

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D152/99

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 – whether tax chargeable upon profits derived from sale of property – sections 2(1), 14, 16(1) and 68(4) of the Inland Revenue Ordinance.

Panel: Anna Chow Suk Han (chairman), John Lee Luen Wai and Man Mo Leung.

Date of hearing: 13 October 1999.

Date of decision: 28 March 2000.

The Subject Property was purchased by the taxpayer on 18 November 1993 for \$4,680,000 and was sold on 20 March 1994 for \$7,000,000. The assessor was of the view that the purchase and sale was an adventure in the nature of trade. The taxpayer objected in that it was purchased for self-residential use.

In the year of assessment 1994/95, the taxpayer did not include as assessable profits the profit of \$1,375,572.10 (less duties etc.) derived from the sale of the Subject Property.

At the hearing, the Board applied, inter alia, the following legal principle :

The stated intention of the taxpayer must be genuinely held, realistic and realisable and, although of great weight, is not decisive but must be viewed in the light of the whole of the surrounding circumstances (All Best Wishes Limited v CIR, per Mortimer J, followed).

Held by the Board :

1. There was insufficient evidence to establish that the Subject Property was acquired as a long term investment.
2. The fact that there was minimal electricity use in the flat between November 1993 and March 1994 indicated that no substantial decoration works were undertaken. No evidence of such decoration works was produced before the Board hearing. Further, the short period of ownership was a strong indicator that the Subject Property was purchased as a trading asset.

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3. From the evidence, it was also clear that the taxpayer lacked sufficient means to hold the property long term. It was likely that it was not intended to be held long-term.
4. On the evidence, the Subject Property was purchased by the taxpayer as a trading stock with the intent to dispose of it at a profit at the appropriate time.

Appeal dismissed.

Cases referred to:

D61/97, IRBRD, vol 12, 378
D69/96, IRBRD, vol 11, 677
D100/96, IRBRD, vol 12, 37
D102/96, IRBRD, vol 12, 44
D16/97, IRBRD, vol 12, 155
All Best Wishes Limited v CIR 3 HKTC 750

Yeung Siu Fai for the Commissioner of Inland Revenue.

Gabriel H T Leung Jackson-Lipkin of Messrs T C Lau & Co for the taxpayer.

Decision:

The appeal

1. This is an appeal by the Taxpayer against the determination made by the Commissioner on 12 April 1999 in respect of the profits tax assessment for the year of assessment 1994/95, showing assessable profits of \$1,375,572 being increased to \$1,865,372.
2. The Taxpayer has objected to the profits tax assessment for the year of assessment 1994/95 raised on him. The Taxpayer claims that the gain he derived from the sale of the property at Private Housing Estate A in District B in the New Territories [‘ the Subject Property’] is capital in nature and is not chargeable to profits tax.

The background facts

3. At all the relevant times the Taxpayer is married. He and his wife have a daughter who was born on 20 June 1995.

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4. For the years of assessment 1993/94 and 1994/95, the Taxpayer and his wife had the following sources of income:

The Taxpayer	1993/94	1994/95
	\$	\$
Salaries	4,000	8,881
Business profits	62,880	27,027
Share of net assessable value from properties	<u>82,896</u>	<u>82,896</u>
	<u>149,776</u>	<u>118,804</u>
The Taxpayer's wife	1993/94	1994/95
	\$	\$
Salaries	<u>32,350</u>	<u>0</u>

5. On 18 November 1993 the Taxpayer entered into a provisional agreement to purchase the Subject Property at a price of \$4,680,000. The purchase was completed on 8 December 1993 when the assignment was executed.

6. The Taxpayer obtained a mortgage loan of \$3,000,000 from a bank to finance the purchase of the Subject Property. The loan was to be repaid by 180 equal instalments of \$29,104.20 each.

7. On 20 March 1994 the Taxpayer entered into another provisional agreement to sell the Subject Property at a price of \$7,000,000. The assignment of the Subject Property was made on 20 May 1994.

