

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D63/00

Profits tax – sale of property – whether profits derived from the sale of the property assessable to profits tax – sections 2 and 68(4) of the Inland Revenue Ordinance (‘IRO’) – onus of proof – intention of the taxpayer – termination of the lease by the tenant – financial difficulty – whether the quick sale is inconsistent with the long term investment intention.

Panel: Robert Wei Wen Nam SC (chairman), Lo Lai Yee Dora and Alex Lui Chun Wan.

Dates of hearing: 3 and 7 March 2000.

Date of decision: 12 October 2000.

The taxpayer purchased the subject property on 6 February 1996 subject to an existing tenancy for a term of two years commencing on 6 September 1995. Under the term of the lease, the tenant was granted a right to terminate the tenancy prematurely by giving the landlord two months’ prior notice in writing. On 30 May 1996, the taxpayer sold the subject property. The taxpayer contended that the profit derived from the sale of the subject property should not be subject to profits tax assessment.

The taxpayer argued that first of all, the property was bought for long-term investment and there is no evidence to indicate that the property was bought for ‘trading purpose’. Secondly the subject property was sold only because of serious financial difficulty and the financial difficulty was a result of the termination of the lease by the tenant and the taxpayer’s separation with his wife on May 1996. The taxpayer further alleged that the letting of the subject property by the taxpayer even cannot solve the financial difficulty. The taxpayer gave evidence in support of his appeal.

Held:

1. Section 2 of the IRO provides that trade includes every trade and manufacture, and every adventure and concern in the nature of trade. Section 68(4) of the IRO further stated that the onus of proving that the assessment appealed against is excessive or incorrect shall be on the taxpayer.
2. Trade requires an intention to trade : normally the question to be asked is whether this intention existed at the time of the acquisition of the asset. It is not possible for an asset to be both trading stock and permanent investment at the

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same time, nor to possess an indeterminate status – neither trading stock nor permanent asset (Simmons v IRC [1980] 1 WLR 1196 followed).

3. The stated intention of the taxpayer cannot be decisive and actual intention can only be determined upon the whole of the evidence. 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 (All Best Wishes Limited v CIR 3 HKTC 750 followed).
4. The Board found that the taxpayer's case has undergone changes as the Revenue's investigation developed and there were inconsistencies in the taxpayer's testimony. The Board found that the taxpayer purchased the subject property on 6 February 1996 and sold it on 30 May 1996 at a profit. This is an example of what is commonly known as a quick sale and is inconsistent with the long term investment intention he declared he had towards the subject property at the time of acquisition. It is for the taxpayer to explain away the quick sale. In conclusion, the Board found that the taxpayer has failed to establish a long term investment intention towards the subject property.

Appeal dismissed.

Cases referred to:

Simmons v IRC [1980] 1 WLR 1196
All Best Wishes Limited v CIR 3 HKTC 750

Fung Ka Leung for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

Nature of appeal

1. The Taxpayer Mr A is appealing against the profits tax assessment raised on him for the year of assessment 1996/97 and revised by the determination of the Commissioner of Inland Revenue dated 11 June 1999. He contends that the profit derived by him from the sale of a property located in Housing Estate B (the subject property) should not be chargeable to tax.

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Facts not in dispute

2. The Taxpayer married Ms C on 10 May 1995. After marriage they lived in a flat in Housing Estate D (Property 1). They divorced on 24 December 1997.

3. By a provisional agreement dated 6 February 1996, the Taxpayer purchased the subject property at a consideration of \$5,950,000.

4. The subject property was purchased subject to an existing tenancy for a term of two years commencing on 6 September 1995 at a monthly rental of \$27,000. Under the terms of the tenancy, the tenant, a university in Hong Kong (University E), was granted a right to terminate the tenancy prematurely by giving the landlord two months' prior notice in writing.

5. On 21 March 1996 the Taxpayer took out a bank loan of \$4,165,000 to finance the purchase of the subject property. The loan and interest thereon were repayable by 240 monthly instalments of \$38,823.10 each. On 24 April 1996 the subject property was assigned to the Taxpayer.

6. By a provisional agreement dated 30 May 1996 the Taxpayer sold the subject property for \$6,780,000. On 16 September 1996 the sale was completed.

7. In response to a questionnaire from the Inland Revenue Department ('IRD'), the Taxpayer claimed that the subject property was purchased for letting purposes and that it was sold because of the financial difficulty he encountered in mid-1996 and the early termination of the tenancy. He also stated that a profit of \$256,575 was derived from the sale of the subject property.

