INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D 2/78

Board of Review:

L. J. D'Almada Remedios, *Chairman,* D. Evans, R. S. Huthart & Peter P. L. Li, M*embers*.

26 June 1978.

Property tax – pre-war building owned and occupied by taxpayer – whether the restrictions imposed by Part I of the Landlord and Tenant (Consolidation) Ordinance should be ignored in determining the assessable value of an untenanted property under section 5A(2) of the Inland Revenue Ordinance.

The appellant owned and wholly occupied a pre-war building. He had been assessed to property tax in the sum of $2,304.00 for the year of assessment 1976/77, which was computed on the premises having an assessable value of $19,200.00 based on an estimated full market rent that did not take into account the restrictions imposed by Part I of the Landlord and Tenant (Consolidation) Ordinance. If the restrictions were taken into account, the assessable value would be $2,960.00 based on the estimated permitted rent of $246.00 per month.

On appeal against such assessment, the point for decision was whether for the purpose of property tax the Revenue was entitled to fix as the assessable value the amount equal to a freely negotiated market value regardless of the restrictions and controls imposed by Part I of the Landlord and Tenant (Consolidation) Ordinance.

Decision: Appeal allowed. Property tax to be computed on assessable value of $2,960.00 as premises could not be let from year to year for more than the permitted rent.

The Decision of the Board of Review was confirmed on appeal to the Court.

Appellant in person.

Brockelbank, Crown Counsel, for the Commissioner of Inland Revenue.

Cases referred to: -

1. Poplar v. Roberts, (1922) 2 A.C. 93.

2. Rawlance v. Croydon Corporation, (1952) 2 All E.R. 535.

3. Gidlow-Jackson v. Middlegate Ltd., (1974) 1 All E.R. 830.

4. Port of Spain Corporation v. Gordon, Grant & Company, Ltd., (1955) A.C. 389.

5. Tangammah Cumarasamy v. Chairman, Town Council, (1958) 24 M.L.J. 290.

6. Croxford Universal Insurance Co., (1936) 2 K.B. 253.

Reasons:

A pre-war building is wholly occupied by the Appellant, who owns the property. The Appellant has been assessed to property tax in the sum of $2,304.00 for the year of assessment 1976/77. He is indignant over it since tax is computed on the premises having an assessable value of $19,200.00 based on an estimated full market rent that does not take into account the restrictions imposed by Part I of the Landlord and Tenant (Consolidation) Ordinance. If regard is to be had to the restrictions imposed by that Ordinance, the assessable value would be $2,960.00 based on the estimated permitted rent of $246.00 per month. The Appellant has, therefore, appealed against such assessment.

The point raised for consideration is whether for the purpose of Property Tax the Revenue is entitled to fix the assessable value as being the amount equal to a freely negotiated market value without regard to the restrictions and controls imposed by Part I of the Landlord and Tenant (Consolidation) Ordinance.

This point has been previously raised before and answered by another Board of Review in B/R 27/77/PPT 19. For reasons fully expressed that Board came to the conclusion that the restrictions imposed by Part I of the Landlord and Tenant (Consolidation) Ordinance as to the amount of rent chargeable and receivable by the Landlord cannot be ignored in determining the assessable value.

It is not disputed that in the appeal before us the “assessable value’ of the premises shall be an amount equal to the rent which on the 1 April 1976 the property might reasonably be expected to let from year to year; nor is it disputed that if the premises were let on the 1 April 1976 on a year to year basis the Appellant is not entitled to receive – and commits an offence if he receives – more than the permitted rent. If on a letting from year to year the Appellant demands and receives more than the permitted rent the tenant can recover any excess so paid including any premium which the tenant may have paid for the grant of the tenancy.

As the Ordinance requires the assessable value to be determined by having regard to what the premises can “reasonably” be expected to let from year to year, it is our view that the Appellant cannot “reasonably” be expected to contravene the law and commit an offence by a letting on a yearly basis for more than the permitted rent. We agree with the views expressed in the Decision of the Board of Review in B/R No. 27/77/PPT 19 which we adopt for the purpose of this appeal.

In deference to Mr. Brockelbank who appeared on behalf of the Commissioner we feel that we should deal with the points he has raised. He contended firstly that it would not be wrong for us to follow the decision in **Poplar v. Roberts**[1]**.** Although in that case the Divisional Court and the Court of Appeal by a majority held that the gross value of a building for rating purposes could not be greater than the standard rent which permitted increases under the Rent Acts, the decision was reversed by a majority in the House of Lords who held that the Rent Acts were not to be taken into account. The ratio of the decision in the **Poplar** case[1] is peculiar only to rating under the English law of Rating where the liability for rates is a tax on the occupier based on the value or benefit of the here-ditament to the occupier in respect of his occupation; it is concerned with value, not to the landlord or owner, but to the occupier. Property Tax, on the other hand, is concerned with the value to the owner or landlord.

