

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D28/98

Profits tax – profits arising from sale of property – investment or trade – intention at the time of acquisition – Inland Revenue Ordinance sections 68(4), 70.

Panel: Robert Wei Wen Nam SC (chairman), Arthur Chan Ka Pui and John Lee Luen Wai.

Date of hearing: 6 February 1998.

Date of decision: 25 May 1998.

The taxpayer is a private limited company. At all material times, Mr A was one of its directors. By an agreement dated 2 July 1992, the taxpayer purchased a property in a commercial building at a consideration of \$3,768,100. (the Subject Property). The Subject Property was purchased subject to an existing tenancy for a term of two years commencing on 25 May 1991 at a monthly rental of \$23,000. The Subject Property was assigned to the taxpayer on 24 August 1992. The taxpayer took out a bank loan of \$2,700,000 in order to finance the purchase.

By a provisional agreement dated 26 August 1993 the taxpayer sold the Subject Property for \$6,400,000 which was completed on 6 October 1993.

Upon the taxpayer's failure to file its profits tax return for the year of assessment 1993/94, the assessor raised on it a profits tax assessment for the year of assessment 1993/94 showing assessable profits of \$990,000 which was not objected by the taxpayer and has become final and conclusive by virtue of section 70 of the Inland Revenue Ordinance (IRO).

In March 1995, the assessor raised on the taxpayer an additional tax assessment for the year of assessment 1993/94 showing additional profits of \$1,710,000. The taxpayer objected to the additional tax assessment. To validate its objection, the taxpayer filed its profits tax return for the year of assessment 1993/94 which excluded a sum of 2,519,357 being the gain on disposal of the Subject Property which has however been included in its profit and loss account.

The taxpayer's case is that the Subject Property was acquired as a long term investment and therefore profit arising from the subsequent sale is a capital gain and is not subject to profits tax.

The taxpayer offered two explanations for the resale.

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The first explanation asserts an initial intention to sue the Subject Property as the taxpayer's own office upon the expiry of the short-term tenancy. In November 1992, the tenant requested an early termination of the tenancy on 24 February 1993. Thus the taxpayer planned to use the Subject Property as its office so the existing office could be let out to earn rental income to provide a steady cash flow. However, Mr A was appointed the consul (HK) of Country E and it was necessary to set up a consular office in Hong Kong. The Subject Property was too small for use as the taxpayer's new office as well as the office of the consulate. The taxpayer decided not to move into the Subject Property but to remain in the existing office. It then tried to lease out the Subject Property but was unsuccessful. The Subject Property had been left vacant for more than six months before it was sold.

In the second explanation Mr A declared an initial intention to use the Subject Property as an office to promote trade for Country E and also the representative office of that country. He knew that he was going to be appointed consul of Country E and the Subject Property was purchased in anticipation of that. At first Country E intended to send four or five representatives to Hong Kong to assist him. He could not purchase a property and leave it vacant to wait for the arrival of those representatives, so he purchase the Subject Property with the benefit of a short term tenancy. Later on, Country E experienced a drought and appealed to international community for food. As a result, they could not afford to send along those representatives to Hong Kong. So Mr A used part of the existing office as the office of the consulate. In the end, Country E sent one representative to assist him. He received no pay for his services. For these reasons, he had to rent out the Subject Property or sell it for it was owing the bank a lot of money. However, Mr A could not give the Revenue a written explanation about Country E's failure to pay him and to keep its promise to pay rent as a result of the difficulties in that country.

Held:

1. The question for the Board is whether the Subject Property was acquired with the intention of disposing of it at a profit or as a permanent investment. (Lionel Simmons Properties Limited (In Liquidation) & Others v CIR 53 TC 461 applied)
2. The onus is on the taxpayer to prove that the assessment is excessive or incorrect (IRO section 68(4)). In order words, it has to prove that the Subject Property was acquired with the intention of holding it as a permanent or long-term investment.
3. Intention is a question of fact and can only be judged by considering the whole of the surrounding circumstances. (All Best Wishes Limited v CIR 3 HKTC 750 applied)
4. The Board found the first explanation implausible. On 2 July 1992, the Subject Property was acquired to be used as the taxpayer's own office. On 8 July 1992, Mr A was appointed consul of Country E. Upon the appointment,

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the taxpayer should immediately have realized that the Subject Property would not be large enough to house both the taxpayer's own office and the office of the consulate and should have decided to retain the existing office. The first explanation does not say why, as late as November 92, the taxpayer was still planning to use the Subject Property as its office.

