

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D31/93

Profits tax – sale of land – intention of taxpayer at the time when the land was acquired – whether profit subject to profits tax.

Panel: William Turnbull (chairman), Elsie Leung Oi Sie and E M I Packwood.

Dates of hearing: 25 November 1992 and 17 February 1993.

Date of decision: 1 November 1993.

The taxpayer acquired a number of pieces of land which he claimed were for the purpose of operating a business. He sold part of the land which he had acquired at a profit. He submitted that the profit was not subject to tax because the land had been acquired as a long term capital asset.

Held:

While the subjective evidence of the taxpayer was clearly in his favour, it was necessary to test this against the objective facts. When the evidence was tested against the objective facts, it was found to be fanciful and was rejected by the Board.

Appeal dismissed.

Cases referred to:

Lionel Simmons Properties Ltd v CIR 53 TC 461
Hillerns and Fowler v Murray 17 TC 77
D11/80, IRBRD, vol 1, 374
CIR v Sincere Insurance & Investment Co Ltd 1 HKTC 602
Richfield International Land & Investment Co Ltd v CIR 3 HKTC 167
Shadford v H Fairweather & Co Ltd 43 TC 291
BR 23/74, IRBRD, vol 1, 168
D16/91, IRBRD, vol 6, 24

Mei Yin for the Commissioner of Inland Revenue.

Benjamin Chain instructed by Messrs Norman M K Yeung & Co for the taxpayer.

Decision:

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This is an appealed by an individual against a profits tax assessment which assessed to tax a gain or profit which had been made upon the sale of certain land. The facts are as follows:

1. In early 1972 the Taxpayer acquired a vacant site in site A at a cost of \$380,000. The Taxpayer's intention in acquiring this site was for the purpose of re-sale. The Taxpayer erected a new building upon the site which was completed in late 1972 and all flats in the building were subsequently sold. The construction of the new building was financed with a bank loan.
2. In late 1972 the Taxpayer acquired several other pieces of land in site A. They were all purchased by the Taxpayer in one lot at a lump sum price of \$580,000 which the Taxpayer paid from his own financial resources without it being necessary for him to acquire any mortgage. At that time the vendors were only prepared to sell all of the various lots together and the Taxpayer agreed to purchase the same because he considered the price to be a good bargain.
3. For convenience we will refer to all of these other lots purchased together in late October 1972 as 'the relevant land'.
4. The relevant land did not comprise one large site but a number of separate lots which were not contiguous or adjoining. All of the lots were in remote area and not readily accessible, and occupied either by persons claiming to be tenants or by trespassers.
5. Prior to purchasing the relevant land the Taxpayer did not inspect all of the lots which he was purchasing and the acquisition was without vacant possession. There were also no warranties given by the vendors regarding the status of whosoever were occupying the lots.
6. The Taxpayer filed profits tax returns with the Inland Revenue Department in respect of a land investment business which the Taxpayer carried on in his own name. He employed a firm of certified public accountants as his tax representatives and maintained annual accounts in respect of this land investment business. The relevant land was included in the assets of this land investment business, and was classified as fixed assets.
7. The Taxpayer was also a 50% partner in business A which business was carried on in site A. Tax returns were filed in respect of business A and the same tax representatives were employed as for the land investment business of the Taxpayer.
8. During the year of assessment 1980/81 the Taxpayer sold a number of the lots which were comprised in the relevant land. The Taxpayer in his 1980/81 profits tax return reported the profit which he made on this sale as an assessable property trading profit of \$2,328,842.

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9. Queries were raised by the assessor in respect of the profits tax return for the year of assessment 1980/81 because profits from the sale of certain additional lots had not been included. The former tax representatives explained that the Taxpayer had inadvertently left out the relevant transactions in the accounts and they provided a schedule showing an additional profit of \$501,794.20 which should have been included in the 1980/81 profits tax return.

10. On 14 September 1982 the assessor raised on the Taxpayer the following 1980/81 profits tax assessment on the land investment business carried on by the Taxpayer:

	\$
Profits per Return	2,328,842
<u>Add: Profits from sale of lots comprised in the relevant land</u>	<u>501,794</u>
Assessable Profit	<u>2,830,636</u>
Tax Payable thereon	<u>424,595</u>

The Taxpayer did not object against this assessment

11. In respect of the year of assessment 1983/84 the Taxpayer claimed personal assessment and stated that in addition to business A he was also engaged in the business of property dealing under his own name. This was in accordance with the accounts and tax returns which he had been filing in respect of his land investment business.