8. The assessor was of the opinion that the profit derived by the Taxpayer from the sale of the subject property should be assessable to tax and raised on him the following profits tax assessment for the year of assessment 1996/97:

Assessable profits	<u>\$256,575</u>
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9. The Taxpayer objected against the profits tax assessment for the year of assessment 1996/97 in the following terms:

' ... I sold the subject property only because of financial difficulty. The property is bought for long-term investment with lease to University E up to September 1997. Because I was informed by University E that they would terminate the lease and I therefore cannot afford the monthly mortgage and I therefore sold it. It is nothing about

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short-term property trading ...’

10. In correspondence with the assessor, the Taxpayer put forth the following allegations:

- (a) In mid-May 1996, he was informed by University E over phone that it intended to terminate the tenancy prematurely. University E later sent him a written notification dated 17 July 1996.
- (b) He had tried to let out the subject property through local agents in mid-May 1996 but in vain. There was no documentary evidence available.
- (c) His relationship with Ms C deteriorated in early May 1996 that they decided to separate. It was agreed that she would not make any contribution in meeting the loan instalments (see paragraph 5 above). As he at the same time had to pay the monthly loan instalments of \$40,000 in respect of the Property 1, he encountered serious financial difficulty.
- (d) The actual date of separation with Ms C was May 1996 whilst the application for divorce was filed in July 1997.

11. The Taxpayer also supplied the following information in relation to the subject property:

- (a) The downpayments were financed by the Taxpayer’s own savings, borrowings from his parents and funds of \$546,000 contributed by Ms C on 23 April 1996.
- (b) Ms C had made contribution to the loan instalments. On 27 May 1996, she paid a sum of \$40,000 to the Taxpayer which was more than sufficient in meeting three monthly instalments, net of rental income received.
- (c) The net sale proceeds were applied as follows:
 - (i) to purchase a property in Housing Estate F (Property 2);
 - (ii) to repay the amount due to Ms C; and
 - (iii) for stock investment.

12. In response to enquiries from the assessor, University E stated the following:

- (a) ‘ The subject property was a University E leased quarters for visiting academic. The termination of lease was initiated by the university due to

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surplus.’

- (b) ‘ According to our records, the initial discussion with the Taxpayer about the termination of lease was over the phone on 17 July 1996 followed by a written confirmation on the same day.’

13. The assessor has since ascertained the following information:

- (a) During the year of assessment 1996/97, the Taxpayer derived employment income of \$898,178.
- (b) The Taxpayer was a shareholder of the following companies:

Company	No of shares	Date of purchase	Purchase price \$	Date of sale	Selling price \$
Company G	1	15-10-1996	1	5-11-1996	224,500
Company H	1	15-10-1996	1	6-11-1996	215,000

- (i) Company G and Company H were private companies incorporated in Hong Kong on 17 September 1996 and 24 September 1996 respectively.
- (ii) In October 1996, Company G and Company H each purchased a penthouse together with a car-parking space in the New Territories, the downpayments of which were wholly financed by the Taxpayer by way of interest-free loans. Details of the transactions are as follows:

Company	Unit	Date of purchase	Purchase price \$	Loan from the Taxpayer \$
Company G	Penthouse and car-parking space on Platform A	19-10-1996	7,751,000	967,598
Company H	Penthouse and car-parking space on Platform B	19-10-1996	7,589,000	1,002,803

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The two loans were assigned to the new shareholders at cost upon transfer of the shares.

(c) The Taxpayer has also engaged in the following property transactions in 1997:

Location	Date of purchase	Purchase price \$	Date of sale	Selling price \$
Duplex flat and roof of Housing Estate I (Property 3)	18-7-1997	5,400,000	-	-
Property 2	25-2-1997	4,150,000	6-5-1997	5,550,000

14. The assessor notices from clause 9 of the provisional agreement that the Taxpayer was only liable to pay commission of \$30,000 on sale of the subject property. She considers that the profits tax assessment for the year of assessment 1996/97 should be revised as follows:

	\$
Profits on sale	234,075
<u>Add</u> : Commission on sale over-claimed: \$(67,800-30,000)	<u>37,800</u>
Revised assessable profits	<u><u>271,875</u></u>

Determination

15. On 11 June 1999, the Commissioner of Inland Revenue by her determination of even date decided that the Taxpayer's objection failed and that the profits tax assessment for the year of assessment 1996/97 be revised as per paragraph 14 above. From the revised assessment the Taxpayer now appeals.

Ground of appeal

16. The Taxpayer's grounds of appeal may be summarised as follows:

- 16.1 The reasons which are used to support the determination are mere guessing without logic.
- 16.2 Generation short-term profit from rent is not the Taxpayer's objective. The Taxpayer considered that the property had long-term potential and

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therefore made such an investment.