5. According to the second explanation, the Subject Property was acquired to be used as the office of the consulate and in anticipation of the arrival of four or five representative of Country E. It is contradicted by the statement that, if Country E had sent along those representatives, then the Subject Property would have been too small as a consular office, for, if the later statement is true, there would have been no reason to purchase the Subject Property.
6. The second explanation was not disclosed previously and there was also no documentary evidence whatsoever produced concerning the communications between Mr A and Country E regarding the financial affairs of the consulate. Furthermore, the first explanation suggests the second explanation was an afterthought
7. The two explanations are so different in nature that they cannot both be true but can both be false. They were not accept by the Board.

Appeal dismissed.

Cases referred to:

Lionel Simmons Properties Limited (In Liquidation) and Others v CIR 53 TC 461
All Best Wishes Limited v CIR 3 HKTC 750

Ma Wai Fong for the Commissioner of Inland Revenue.
Taxpayer represented by its director.

Decision:

Nature of appeal

1. This is an appeal by a private limited company against the additional profits tax assessment raised on it for the year of assessment 1993/94 in respect of the profit derived from the sale of a property.

Agreed facts

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2. The Taxpayer was incorporated on 20 June 1986. At all relevant times, its directors were Mr A, Ms B and Mr C. Its authorised and paid-up capital was \$10,000.
3. In its profits tax returns for the years of assessment 1986/87 to 1992/93, the Taxpayer described the nature of its business as 'properties investment'. Profits derived from the sale of properties for the years 1986/87 to 1991/92 were offered for assessment.
4. By an agreement dated 2 July 1992, the Taxpayer purchased a property in a commercial building in Kowloon at a consideration of \$3,768,100. The property was purchased subject to an existing tenancy for a term of two years commencing on 25 May 1991 at a monthly rental of \$23,000.
5. The Subject Property was assigned to the Taxpayer on 24 August 1992. To finance the purchase, the Taxpayer took out a bank loan of \$2,700,000 which was repayable by 84 monthly instalments of \$43,441 each.
6. By a provisional agreement dated 26 August 1993 the Taxpayer sold the Subject Property for \$6,400,000. The sale was completed on 6 October 1993.
7. Upon the Taxpayer's failure to file its profits tax return for the year of assessment 1993/94, the assessor raised on it a profits tax assessment for the year of assessment 1993/94 showing assessable profits of \$990,000 with tax payable thereon of \$173,250. The Taxpayer did not object against the assessment which has since become final and conclusive by virtue of section 70 of the Inland Revenue Ordinance.
8. On 24 March 1995, the assessor raised on the Taxpayer an additional profits tax assessment for the year of assessment 1993/94 showing additional assessable profits of \$1,710,000 with tax payable on thereon of \$299,250.
9. The Taxpayer's tax representatives, Messrs W and Co, on behalf of the Taxpayers, objected to the additional profits tax assessment for the years of assessment 1993/94 on the ground that the profits assessed were excessive.
10. (a) In the Taxpayer's accounts for the year ended 31 March 1993 which were approved by the board of directors on 24 April 1995, the Subject Property was classified as 'land and buildings'.

(b) To validate its objection, the Taxpayer filed its profits tax return for the year of assessment 1993/94 disclosing assessable profits of \$857,115. In arriving at the assessable profits, the Taxpayer excluded a sum of \$2,519,357, being the gain on disposal of the Subject Property which has however been included in its profit and loss account. The gain was computed as follows:

	\$
Selling price	6,400,000
<u>Less: Legal fee and commission</u>	<u>55,500</u>

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		6,344,500
<u>Less: Purchase</u>	3,768,100	
Legal fee	105,463	
Accumulated depreciation	<u>(46,420)</u>	<u>3,825,143</u>
		<u>2,519,357</u>

11. In correspondence with the assessor, the representatives put forth the following contentions:

11.1 The Taxpayer's initial intention in purchasing the Subject Property was for self-use as the Taxpayer's office when the lease term expired.