12. During the year of assessment 1984/85 the Taxpayer disposed of two properties and did not offer the profits derived therefrom for profits tax assessment. The properties were not part of the relevant land but other properties owned by the Taxpayer. In answer to a query from the assessor the former tax representatives by letter dated 25 February 1986 informed the assessor that the two properties which the Taxpayer had sold were held for rental income purposes and the profits were not considered to be property dealing business and accordingly the same had not been offered for assessment to profits tax. The assessor accepted this explanation and the profits from the sale of the two properties were not assessed to tax.

13. On 13 June 1989 the Taxpayer submitted a profits tax return for his land investment business for the year of assessment 1988/89 declaring assessable profits of \$75,500 for the year ended 31 March 1989. The profits declared as assessable excluded a profit on the disposal of part of the relevant land amounting to \$6,448,981.48. In his tax return the Taxpayer claimed that the surplus of \$6,448,981.48 represented 'capital gain on long term investment of land and was not taxable'.

14. On 14 December 1989 the assessor raised on the Taxpayer a profits tax assessment for the year of assessment 1988/89 as follows:

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	\$
Profit per return	75,500
<u>Add:</u> Profit on disposal of land	<u>6,448,981</u>
Assessable Profit	<u>6,524,481</u>
Tax Payable thereon	<u>1,011,294</u>

15. The former tax representatives objected to this assessment on the ground that the profit on sale of land amounting to \$6,448,981 represented a capital gain.

16. In correspondence with the assessor, the former tax representatives informed the assessor that the land which had been sold and had been acquired at the same time as the remainder of the relevant land part of which had already been sold and that the lots which had been sold were land with restricted usage.

17. The Taxpayer then employed solicitors to represent him and these solicitors by letter dated 29 January 1991 informed the assessor as follows:

- (a) '(The) lots were acquired for long term investment purpose as evidenced by the fact that at all times since acquisition and in all of the accounts submitted to (the Inland Revenue) Department they were classified as fixed assets.'
- (b) '(The Taxpayer), who is principally engaged in owning and operating business A had let such lots, or part thereof, to various tenants. Total rent collected therefrom amounted to approximately \$13,394.'
- (c) '(The Taxpayer) is not engaged in a property dealing business and neither is he a professional property dealer.'
- (d) 'No feasibility studies of the return on the investment had ever been made but rather (Taxpayer) had relied on his own acumen and judgment in making the investment decision.'
- (e) '(The Taxpayer) had purchased the lots at \$580,000 financed entirely from his own savings. In view of the current political situation and in response to repeated offers made to him, (the Taxpayer) considers this as an appropriate time to reduce his holdings (and he therefore sold the relevant land).'

18. The assessor subsequently found out that the Taxpayer had not reported the profits from the sale of a small piece of land also included in the relevant land and which had been sold for \$26,000 separately in early 1989. The pro rata cost price of this additional piece of land was \$789 making an additional profit which the assessor considered to be taxable of \$25,211.

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19. The matter was referred to the Deputy Commissioner who by his determination dated 22 June 1991 upheld the profits tax assessment set out in fact 14 above and in addition added thereto the additional profit of \$25,211 making total assessable profits of \$6,549,692 with tax payable thereon of \$1,015,202.

20. The Taxpayer duly appealed to this Board of Review.

21. In support of his appeal to this Board of Review the solicitors for the Taxpayer filed a statement of facts in which they stated the following:

- ‘(a) The Taxpayer is a professional under the name of (XYZ) business A and has a long established business A in (ABC) Square and within the vicinity of the relevant land. The relevant land were acquired as assets/reserves for business A.
- (b) The relevant land was acquired because they were ideal for business A. The location of the relevant land was essential for running business A by the Taxpayer.
- (c) The decision to dispose the relevant land was made because there are cheaper and more suitable sites for business A in Country B and the relevant land are being polluted and were becoming less ideal for the Taxpayer’s business A.’