8. The Taxpayer provided the assessor with the following computation of profit arising from the sale of the Subject Property:

	\$	\$
Selling price		7,000,000.00
<u>Less : Purchase price</u>		<u>4,680,000.00</u>
		2,320,000.00
<u>Less : Expenses</u>		
Legal fee on purchase	51,065.00	
Stamp duty	128,700.00	
Agency commission on purchase	46,800.00	
Bank interest	183,872.90	
Decoration expenses	450,000.00	
Legal fee on sale	13,990.00	
Agency commission on sale	<u>70,000.00</u>	
		<u>944,427.90</u>

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Net gain	1,375,572.10
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9. The assessor was of the view that the purchase and the sale of the Subject Property by the Taxpayer amounted to an adventure in the nature of trade. On 15 April 1998, the assessor raised on the Taxpayer the following profits tax assessment for the year of assessment 1994/95:

Assessable profits	\$1,375,572
Tax payable under personal assessment thereon	<u>\$213,283</u>

10. The Taxpayer objected to the above assessment on the ground that the Subject Property 'should not be assessed on the basis of trading profit. ... the said property is all along intended for self residential use only.'

11. The assessor has since ascertained from the China Light and Power Company Limited that the Subject Property during the period when the electricity account was registered in the name of the Taxpayer, had the following electricity consumption:

Consumption period	Unit consumed
15 December 1993 to 19 January 1994	4
19 January 1994 to 16 February 1994	61
16 February 1994 to 18 March 1994	0
18 March 1994 to 20 April 1994	0
20 April 1994 to 18 May 1994	0
18 May 1994 to 21 May 1994	1

The assessor has also ascertained from the provisional agreements of the sale and the purchase of the Subject Property that the Taxpayer had to pay a commission of \$42,000 on purchase and a commission of \$35,000 on sale of the Subject Property.

12. The assessor is now of the view that the profits tax assessment should be revised as follows:

Year of assessment 1994/95	\$	\$
Selling price		7,000,000
<u>Less</u> : Purchase price		<u>4,680,000</u>
		2,320,000
<u>Less</u> : Expenses		
Legal fee on purchase	51,065	

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Stamp duty	128,700	
Agency commission on purchase	42,000	
Bank interest	183,873	
Legal fee on sale	13,990	
Agency commission on sale	<u>35,000</u>	
		<u>454,628</u>
Assessable profits		<u>1,865,372</u>

13. By the said determination of 12 April 1999, the assessable profits of \$1,375,572 for the year of assessment 1994/95 dated 15 April 1998, was increased to \$1,865,372.

The proceedings

14. The Taxpayer attended the hearing and he was legally represented by Mr Gabriel H T Leung Jackson-Lipkin of Messrs T C Lau & Co.

15. The Taxpayer had prepared a written statement and proposed to put it in as evidence-in-chief. After having amended two minor errors in it, the Taxpayer confirmed the contents of his written statement under oath.

16. The Taxpayer was further examined by his legal representative, Mr Leung and was subsequently cross-examined by Mr Yeung of the Respondent (the Revenue).

The Taxpayer's case

17. In early 1990, the Taxpayer's wife and her parents applied to immigrate to Country C. Their applications were duly approved in about September 1992. The Taxpayer, however, had never lodged his application.

18. On 19 July 1993, the Taxpayer accompanied his wife and parents-in-law to land in Country C for the purpose of immigration. After his wife had found a place to establish her residence in Country C, the Taxpayer returned to Hong Kong. At that juncture, the Taxpayer was undecided as to whether he would move to Country C or not. As for his parents-in-law, they found the way of life in Country C unsuitable for them and they returned to Hong Kong after two weeks.

19. As his wife had moved to Country C, the Taxpayer sold his matrimonial home in District D and moved to live with his own parents in District E in about October 1993. However, the Taxpayer claimed that he was then going through a period of indecisiveness as to whether he should move to Country C. The indecision was due to his assessment that he would have difficulty in finding a job or starting a business in Country C.

20. In October 1993, to further explore business opportunities in Country C, the Taxpayer

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visited Country C again. Having studied Country C more closely, the Taxpayer was of the view that it would not be easy for him to find a job or to start a business there.

21. The Taxpayer then returned to Hong Kong and as a result of his visit to Country C in October 1993, he decided to take a practical approach and to stay in Hong Kong to develop business opportunities here.

22. The Taxpayer then considered setting up a home in Hong Kong in anticipation that his wife would return to Hong Kong after obtaining her immigration status. One of the Taxpayer's considerations in setting up his home was that 'after having accustomed to the foreign style of living, what would be an ideal accommodation for members of his family when they return from Country C.'