[A copy of the minutes of a meeting of the Taxpayer's directors held on 21 August 1992 sets out resolutions: (1) to purchase the Subject Property subject to the existing tenancy, (2) to ratify the execution of the agreement for sale and purchase dated 2 July 1992 in respect of the Subject Property by Mr A, (3) to execute the assignment of the Subject Property and to authorize Mr A and Ms B to sign the assignment, (4) to apply to a named bank for banking facilities to be secured by a legal charge on the Subject Property, (5) to affix the seal of the Taxpayer to the legal charge and other relevant documents in the presence of Mr A and Ms B and (6) to authorize Mr A and Ms B to execute the legal charge and other relevant documents for the Taxpayer.]

11.2 Firstly, the Subject Property was purchased together with an unexpired tenancy until May 1993 and it was clearly proved that the Taxpayer had no intention to sell the Subject Property within a short period of time. In fact, the Taxpayer intended to hold the Subject Property for long-term investment.

11.3 In November 1992, the tenant requested an early termination of the tenancy on 24 February 1993. At the time, the Taxpayer planned to use the Subject Property as the Taxpayer's office because the directors estimated that the existing office located in District D (the Existing Office) could at least earn a monthly rental income of about \$180,000 to \$200,000. Therefore, it could improve the Taxpayer's financial position and provide a steady cash flow to the Taxpayer's operating funds if the Taxpayer moved into the Subject Property.

11.4 However, during the unexpired period of the tenancy, Mr A was appointed the consul (HK) of Country E and it was necessary to set up an office in Hong Kong. The directors considered that the Subject Property was too small and not suitable for use as the Taxpayer's new office as well as the office of the consulate of Country E. Therefore, the Taxpayer dropped the idea and decided to remain in the Existing Office.

11.5 On the other hand, the Taxpayer tried to lease out the Subject Property through the property agent when the Taxpayer decided not to move into the Subject Property. Unfortunately, it was unsuccessful and the Subject Property was vacant for more than six months.

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11.6 In August 1993, a friend of Mr A introduced the buyer who was interested and willing to purchase the Subject Property. As the Taxpayer forecast that the return from rental market was not as good as that in previous years and it would be costly if the Subject Property was to stay vacant. Therefore the Taxpayer agreed to sell the Subject Property so that the proceeds of sale could settle part of the loans and reduce the interest expenses of the Taxpayer.

12. In reply to inquiries raised by the assessor, the representatives provided, inter alia, the following information:

12.1 The Taxpayer had incurred commission expense of \$37,850 on purchase of the Subject Property which was omitted in computing the gain on disposal.

12.2 The Existing Office was acquired by the Taxpayer in 1987. It has since been used as the directors' quarters for Mr A and Ms B as well as the Taxpayer's office.

12.3 The floor area of the Existing Office and that of the Subject Property were about 10,000 square feet and 1,600 square feet respectively.

12.4 Mr A was appointed the consul (HK) of Country E on 8 July 1992. [A copy certificate of the honorary consul of Country E dated 8 July 1992 declares the appointment of Mr A as the honorary consul of Country E in Hong Kong.]

12.5 The mortgage loan of the Subject Property was repaid by: (a) 9 instalments totalling \$409,289.45 from September 1992 to May 1993; (b) early interim repayment of \$1,555,000 on 14 May 1993; (c) 3 instalments totalling \$48,661.15 from June 1993 to August 1993, and (4) final repayment of \$909,205.84 upon sale of the Subject Property. The interim repayment of \$1,555,000 was financed from funds of the Taxpayer's shareholder.

13. In response to the assessor's inquiries, the representatives stated that the Taxpayer was planning to use the Subject Property as office and therefore did not offer the Subject Property for letting after the termination of the tenancy.

14. In support of the claim that the profit on sale of the Subject Property should not be chargeable to tax, the representatives advanced the following arguments:

14.1 Short period of ownership of a property does not necessarily mean trading. The Subject Property was originally acquired to be used as the Taxpayer's office, which is more conveniently located than the Existing Office, when its lease expired. The lease, being a commercial release, if not for the mutual agreement to terminate early, would have come to an end on 24 May 1993. If not for the change of circumstances at the relevant time, the Taxpayer would have used the Subject Property as its office.

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14.2 The Taxpayer's history of properties trading does not automatically make the disposal of the Subject Property a trading transaction. The Taxpayer has clearly indicated by way of classification that the Subject Property was intended for long-term investment. Disposal of the Subject Property was the result of the change of the needs of the Taxpayer.