22. In a separate letter dated 24 July 1992 addressed to the senior assessor of the Inland Revenue Department the solicitors for the Taxpayer, inter alia, made the following statements:

‘In this connection, Mr X of (former tax representatives) for the Taxpayer had spoken to you and we have spent considerable time and efforts in chasing the history of the (Taxpayer’s) land transaction and although we had succeeded in obtaining details of the majority of cases, the picture is not entirely complete. However we wish to point out that our client was wrongly represented in the past and because of his ignorance he acquiesced to the earlier decision of trading. From the facts already gathered by us there was very little trading involved and we now refer, in chronological order to the facts extracted by you.’

After referring to the facts set out in the determination the solicitors went on to say:

‘Our client’s original intention was business A and the plots he acquired were reported to be ideal for business A. However the plots were situated in scattered locations, some of the plots were not even identified and some were already occupied by other people without any legal titles. Normal access to some plots were difficult and our client encountered innumerable problems in collecting rent. Our client was not familiar with the attitude and behaviour of

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inhabitants in site A and most of the sales were forced upon him by circumstances beyond his control. What he already disposed of represent a very small portion and if you consider that disposal took place after seventeen years in his possession indicate that his intention was none other than investment. The surplus he received should therefore be capital gain.'

At the hearing of the appeal the Taxpayer was represented by Counsel. The Taxpayer together with another witness and a representative from the former tax representatives gave evidence.

The Taxpayer in his evidence said that all of the lots comprised in the relevant land were purchased by him in late 1972 at a lump sum of \$580,000 which he paid in cash from his own resources without mortgage. He said that at that time the vendors of the relevant land were only prepared to sell the land in one lot and he agreed to purchase the same because he considered the price to be a good bargain.

He said that at the time when he purchased the relevant land he had no intention to trade or to re-sell the same for profit. He said that throughout the years up to now he had never advertised any of the relevant land for sale and had never asked anyone to sell any of the relevant land or to buy any of the relevant land from him.

He said that in 1972 if he had wished to trade in real estate he would not have purchased land in site A much of which was not readily accessible and most of which was occupied by persons who claimed to be tenants or by trespassers.

He said that even at that time he had some experience in dealing with real property because he had purchased as a joint venture another property the development and sale of which at that time he had just been completed (fact 1 above).

He said that he had not even inspected all of the relevant land when he purchased it and the acquisition was without vacant possession. He said that there was no warranty by the vendors regarding the status of whosoever were occupying the relevant land.

He then said that he was operating business A at rented land in site B and he had in mind that some of the relevant land might be useful for his business and/or any expansion thereof. He said that apart from any use to which he might put the relevant land for the purpose of business A, at the time of purchase he did not have any fixed idea as to how he would deal with the rest of the relevant land as he did not even know some of the locations and/or their status for example whether they were occupied and whether he was able to obtain/recover vacant possession.

He said, however, that it was clear that he never intended to dispose of any of the relevant land for a quick profit and that is why he never advertised the relevant land for sale or did anything towards sale.

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He said that when he acquired the land he thought that the acquisition was a good idea for long term investment because the supply of land is always limited. He said that he agreed to purchase the land from the vendor who was emigrating from Hong Kong and wanted to sell all of the lots comprised in the relevant land together.

He said that as it transpired after he purchased the land almost all of the lots comprised therein were in fact occupied and many of the occupiers claimed to have an oral lease with the predecessors at a very low rent and others simply refused to go and alleged that they and/or their predecessors had been there for decades. He said that as the land was in site A there was very little that he could do to try to recover possession.

He said that he tried to use some of the vacant lots comprised in the land for the expansion of business A but due to restrictions on user he had to apply to the District Land Office. He did not proceed with his plan because of bureaucratic red-tapes and the amount of waiver fee involved.

He said that the first sale by him of some of the lots comprised in the relevant land was in 1974. He first sold two lots to an occupier thereof through the agency of an individual estate agent, Mr C who was familiar with lands in site A. The second sale was when he was approached by the occupiers of some other lots comprised in the relevant land who offered him a fairly good purchase price for approximately 200,000 square feet which they were occupying. The price offered was over \$3 per square foot and by this sale alone he was able to recoup what he had paid for the whole of the relevant land which had a total area of over 1,100,000 square feet. He said that he could not recall whether he paid profits tax on those two sales.

He then said that the next sale was in November 1980 when he was approached by an individual, Mr Z, who was a native of that area and who offered to purchase various lots comprised in the relevant land at a price of \$18 per square foot without vacant possession. He said that since he had not been able to recover possession of the land and the price offered was good he agreed to sell the same.