The **Poplar** case' has not been extended to cover any other type of case. This is conceded by Mr. Brockelbank. In **Rawlance v. Croydon Corporation**[2] it was held that the "full net annual value" of the house within section 9(4) of the Housing Act 1936 was the value of a house to the landlord and in the case of a house within the Rent Restrictions Acts it was the maximum rent permitted by those Acts. As was said by Somerville L.J. in that case (at page 541): -

> "The Rent Acts control and restrict the value to the landlord with which we are concerned, while leaving unaffected the value to the occupier with which rating is concerned.".

In that same case Denning L.J. (as he then was) put it in this way (at page 542): -

> "I do not think that (the *Poplar* Case) has any application to the present case. Rating concerns the value to the occupier whereas we are concerned with the value to the landlord ... The 'full net annual value' of the house is not to be calculated as if the Rent Acts did not exist. It is the full amount which a landlord can reasonably expect to get from a tenant. If he receives the full permitted amount, he is receiving the 'full annual value.'".

The same principle was applied in **Gidlow-Jackson v. Middlegate Ltd.**[3] where the Court was concerned with the meaning of "letting value."

There is also strong authority for the proposition that the decision in the **Poplar** case is inapplicable even in rating where rates can be charged on the owner. They will be found in the cases of **Port of Spain Corporation v. Gordon, Grant & Company Ltd.**[4] and

---

1 (1922) 2 A.C. 93.
2 (1952) 2 All E.R. 535.
3 (1974) 1 All E.R. 830.
4 (1955) A.C. 389.

Tangammah Cumarasamy v. Chairman, Town Councils[5]. Both cases are concerned with assessment for rating purposes: the former in the West Indies and the latter in Malaya. The same question arose for consideration, namely, whether by reason of rent control (analogous to Part I of our Landlord and Tenant (Consolidation) Ordinance) the basis of assessment can, for rating purposes, exceed the permitted rent. In both cases the answer was in the negative. These two cases deal with the relevant points comprehensively.

The other aspect of Mr. Brockelbank's contention is interesting. He argues that in a case where there is a letting then by virtue of section 5A(1) of the Inland Revenue Ordinance the assessable value shall be an amount equal to the estimated annual rent which would be permitted under Part I or authorized under Part II, as the case may be, of the Landlord and Tenant (Consolidation) Ordinance provided the Commissioner is satisfied that no consideration has been given or required as a condition for the grant or continuation of such letting other than the payment of the rent as is permitted or authorized under the Landlord and Tenant (Consolidation) Ordinance. He submits that if the Commissioner is not so satisfied then the assessable value shall be computed in accordance with section 5A(2) which, incidentally, is the same mode by which computation is to be assessed where there is no letting such as in the case now before us. He argues, therefore, that the result would be strange if in the case of premises controlled by Part I of the Landlord and Tenant (Consolidation) Ordinance and there is a letting plus the acceptance of tea-money the assessable value must still be based on the permitted rent. Although we are not concerned with a hypothetical case of that nature, the answer is really this: If the legislature has thought fit to enact that upon that eventuality as outlined by Mr. Brockelbank the assessable value shall be computed in accordance with section 5A(2), so be it. We simply look to what section 5A(2) says and we apply it. We are dealing with a taxing statute and we are not, therefore, concerned with the morality or otherwise of the quantum of tax payable.

For Property Tax purposes, the Inland Revenue Ordinance provides a clear formula for the ascertainment of the assessable value of premises that are untenanted. In clear terms section 5A(2) provides that in a situation such as in this appeal before us the assessable value –

> "... shall be an amount equal to the rent at which on the first day of any year of assessment such property might reasonably be expected to let from year to year …".

These words are not equivocal, wherefore, they must be construed according to their plain, literal meaning.

> "Where the words of an Act of Parliament are clear, there is no room for applying any of the principles of interpretation which are merely presumptions in cases of ambiguity in the statute." – per Scott L.J., in *Croxford Universal Insurance Co.* (1936) 2 K.B. 253 at 281.

---

[5] (1958) 24 M.L.J. 290.

Since the words used in section 5A(2) are unambigious, we cannot alter the meaning or the language of the section to read into it something which it does not say and different from what it says.

As the premises, the subject matter of this appeal, cannot lawfully be let from year to year for more than the permitted rent, we find the assessable value to be $2,960.00 on which figure Property Tax is to be computed.