23. The Taxpayer's attention was drawn by the sales campaign of Private Housing Estate A launched by the property developer in around October 1993. They promoted the foreign life style in the housing estate and its convenient transportation. The Taxpayer was particularly impressed by their claim that it would take less than 30 minutes from the housing estate in the New Territories to District F in Kowloon, because of the freeway. Captivated by the sales campaign, the impressive sale brochure, massive advertisement in newspapers and on television, the Taxpayer purchased the Subject Property.

24. The Taxpayer was further prompted to purchase the Subject Property because he had sufficient funds to cover the down payment and the monthly instalments. The Taxpayer claimed that he had ample savings in the bank and his parents-in-law were also prepared to assist him financially by offering him their savings and if necessary to raise funds for him by selling their flat in District G.

25. The Taxpayer claimed that he intended to spend a substantial amount in decorating the Subject Property as he intended to live there with his family on a long term basis. As the decoration expenses were personal in nature, he did not keep them for a long time.

26. After the decoration was completed in early December 1993, the Taxpayer moved into the Subject Property. His younger sister who offered to take care of the housework, also moved in with him.

27. After moving into the Subject Property, the Taxpayer encountered many unexpected problems. He discovered that the living conditions there were not so as claimed by the developer. He found that there were many illegal immigrants straying into the compound of Private Housing Estate A, thus causing security risks. He was prevented from enjoying his yard because it was invaded by various types of insects and mosquitoes. These problems were not rectified due to the poor management of the estate.

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28. Furthermore, although it was claimed in the sales campaign that it only took 30 minutes to drive from Private Housing Estate A to District F, the Taxpayer believed that it would only be possible if the driving was done 'at midnight and at a speed of 100 km per hour and without having to stop at any red traffic light.' The condition was made worse by the slow traffic in District H. He claimed that it normally took one and a half hours from the housing estate to District F by car.

29. In February 1994, the Taxpayer went to Country C and discussed these problems with his wife who agreed that he should look for an alternate accommodation, if he continued to feel the same about the Subject Property after he returned to Hong Kong.

30. After he returned to Hong Kong, the Taxpayer tried his best to accommodate those problems but his efforts failed. He then sold the Subject Property in March 1994 and looked for another property nearer to the city.

31. The Taxpayer then purchased an uncompleted unit in District I as a long term investment. He obtained possession of this property in December 1994.

32. The Taxpayer asserted that all along he switched from one flat to another for residence purpose only and had never intended to trade any of those flats. The Taxpayer stressed that during the period from the purchase of the Subject Property to the purchase of the flat in District I, he had properties registered under his name as owner only one at a time.

33. The Taxpayer was aware that the Commissioner took issue with him on the low electricity consumption at the Subject Property. He claimed that the decoration works such as plastering, adhering wall papers, sanitary installation would not consume much electricity, and that during the decoration period, the contractor once told him that there were problems with the fuse box or wiring which caused momentous failure of electricity supply to the Subject Property. The Taxpayer said that the contractor might have arranged contingent electricity supply from other units to solve the problem.

The Respondent's (the Revenue's) case

34. At the early stage of his correspondence with the assessor the Taxpayer stated that the Subject Property was sold because of the inconvenient transportation and that he was in need of cash. He failed to give any explanation as to the low or nil electricity consumption at the Subject Property. It was only at a later stage after the appointment of his legal representative that the Taxpayer contended the sale of the Subject Property was prompted by the security problem caused by straying illegal immigrants, the nuisance caused by mosquitoes and the traffic inconvenience. He also at a later stage claimed that he had the financial ability to hold the Subject Property on a long term basis. It was also only after the appointment of his legal representative that the Taxpayer tried to give reasons for the low electricity consumption at the Subject Property. The Respondent submitted that the Taxpayer's assertions were therefore after thoughts.

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35. Other than bare assertions, the Taxpayer has not adduced any cogent evidence to prove his stated intention. Before the purchase or after the sale of the Subject Property, the Taxpayer was living with his parents at his parents' property in District E. The low and nil electricity consumption at the Subject Property suggested that the Taxpayer at most had only short and temporary stay at the Subject Property.