He went on to say that shortly thereafter he was again approached by Mr Z to sell some more of the lots comprised within the relevant land again without vacant possession and he sold some further lots in the year of assessment 1980/81. He said that at that time he was still in active correspondence with the District Land office over some of the other lots comprised in the relevant land.

He said that after the sale of the lots in the year of assessment 1980/81 he did not take any advice on his tax position and when the time came for him to submit his tax return which he did every year for business A he simply handed all the information together with the information on the sale of the lots to his then tax representative. He said that he had not sought advice from the former tax representative or any one else on whether he was liable to pay profits tax and unfortunately his then accountant did not take instructions from him or advise him about it. He said that it appeared to him that his former tax representative had simply compiled all the information which he gave to him and included the profits on

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the sale of the land when submitting the tax return on his behalf. He said that as a result he was assessed to profits tax in the sum of \$424,595 which he paid in ignorance as no one had advised him to the contrary.

With regard to the sale of another lot at about the same time, he said that the same was again sold through the agency of Mr Z. He said that for some reason the information had only been given to his former tax representative at a later date and hence the profit of \$107,120.41 was only included in his tax return for the following year. He said that as the assessable profit was only \$42,008 and that he had actually over paid tax on the provisional tax for the preceding year he did not appreciate that the income from the sale of the land was again included in his tax return as a taxable profit.

He then said that thereafter he had not dealt with any of the relevant land for three years. In 1984 he was again approached by Mr C who acted for some of the occupiers thereof and offered to purchase various lots comprised in the relevant land which they already occupied. He said that the profits on these sales were again included in his tax return without his realising it because he did not have to pay tax. He said that the reason was that his accountant had brought forward a loss of \$451,377.50 being the loss which he had suffered on speculation on two units in site C in 1983. He said that as far as those two units were concerned they were purchased by him for speculation rather than investment and they were bought and sold within two years.

He said that thereafter he had no dealings in the relevant land until the present disposals in the year of assessment 1988/89. He said that on this occasion he was approached by another agent who was also a native of the same area of site A. He said that he was told that the individual represented various persons who were interested in purchasing some of his land. He said that because of the approach of 1997 he had applied to emigrate to Country C in 1986 and he had based his application on investment and for that purpose he had to realise part of his investments in Hong Kong to raise the required cash and so he agreed to sell the remainder of the relevant land. He said that his application to emigrate to Country C was refused in 1990 for health reasons.

He then said that his previous tax representative had died in late 1987 and his present tax representative had advised him that the gain which he made on the disposal of the remainder of the relevant land in the year of assessment 1988/89 was a capital gain.

Under cross examination the Taxpayer was asked whether he had taken any action against his accountant for the wrong representations which he alleged the accountant had made. He said that he did not know if there was any wrong representation.

The second witness called to give evidence was the agent Mr C who appeared to have been a friend of or acquainted with the Taxpayer for many years. He was the person who had acted as the agent to sell parts of the relevant land first in 1974 and subsequently in 1984. He said that most of the land which he sold for the Taxpayer was sold to people occupying it and that the occupiers first approached him and that he then approached the

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Taxpayer. He said that the Taxpayer never approached him and that he had been acquainted with the Taxpayer for twenty five years.

The third witness was an employee of the former tax representatives who said that the principal of the firm for which he worked had died in late 1987 and that up to his death the principal had taken care of the accounts of the Taxpayer.

Counsel for the Taxpayer submitted that this appeal was a mixed question of fact and law. He said that there can only be two categories of assets namely stock in trade or capital assets and that it is a matter of degree to decide which. He said that there can be no third category. He said that the burden of proof is on the Taxpayer and said that it was enough to fulfil this burden of proof if we were satisfied on the evidence that the assets were purchased and simply 'left there'. He said that trading is an activity which requires certain steps, even if minimal. He said that if the assets were simply left to lie then it cannot be trading. Simply to acquire and keep an asset in the hope of appreciation is not trading. He said that on the facts there were two essential points namely that the Taxpayer is an individual and that if we accept his evidence then it is the best evidence of his intention.

Counsel referred to the badges of trade and pointed out that the lots of land comprised in the relevant land were scattered lots without vacant possession and without any mortgage. He said that with regard to the length of ownership some of the relevant land is still owned by the Taxpayer. He split the numbers of transactions into four groups. He said that the greatest hurdle for the Taxpayer was that he had not objected to the previous tax assessments but he said that this was only one factor. He then took us through the various earlier land disposals and pointed out that it was not the Taxpayer who had ever actively tried to sell the land.