Determination

15. The Commissioner is of the view that the Subject Property was acquired by the Taxpayer as trading stock and the profit derived therefrom should be chargeable to tax and has revised the additional profits tax assessment for the year of assessment 1993/94 as follows:

	\$
Profits per return	857,115
<u>Add</u> : Gain on disposal of property (\$2,519,357 - \$48,420 - \$37,850)	<u>2,433,087</u>
Assessable profits	3,290,202
<u>Less</u> : Profits already assessed	<u>990,000</u>
Revised additional assessable profits	<u>2,300,202</u>
Tax payable thereon	<u>402,535</u>

Grounds of appeal

16. The statement of the grounds of appeal is principally to the following effect:

16.1 The Subject Property was acquired by the Taxpayer as long-term investment, and therefore the gain on its disposal was non-taxable capital gain.

16.2 The Commissioner wrongly concluded that the Taxpayer did not have a firm intention to purchase the Subject Property for self-use as its office when the lease of the existing tenancy expired.

16.3 (a) The Commissioner incorrectly placed too much emphasis on the floor area of the Existing Office and the Subject Property. The Existing Office was used as the Taxpayer's office as well as the quarters of the directors while the Subject Property would only be used as the office of the Taxpayer.

(b) The Commissioner failed to take into account that the rate of return of letting the Subject Property was 7.3% ($\$23,000 \times 12 / \$3,768,100$) which was undoubtedly an attractive return for a rental income even though it realized that the Subject Property might not be suitable for the purpose of office use. There is no change in the Taxpayer's long-term intention in holding the Subject Property.

(c) The Commissioner wrongly took into account the fact that the rental income was not sufficient to cover the interest payment and wrongly concluded that the

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Taxpayer did not have the financial capability to hold on to the Subject Property long term. The Taxpayer did make an early repayment of the bank loan with the support of its shareholders in May 1993.

- (d) The Commissioner place too much significance over the properties trading record of the Taxpayer before 1992 as the Subject Property was purchased in July 1992. There is no inconsistency in the Taxpayer's history that some properties were for trading while some other properties were for long-term investment.
- (e) The Commissioner failed to take a consistent view over the accounting treatment. The classification of the Subject Property as a fixed asset was not accepted as a conclusive factor while the inclusion of the gain on disposal in the profit and loss account as a normal operating profit 'clearly negates the Taxpayer's allegation'.
- (f) The Commissioner failed to pay sufficient regard to the fact that the Taxpayer took no active action to sell the Subject Property. It was sold to the buyer who was introduced by a friend of Mr A. If the Taxpayer had any intention to trade the property, it would play a more active role in seeking potential buyers.

Parties as the hearing

17. At the hearing of this appeal, the Taxpayer was represented by Mr A with the representative of Messrs W and Co, certified public accountants, in attendance. No witness was called. Instead of giving evidence on oath, Mr A elected to make unsworn statements in the course of his submissions.

Mr M's statements

18. Briefly, Mr A's statements were to the following effect.

18.1 He apologized to the Revenue. When he was asked to supply information, he did not reply, in order to protect the interests of Country E. He was no longer a consul of that country and he could now disclose certain information.

18.2 He was the chairman of a Buddhist institute which enjoyed exemption from tax. The institute was located in a property in District D which belonged to the Taxpayer.

18.3 Because of the June 4 movement, he stopped property transactions and tried to promote Buddhist culture in China. While he was promoting Buddhism in the communist world, he was appointed the consul of Country E for Hong Kong. Upon acceptance of the post, he agreed to promote trade on behalf of Country E in Hong Kong, while, at the same time, taking care of the consulate. And he agreed to set up a trading company for them in Hong Kong.

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18.4 Before the appointment, he looked for a property for that purpose. Before the appointment, he already knew that he was going to be appointed. They had such intention; they were awaiting approval from Country F.

18.5 At first, the foreign trade department of Country E intended to send four or five representatives to Hong Kong to help him. They had to send along those representatives because Hong Kong people could not do the job, but those representatives could because they knew the language of Country G and the language of Country E.

18.6 He could not purchase a property and leave it vacant to wait for the arrival of those representatives. So, through a friend, he purchased a property with the benefit of a short-term tenancy. That way he would be in a position to wait for the arrival of the representatives, while at the same time receiving rental income. The new company to be set up would rent the premises from the Taxpayer upon the expiry of the tenancy.