36. Before the Taxpayer's wife emigrated to Country C in July 1993, they lived at their then residence in District D with a floor area of 650 square feet. It is contended that the Subject Property with a floor area of 1,768 square feet is quite out of range of those of the Taxpayer's past residence at District D and District E. It is difficult to believe the Taxpayer would use the Subject Property as future residence for a family of two. His daughter was only born on 20 June 1995, more than a year after the Subject Property was sold. This casts doubt on his claim that the Subject Property was acquired for use as his residence.

37. The property in District I which was supposed to replace the Subject Property, was let out on 10 December 1994 soon after it was assigned to the Taxpayer by the developer on 1 December 1994. When the first tenancy was early terminated on 30 September 1995, the Taxpayer let out the property again within five days (stamp duty of the tenancy agreement paid on 5 October 1995). This is indicative that the Taxpayer did not need a property for self-use. As Mortimer J said, the stated intention should be tested against the whole of the surrounding circumstances, including things done after.

38. Although the Taxpayer claimed that the Subject Property was a capital asset for residential use, he sold it only 3½ months after the Subject Property was assigned to him. The short period of ownership is a strong indicator of trading intention.

39. Intention must be genuinely held, realistic and realisable. It was submitted that the Taxpayer was not financially capable of holding the Subject Property long term. In his own admission, the Taxpayer stated in his reply to the Revenue's questionnaire and subsequent correspondence with the assessor that:

- (i) he was in need of cash so he sold the Subject Property;
- (ii) he had to bear his wife's living expenses in Country C and his income was not so good, thus he decided to sell the Subject Property;
- (iii) he faced financial instability and difficulty in the period of 1993 and 1994;

Furthermore, the Taxpayer's average monthly income for the years of assessment 1993/94 and 1994/95 was about \$12,500 and \$10,000 respectively, while the monthly mortgage repayment was \$29,104. It is clear from these facts that the Taxpayer did not have the financial

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ability to hold the Subject Property on a long term basis.

40. Although the Taxpayer's representative claimed that the Taxpayer's parents-in-law were prepared to offer financial assistance to the Taxpayer, the Taxpayer has yet to prove that his parents-in-law were willing as well as able to lend money to him on a long term basis. Thus, in the absence of such evidence, it cannot be said that the intention of holding the Subject Property as a long-term investment was genuinely held, realistic and realisable.

41. The Taxpayer claimed that he sold the Subject Property because of the security problem caused by the straying illegal immigrants, the nuisance caused by the mosquitoes and the traffic inconvenience. It was submitted that buying a property as a home is a major decision for most people and it is too important to be taken lightly. The Taxpayer was not a first-time home buyer. He had experience in buying properties as his residence. If he really intended to use the Subject Property as his home, he should have checked the surrounding environment of the Subject Property before committing to the purchase.

42. As to the problems encountered by the Taxpayer after he purchased the Subject Property, the Respondent argued that there is no evidence that the straying illegal immigrants posed a serious problem to the residents of Private Housing Estate A. The presence of insects and mosquitoes is a known phenomenon in New Territories and the traffic congestion in that area is a known problem to most people in Hong Kong.

43. It was submitted that the Taxpayer originally resided in District E and yet he purchased the Subject Property in District B. Contrary to his stated intention of acquiring it for self use, he sold it at a handsome profit 3½ months after it was assigned to him. This fact strongly suggests that the Taxpayer's intention to acquire the Subject Property was to dispose of it to reap a quick profit.

44. It was further submitted that whether the purchase and sale of a property constitutes a trading adventure is a question of fact and that each case turns on its own facts. While the Taxpayer relies on the Board of Review decisions, that is, D61/97, IRBRD, vol 12, 378, D69/96, IRBRD, vol 11, 677, D100/96, IRBRD, vol 12, 37, D102/96, IRBRD, vol 12, 44, and D16/97, IRBRD, vol 12, 155 to support his appeal, it was submitted that the facts in each of the five cases cited are different from the facts of the Taxpayer's case and that the five cases do not carry the Taxpayer's case any further.

45. As to the decoration expenses of \$450,000, it was submitted that there is no evidence to show that the Taxpayer had actually incurred those expenses. As the sum alleged is not small, payment in cash is unlikely. The Taxpayer so far has not provided any documentary evidence such as receipts, bank passbooks or statements to prove that he did incur the expenses. The Taxpayer alleged that the receipts or documents in respect of the decoration expenses were not kept because the expenses were of personal nature. However, he could produce copies of the other receipts of the Subject Property dated 9 December 1993.