The representative for the commissioner submitted that the profits which the Taxpayer had made were of a revenue nature and should be assessed to tax. She referred to the property redevelopment (fact 1 above). She reminded us that in his application for personal assessment for the year of assessment 1983/84 the Taxpayer had confirmed that he was engaged in a business of property dealing under his own name. She pointed out that in the years of assessment 1980/81, 1981/82 and 1984/85 the Taxpayer had disposed of other parts of the relevant land and in each instance the profits had been duly assessed to profits tax. She pointed out that the present claim that part of the relevant land was acquired for the purpose of business A had not been put forward at the beginning of the case but had only been raised at a later date by the new tax representatives and there was no evidence to support this. She pointed out that the Taxpayer was not the sole proprietor of business A but only a 50% partner and there was no evidence of any partnership agreement or discussion with regard to the use of the land which the Taxpayer said he had acquired for this business.

She said that though it was now alleged that the former tax representatives had made incorrect representations in the past there was no evidence with regard to this.

She then drew to our attention that in the statement of facts in support of the appeal (fact 21 above) it was stated that the decision to dispose of the relevant land was

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made because there were cheaper and more suitable sites for business A in Country B and the relevant land was polluted. She pointed out that no explanation or evidence had been given with regard to this and she said that the fact that different explanations had been given at different times was an indication that the relevant land had not been acquired by the Taxpayer for the purposes which he claimed.

With regard to the classification in the accounts of the Taxpayer of the relevant land as 'fixed assets' she pointed out that no attempt had been made to give any meaningful classification to the landed properties of the Taxpayer in his balance sheet. They had all been grouped together regardless of whether they were trading stock or not.

The representative for the Commissioner referred us to the following cases:

Lionel Simmons Properties Ltd v CIR 53 TC 461

Hillerns and Fowler v Murray 17 TC 77

D11/80, IRBRD, vol 1, 374

CIR v Sincere Insurance & Investment Co Ltd 1 HKTC 602

Richfield International Land & Investment Co Ltd v CIR 3 HKTC 167

Shadford v H Fairweather & Co Ltd 43 TC 291

BR23/74, IRBRD, vol 1, 168

D16/91, IRBRD, vol 6, 24

The law applicable to cases such as the one before us is quite simple. The question which the Board must decide is what was the intention of the Taxpayer at the time when he acquired the relevant land. In the case before us there is no claim by either the Taxpayer or the Commissioner that there ever was any change of intention. Accordingly whatever was the intention of the Taxpayer when he acquired the relevant land had remained his intention throughout the period up to the present date.

The principle of law which we have stated is so well known that it is not necessary for us to cite authorities at any length. The principle has been often re-stated and it is sufficient for us to refer to the Lionel Simmons Properties Ltd case and the judgment therein of Lord Wilberforce.

In all cases of this nature it is necessary to look at the subjective facts and then test the same against the objective facts. We have had the benefit of hearing the Taxpayer himself give evidence and of being cross examined. He clearly said in his evidence before us that it was not his intention to trade in the relevant land and that the relevant land was owned by him as a long term capital asset. This is the clear subjective evidence before us with regard to what the Taxpayer now states was his intention. However he also has made a number of other statements in his evidence, statements have been made to this Board of Review when the notice of appeal was given, and previously statements were made to the assessor on behalf of the Taxpayer. These various statements cannot be simply ignored and must be analyzed with the other facts.

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We have before us a number of other facts which include various disposals of parts of the relevant land and the treatment of the resulting profits for taxation purposes.

Having heard the Taxpayer give evidence we do not accept the evidence which he gave as to his intention when he acquired the relevant land. We find as a fact that when he acquired the relevant land he did so with the intention to speculate therein and with the hope and expectation that he would be able to sell all or part of the relevant land at a profit and for no other purpose. We do not accept the evidence given by the Taxpayer that when he acquired it he intended to use part or all of the relevant land for business A. His evidence in this regard is purely fanciful and expedient.