18.7 Later on, Country E experienced a drought. They had to appeal to the international community for food. As a result, for lack of funds, the foreign trade department could not send along those representatives to Hong Kong. They could not afford their accommodation and other expenses.

18.8 He had to change his plans. So he used part of the Existing Office in District D as the office of the consulate. In the end Country E could only send out one representative to assist him. They could not pay him anything.

18.9 Because of those changes, he had to rent out the Subject Property or sell it when the price was good, for the Taxpayer owed the bank a lot of money and had to pay substantial interest to the bank.

18.10 A few months later, a construction site was going on pre-sales and the asking price was high. The price of the Subject Property had not been good before those pre-sales. His friend had a friend who wished to know whether he would like to sell the Subject Property. He asked \$6,400,000. He was very fortunate. The buyer paid him a deposit straight away. This happened a year after he had purchased the Subject Property. Later on, he realized that it might be the economic recovery after the June 4 incident. It was something special – the sudden appreciation in the value of property.

18.11 Since the setting up of the Taxpayer and the investment in the Subject Property, he had a plan. The Taxpayer would go in two directions. One was for long-term rental income and the other was for resale. Then they would inject the profits from the resale into long-term investments. Lots of properties purchased in 1987 were not sold yet. His approach was mainly to invest in residential pre-sale flats. He never invested in office resales.

18.12 If Country E had sent along those representatives, then the Subject Property would have been too small as consulate office.

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18.13 Later on, he learned that Country E did not have funds to purchase goods and they had to barter. They needed the garden of the Existing Office in District D for storage purposes. He acted as the middleman. He only charged commission, but he had to provide storage.

18.14 At the time of the purchase of the Subject Property, he intended it to be used as an office to promote trade for Country E and also as the representative office of Country E.

18.15 He could not give the Revenue a written explanation about Country E's failure to make payment and also about its failure to keep its promise to pay rent to him as a result of the difficulties in that country. He must apologize to the Revenue for that. He had to protect the dignity of Country E. In doing so, he has caused delays in solving this problem.

Findings and reasons

19. The question for the Board is, what was the intention of the Taxpayer at the time of the acquisition of the Subject Property. Was it acquired with the intention of disposing of it at a profit, or was it acquired as a permanent investment? (See Lionel Simmons Properties Limited (In Liquidation) and Others v CIR 53 TC 461 at 491.) If the intention was to dispose of it at a profit, the Subject Property was a trading asset, and the profit arising from the subsequent sale is a trading profit and is subject to profits tax. On the other hand, if the Subject Property was acquired as a permanent or long-term investment, the profit arising from the subsequent sale is a capital gain and is not subject to profits tax.

20. The assessment in question was raised by the assessor on the basis that the Subject Property was acquired by the Taxpayer with a trading intention, that the Subject Property was a trading asset and that the profit on its sale was subject to profits tax.

21. By reason of section 68(4) of the Inland Revenue Ordinance, the onus is on the Taxpayer to prove that the assessment is excessive or incorrect, and for that purpose to prove that the Subject Property was acquired with the intention of holding it as a permanent or long-term investment.

22. Intention is a question of fact. The stated intention of the Taxpayer cannot be decisive. Intention can only be judged by considering the whole of the surrounding circumstances, including things said and things done at the time, before and after. Often it is rightly said that actions speak louder than words. (See All Best Wishes Limited v CIR 3 HKTC 750 at 771.)

23. The Taxpayer's case is that the Subject Property was acquired as a long-term investment. That is its stated intention and has to be tested against the fact that the Subject Property was sold at a profit just over a year after the acquisition, and notwithstanding the early termination of a short-term tenancy. The stated intention cannot prevail unless the resale is satisfactorily explained away.

