received a notice from the management company demanding rectification. This was challenged by the Revenue. The Taxpayer was confronted by correspondence exchanged between the Revenue and the management company. The management company confirmed that 'there is an illegal enclosure of laundry balcony' and their first warning letter was issued on 15 June 1994. The Taxpayer explained that given the lapse of time, the relevant notice may have been mislaid.
- c) The Taxpayer placed considerable emphasis on the substantial payments that he made towards the purchase of Property 2. He pointed out that given his then employment with Company I there was no difficulty at all in securing banking facilities. If he were minded to speculate he could have paid only 10% of the purchase price.
- d) He did not consult any fund shui expert when he purchased Property 3 and Property 4. He explained that after his experience with Property 2, it's preferable not to know.

7. The Taxpayer is a forthright witness. We accept his testimony in relation to the subject matter of this appeal. We express no view on other properties referred to in this decision.

8. Whilst we do not condone the clear evasion by the Taxpayer of his responsibility in respect of the unauthorised alterations in Property 1, we accept that he was keen to move in order to avoid the confrontation. We further accept the Taxpayer's contentions in respect of Property 2. He paid \$520,000 towards the purchase price of \$1,620,000. Bank E provided a home loan of \$1,100,000. This is consistent with an intention to purchase the flat as the family home. The Taxpayer's case is further reinforced by the receipt dated 28 May 1992 for \$77,000 being the final instalment payable for renovation of Property 2.

9. For these reasons, we allow the Taxpayer's appeal.