With regard to filing of tax returns and paying tax on profits which he had made on earlier sales of land it is quite clear and we find as a fact that at the relevant times he was of the opinion that such profits were subject to profits tax as was his former tax representative. We do not accept the evidence of the Taxpayer when he says or infers that a mistake was made, that he was ignorant of taxation matters, that he was ignorant of what his tax adviser was doing and that he was misled by his former tax adviser as he would like us to believe. The Taxpayer was at all material times a trader in real estate. We accept that the relevant land was land of a different nature to the other real estate in which the Taxpayer was operating. However it was and is well known that land in site A is something which is or can be traded. The facts of this case appear quite clear to us. The Taxpayer asks us to believe that he acquired as a long term capital investment property which he had never seen; which he did not know was occupied or not; about which he had no knowledge with regard to the rental income if any; had no knowledge as to whether or not he could obtain vacant possession; and he did not even know where the land was situated in site A. For a person to buy land in such circumstances is nothing more nor less than pure speculation. He saw what he, in his own words, thought was 'a good bargain' which he could turn to account for a profit and on this basis he purchased the relevant land. Comparatively shortly thereafter he was able to recoup his entire original investment by selling parts of the relevant land to occupiers thereof. Whenever an offer was made to him at a price which he considered to be attractive he accepted it. There was a suggestion made on his behalf that he rejected many offers but we have no such evidence before us. The evidence before us is that starting some two years after acquisition the Taxpayer on six different occasions sold parts of the relevant land and has now done so again for a seventh time.

The land in question is stated to be land used for certain purposes. The prices paid for the land clearly do not reflect that special use. The unstated suggestion before us is that tenants who were occupying the land for special purposes in site A wished to purchase the land. We do not accept this suggestion either explicit or inferred. It is clear to us that the land in question had and has a significant value beyond its value as mere land. We do not accept that the Taxpayer is or was ignorant of such matters. The Taxpayer bought a bargain and was willing to sell at a profit whenever a suitable opportunity arose.

In the grounds of appeal the solicitors for the Taxpayer informed the Board that the Taxpayer was a professional in business A who acquired the relevant land for business A. They informed us that the relevant land was acquired because it was ideal for running

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business A. No explanation was given to us with regard to this statement of alleged fact which was filed before this Board. In reality the lots comprising the relevant land were scattered over an area and were not adjoining each other. The Taxpayer had never seen the land when he acquired it and did not even know where it was. On the contrary the evidence which we have before us is that most of the lots comprised in the relevant land were occupied by the tenants and the Taxpayer in his own words was unable to obtain vacant possession because the land was in site A.

Then we come to the reason for the disposal of the part of the relevant land the profit on which is now the subject matter of the appeal before us. In the statement of facts filed before us by the solicitors for the Taxpayer we were informed that the decision to dispose of the land was made because there were cheaper and more suitable sites for business A in Country B and the land was polluted and less ideal for business A of the Taxpayer. However we have no evidence whatsoever of any intention on the part of the Taxpayer to move business A to Country B and no evidence whatsoever on the pollution problem.

There are so many inconsistencies in the case for and evidence for the Taxpayer that we reject the same. We do not accept that the tax returns previously filed by the Taxpayer were filed in error. They are clear evidence of what was then the Taxpayer's intention. They were profits tax returns relating to the Taxpayer's land investment business which he himself signed and were filed with the Inland Revenue Department. Apart from the Taxpayer's own allegation there is no evidence before us that any of the earlier profits tax return were incorrect. A representative for the firm of tax representatives in question was called to give evidence. Instead of giving evidence as to whether or not a mistake had been made his evidence was confined to saying that the founder of the firm of tax representatives had died in 1987 and that prior to his death he had looked after the accounts of the Taxpayer. Needless to say the representative for the Commissioner so saw no reason to cross examine this witness on the evidence which he had given.

Finally we come to the point made in favour of the Taxpayer that the relevant land was classified as fixed assets in the land investment business of the Taxpayer. The representative for the Commissioner quite correctly on the facts submitted that the treatment of the assets of the Taxpayer in his accounts had historically meant nothing when it came to a consideration of matters of taxation. In the past when profits tax had been paid or profits had been offered for assessment the assets had likewise been categorised as fixed assets.

For the reasons given and as stated above we reject the evidence of the Taxpayer as to his alleged intention and find in favour of the Commissioner. The appeal is dismissed and the determination of the Commissioner upheld wherein the profits tax assessment for the year of assessment 1988/89 dated 14 December 1989 showing net assessable profits of \$6,524,481 with tax payable thereon of \$1,011,294 is increased to net assessable profits of \$6,549,692 with tax payable thereon of \$1,015,202.