

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D 5/79

Board of Review:

L. J. D'Almada Remedios, *Chairman*, T. J. Bedford, G. A. Hope & B. S. McElney, *Members*.

2 November 1979.

Rebuilding allowance – redevelopment of land – expenditure incurred on payment of compensation to vacating tenants, demolition of old building and site investigation in construction of new building – whether owner entitled to a rebuilding allowance in respect of expenditure incurred under section 36 of the Inland Revenue Ordinance.

The taxpayer demolished an old building on a site which he owned and on it he constructed a new commercial building for rent. The new building was completed in 1976 and for that year of assessment the taxpayer claimed a rebuilding allowance under section 36 of the Inland Revenue Ordinance in respect of payments he had made to tenants to vacate the old building, costs for demolishing the old building and expenses for site investigation in the construction of the new building. The Revenue rejected the claim on the ground that such items of expenditure were not capital expenditure incurred on the construction of the new building entitling the appellant to claim a rebuilding allowance under section 36.

Decision: Appeal partly allowed in that the expenses incurred on site investigation being allied to construction costs fell within section 36. Assessment to be revised.

Andrew Li instructed by Yu, Tsang & Loong for the appellant.
A. K. Gill for the Commissioner of Inland Revenue.

Cases referred to: -

1. Spillars Ltd. V. Cardiff Assessment Committee, (1921) 2 K. B. 21.
2. Broken Hill Proprietary Co. Ltd. V. Federal Commissioner of Taxation, (1967) 10 A. & N. Z. Income Tax Rep. 481.

Reasons:

The Appellant is the owner of a certain property in Hong Kong. For the purpose of constructing a new building at the site the Appellant's outlay included:

- (i) Payments to tenants to vacate the old building;

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- (ii) Costs for demolishing the old building; and,
- (iii) Expenses for site investigation in the construction of the new building.

The new building was completed in 1976 and it is common ground that it is held by the Appellant as an investment asset for rental income.

The question we have to decide is whether any of the 3 items of expenditure we have mentioned above can be regarded as “capital expenditure incurred on the construction of that building” to qualify for a “re-building allowance” under section 36 of the Inland Revenue Ordinance as claimed by the Appellant.

Section 36 must be construed according to its plain ordinary meaning. There is a presumption that words in a statute are used precisely and not loosely: **Spillars Ltd. v. Cardiff Assessment Committee**¹. This being so, the words “incurred on the construction of that building” must be an expense at least peripheral to such construction and related to it. The nexus between the expense and the new building must be such that it is an expense “on” the construction of the new building. For this reason we take the view that the expense incurred for site investigation (totalling \$19,150.00) being allied to construction costs is within the section. In fairness to the Commissioner at the time of his determination this expense for site investigation was lumped together and included as part of the expenses for demolition. However, the compensation payments to tenants and the demolition costs were expended not on the construction of the new building but to enable the demolition of the old building and the clearing of the land itself which was necessary before the construction of the new building thereon could proceed. It is an expense antecedent to the construction of the new building and unrelated to expenditure incurred on it and is not therefore expenditure “incurred on the construction” within the meaning of section 36. Whilst the wording of the Australian Statute on which the case of **Broken Hill Proprietary Co. Ltd. v. Federal Commissioner of Taxation**² quoted in argument to us is based is not identical to that being considered here the reasoning of the judgment in that case was of considerable assistance to us in our determination.

This case is therefore remitted to the Commissioner for him to revise the assessment accordingly.

¹ (1921) 2 K. B. 21.

² (1967) 10 A. & N.Z. Income Tax Reports 481.