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46. Finally, it was argued that the low electricity consumption suggested that no substantial decoration works were undertaken at the Subject Property. There is also no evidence to prove that there were problems with the fuse box or wiring of the Subject Property or that the contractor had arranged contingent electricity supply from other units.

47. Mr Yeung of the Respondent concluded that the Taxpayer has failed to adduce satisfactory evidence to prove that the Subject Property was acquired for use as his future residence and that he did incur the decoration expenses in question. He has not discharged his onus of proving that the assessment under appeal is excessive or incorrect. Viewing the evidence as a whole, it was submitted that the Taxpayer's claimed intention of using the Subject Property for residential purpose was not genuinely held, realistic and realisable. The purchase and resale of the Subject Property constituted an adventure in the nature of trade. It follows that the profits derived from the sale of the Subject Property should be assessable to profits tax. The Taxpayer is also not entitled to the deduction of the decoration expenses claimed.

The law

48. Section 14 of the Inland Revenue Ordinance [' the IRO '] is the charging provision for profits tax. The section reads as follows:

' Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate 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) as ascertained in accordance with this Part.'

49. Section 2 of the IRO contains a definition of trade which reads as follows:

' "trade" includes every trade and manufacture, and every adventure and concern in the nature of trade.'

50. Section 16(1) provides for the deduction of outgoings and expenses for profits tax purposes. The section reads as follows:

' In ascertaining the profits in respect of which a person is chargeable to tax under this Part 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 by such person in the production of profits in respect of which he is chargeable to tax under this Part for any period, ...'

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51. Section 68(4) places the burden of proving the assessments are excessive or incorrect on the appellant (the taxpayer).

The legal principle

52. It is well established that in determining whether a property is a trading stock or a capital asset, one has to ascertain the intention towards the property at the time of acquisition. A stated intention is of limited probative value. Regards must be had to the objective facts and circumstances surrounding the purchase and resale of the property. The intention must also be genuinely held, realistic and realisable. In All Best Wishes Limited v CIR 3 HKTC 750, Mortimer J said at page 771:

‘The intention of the taxpayer, at the time of acquisition, and at the time when he is holding the asset is undoubtedly of very great weight. And if the intention is on the evidence, genuinely held, realistic and realisable, and if all the circumstances show that at the time of the acquisition of the asset, the taxpayer was investing in it, then I agree. But as it is a question of fact, no simple test can produce the answer. In particular, the stated intention of the taxpayer cannot be decisive and the actual intention can only be determined upon the whole of the evidence. Indeed, decisions upon a person’s intention are commonplace in the law. It is probably the most litigated issue of all. It is trite to say that intention can only be judged by considering the whole of the surrounding circumstances, including things said and things done. Things said at the time, before and after, and things done at the time, before and after. Often it is rightly said that actions speak louder than words.’

Our findings and reasons

53. It is our task to ascertain the Taxpayer’s intention towards the Subject Property at the time when he acquired it. Self-serving statements are of limited value. The Taxpayer’s stated intention has to be tested against the objective facts and surrounding circumstances.

54. In reaching our decision, we have taken the following factors into consideration.

55. The Taxpayer’s wife left for Country C in July 1993 for immigration purpose. According to the Taxpayer, she would return to Hong Kong after she had obtained her immigration status in Country C. Nonetheless, that would not happen at least for a few years. The Subject Property was purchased by the Taxpayer in October 1993 soon after his wife left for Country C. Believing that when she returned to Hong Kong, she would have by then accustomed to the foreign style of living, the Taxpayer purchased the Subject Property. Is this claim credible? We think not. This claim needs to be tested against other objective facts and surrounding circumstances. The Taxpayer sold his matrimonial home in District D because his wife left for Country C. He then

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moved to live with his parents. Although he asserted that the Subject Property was purchased when he decided not to move to Country C, there was no immediate need for him to acquire a matrimonial home in anticipation of his wife's return which would not take place until a few years later. The Taxpayer claimed that the Subject Property was chosen because it offered the foreign style of living which his wife would be accustomed to after living in Country C for a few years. However, from the evidence before us, we observe that apart from the Subject Property, the Taxpayer did not acquire other properties of similar style as that of Private Housing Estate A as his family residence nor did he and his family live in one in Hong Kong after he sold the Subject Property.