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24. The Taxpayer has offered two explanations for the resale. The first explanation was conveyed by written representations sent by its tax representatives to the assessor pending the determination of its objection to the assessment. The second explanation was given by Mr A in the course of his submissions at the hearing of this appeal. The two explanations are inconsistent with each other.
- 25 (a) The first explanation asserts an initial intention to use the Subject Property as the Taxpayer's own office upon the expiry of the short-term tenancy (see paragraph 11.1 above). When, in November 1992, the tenant requested an early termination of the tenancy on 24 February 1993, the Taxpayer was planning to use the Subject Property as its office so that the Existing Office in District D could be let out to earn rental income to provide a steady cash flow (see paragraph 11.3 above). However, during the tenancy, Mr A was appointed the consul (HK) of Country E and it was necessary to set up a consular office in Hong Kong. The Subject Property was too small for use as the Taxpayer's new office as well as the office of the consulate. The Taxpayer decided not to move into the Subject Property but to remain in the Existing Office (see paragraph 11.4 above). It tried to lease out the Subject Property but the efforts were unsuccessful. The Subject Property was left vacant for more than six months before it was sold through the introduction of a friend (see paragraph 11.5 and 11.6 above).
- (b) There is a basic implausibility to the first explanation. On 2 July 1992, the Subject Property was acquired to be used as the Taxpayer's own office. On 8 July 1992, Mr A was appointed consul of Country E. Upon the appointment being made, the Taxpayer should immediately have realized that the Subject Property would not be large enough to house both the Taxpayer's own office and the office of the consulate and should have decided to retain the Existing Office in District D (as it contended it did, but at a later time.). The first explanation does not say why, as late as November 1992, the Taxpayer was still planning to use the Subject Property as its office.
26. (a) In the second explanation, Mr A declared an initial intention to use the Subject Property as an office to promote trade for Country E and also as the representative office of that country (see paragraph 18.14 above). He knew that he was going to be appointed consul of Country E, and the Subject Property was purchased in anticipation of the appointment. At first, the foreign trade department of Country E intended to send four or five representatives to Hong Kong to assist him. He could not purchase a property and leave it vacant to wait for the arrival of those representatives, so he purchased the Subject Property with the benefit of a short-term tenancy. That way he could receive rental income while waiting for the arrival of the representatives. Later on, Country E experienced a drought and appealed to the international community for food. As a result, the foreign trade department could not afford to send along those representatives to Hong Kong. He had to change its plans. So he used part of the Existing Office in District D as the office of the consulate. In

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the end Country E only sent one representative to assist him. He received no pay for his services. For those reasons, he had to rent out the Subject Property or sell it when the price was good, for the Taxpayer was owing the bank a lot of money. In the end, the Subject Property was sold. (See paragraphs 18.4 to 18.10 above). If Country E had sent along those representatives, then the Subject Property would have been too small as an office of the consulate (see paragraph 18.12 above). He could not give the Revenue a written explanation about Country E's failure to pay him and to keep its promise to pay rent as a result of the difficulties in that country. He wished to apologise to the Revenue. He had to protect the dignity of Country E (see paragraph 18.15 above)

- (b) According to the second explanation, the Subject Property was acquired to be used as the office of the consulate (see paragraph 18.14 above) and in anticipation of the arrival of four or five representatives of Country E to assist Mr A in operating the office of the consulate (see paragraph 18.6 above). But that statement is contradicted by the statement (see paragraph 18.12 above) that, if Country E had sent along those representatives, then the Subject Property would have been too small as a consular office, for, if the latter statement is true, there would have been no reason to purchase the Subject Property.
- (c) The explanation goes on to say that the Subject Property was sold in the end because Country E lacked the means to maintain it as a consular office on the scale intended. This is said to have been due to an economic crisis brought on by a drought in Country E which he had not disclosed previously because he had to protect the dignity of Country E. He was in a position to make disclosure now because he was no longer consul of Country E. We fail to comprehend the sentiment. Natural calamities can cause economic crises and financial difficulties. But a country does not become less dignified because it suffers the effects of those difficulties. We do not see why it should have been necessary for the Taxpayer to keep the financial difficulties of Country E a secret from the Revenue. It should also be mentioned here that no documentary evidence whatsoever was produced at the hearing in respect of any communications between Mr A and Country E regarding the financial affairs of the consulate.
- (d) Furthermore, the existence of the first explanation suggests that the second explanation was an afterthought.

27. The two explanations are so different in nature that they cannot both be true but can both be false. For the reasons stated in paragraphs 25 and 26 above, we are unable to accept either explanation.

Decision

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28. It follows that this appeal, which is constructed on the second explanation, is dismissed and that the additional profits tax assessment for the year of assessment 1993/94 as revised by the Commissioner (as shown in paragraph 15 above) is hereby confirmed.