56. As to whether the Taxpayer had the financial ability to hold the Subject Property on a long term basis, evidence was produced by the Respondent that at the material time, the Taxpayer had income of less than \$150,000 a year, while his mortgage repayment would be about \$300,000 per annum. This is a strong indicator that the Taxpayer did not have the financial means to hold the Subject Property and the Subject Property was not meant to be held for a long time. In his testimony, the Taxpayer claimed that after making the down payment out of the sale proceeds of his property in District D, he would still have a sum sufficient to cover the monthly mortgage instalments for one year and besides, he also had his monthly income, and that his parents-in-law were prepared to assist him financially, if necessary. However, apart from the aforesaid assertions by the Taxpayer, no other evidence was adduced by the Taxpayer to prove that he had the financial means to hold the Subject Property on a long term basis or that the parents-in-law were willing and/or able to assist the Taxpayer. In the absence of evidence, it is difficult for us to believe that the Taxpayer could hold the Subject Property on a long time basis and that the parents-in-law were prepared to render financial assistance to the Taxpayer by selling their home so that the Taxpayer could set up his 'dream home' which was not needed until a few years' time.

57. The low electricity consumption is a strong indicator that the Subject Property was not occupied by the Taxpayer during the period of his ownership of the Subject Property. The Taxpayer asserted that it was winter time, and due to the problems he encountered, he spent little time at the Subject Property thus resulting low electricity consumption. However, the Taxpayer gave evidence that his younger sister moved in with him to take care of the housework. That being the case, the electricity consumption could not be so low as 'nil'.

58. As to the Taxpayer's assertion that he held properties for self-use only one at a time thus proving non-trading intention, it is well established that an one-off transaction can constitute an adventure in the nature of trade. The crux of the matter is the intention of the Taxpayer at the time when he acquired the Subject Property, and not the number of properties held by him at the relevant time. So the Taxpayer's claim that between the purchase of the Subject Property and the purchase of the flat in District I he never owned two properties at one time, is irrelevant to the issue we have to decide.

59. The short period of ownership of the Subject Property by the Taxpayer, though not

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conclusive, is a strong indicator that the Subject Property was acquired not as a long term investment but as a trading asset.

60. The onus of proof is on the Taxpayer. He is required to prove to our satisfaction that the Subject Property was acquired by him for use as his residence. His assertions had been tested against the evidence before us and the surrounding circumstances. We find that the Taxpayer has failed to discharge the burden placed upon him to prove that the Subject Property was acquired as a home for himself and his wife. Since the Taxpayer has failed to prove that the Subject Property was acquired for self-use, for the purpose of this decision it is not necessary for us to consider his reasons for the sale of the Subject Property. However, had it been necessary for us to do so, we would not accept that the reasons given for the sale of the Subject Property were genuine.

61. The Taxpayer claimed that the Subject Property was sold because he was not happy with the unexpected problems he experienced after he moved into the property. However, we do not accept that those were the genuine reasons for the sale of the Subject Property. The traffic congestion in District B, in particular the area near District H, was well publicized and known to most people in Hong Kong. Besides, advertisement is always prone to exaggerations. It would be naive on the part of the Taxpayer, if he genuinely believed the claim by the developer that it would take only half an hour from Private Housing Estate A to District F. As to the invasion of insects and mosquitoes, we do not accept that it was an insurmountable problem which should cause the sale of an otherwise 'dream home'. Besides, the time that the Taxpayer moved into the Subject Property, was winter time. The invasion of insects and mosquitoes, to say the least, was grossly exaggerated. We also do not accept that the illegal immigrants posed a real security risk to the Taxpayer.

62. As to the decoration expenses, since the Taxpayer has failed to produce any documentary evidence to prove that the same had been incurred, we are unable to allow such expenses as claimed.

63. Finally, we agree with the Respondent that each case has its own merits. Having carefully considered the Board of Review decisions cited to us by the Taxpayer, we do not find that they can assist the Taxpayer in his appeal.

64. It follows that the appeal must be dismissed and the assessment confirmed.