- 16.3 It is unconvincing to say that just because one sells within a short time, one is trading for profit. Apart from the assessor's guessing, there is no evidence to indicate that the property was bought for 'trading purposes'.
- 16.4 It is a matter of common knowledge that property agencies never issue receipts/acknowledgements to landlords for selling/leasing property.
- 16.5 Even if the Taxpayer could let the apartment out, he would still encounter serious financial problems, as the following breakdown will show:

	\$
Income	898,178
Mortgage (Property 1)	480,000
Mortgage (subject property)	141,876
Rates/agent fee	72,000
Tax	<u>135,000</u>
Balance	<u><u>68,000*</u></u>

Only \$68,000* left for one year's living expenses.

* \$69,302 according to the Board's calculations.

- 16.6 The initial discussion on termination of lease was with Ms J of University E through telephone on 12 May 1996 and the Taxpayer was told that the termination date would be 17 September 1996. The letter issued by University E dated 17 July 1996 was only a confirmation after 'Ms K' informed the Taxpayer about the exact date of termination.
- 16.7 The monthly expenses was about \$15,000 (\$38,823 'instalment' - \$27,000 'rent' is \$11,823 + management fees and rates (\$3,500) = \$15,000) for holding the flat. \$40,000 was only sufficient for two to three months' payment. \$40,000 was 'one shot' and was Ms C's final payment as agreed. Ms C can confirm this. The Taxpayer cannot afford reasonable standard of living if he holds two properties at the same time. The bank statement previously submitted to the Board shows that the Taxpayer already had a negative balance at that time.
- 16.8 The \$2,000,000 advanced to Company G and Company H came from the sale proceeds (\$2,600,000) of the subject property. As for Properties 2

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and 3, they were purchased after the sale of Company G and Company H and the return of the loan money.

Hearing and testimony

17. At the hearing of this appeal, the Taxpayer appeared on his own behalf, while Mr Fung Ka-leung, assessor, represented the Commissioner of Inland Revenue. The Taxpayer gave evidence in support of his appeal. No other witnesses were called.

The Taxpayer's testimony

18. The Taxpayer's testimony may be summarised as follows:

In chief

18.1 He and his wife separated in May 1996. The divorce papers were filed in July 1997.

18.2 During May when he was arranging for autopay to receive his rent, a lady from University E told him that they already had enough units for their staff. She spoke to him once on the phone and he met her once. She was a Ms J. He had the impression that they were not going to rent his flat any more. One of the reasons was their staff quarters had already been completed. It was beginning or middle of May.

18.3 They did not have a formal discussion. At that time he was busy with his divorce so he does not have a proper record. She only informed him that they would terminate the lease in mid-September. It was when he was in front of her in her office that she told him that.

18.4 He paid the instalments together with his wife for those two properties. As a result of his divorce, he had a cash flow problem. He had to give up that property which he intended for long-term investment because he could not afford the instalments without the contribution from his wife. When they purchased the subject property, they thought it was in a good school net.

18.5 She only said she would give him the one-off sum of \$40,000. After this, she never gave him any more money.

18.6 If he had to pay instalments for these two properties, even though with rentals, he would have a disposable income of \$68,000 per year for himself. That is why he had to sell this property

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In cross-examination

- 18.7 He first paid the mortgage instalment to Bank L on 28 May. That was the date he started paying.
- 18.8 [He was referred to the first sentence in paragraph 16.6 above, and asked whether he had any evidence that the discussion was held on 12 May 1996.] He scribbled it down on a piece of paper but not a proper record. He does not have it with him now.
- 18.9 [He was asked whether, on 12 May 1996, Ms J told him that the property would be delivered with vacant possession to him on 17 September 1996.] Yes, about that time.
- 18.10 [He was referred to the letter dated 28 September 1999 from University E to the IRD (Doc 1) which stated:

‘ According to our records, we have initiated the termination of the lease for the property on 17 July 1996 and not 12 May 1996 ...’

He was invited to comment.]

- 18.11 As he has said before, he disagrees. [He referred to an internal minute of University E.] In that minute they said they called him planning to advance the date. He disagreed so they issued him with a letter so as to be in compliance with the terms of the contract. But he agrees before 17 July there was never and formal discussion.

[The minute, dated 17 July (Doc 2), reads:

‘ I have contacted Mr A (landlord) to make a special request on exemption of giving the required notice and terminate the lease at the earliest date.

However, he disagreed and confirmed that the earliest date we can release the flat is 17-9-1996.’]

- 18.12 When he sold the property on 30 May 1996, of course he told the purchaser that the property was sold with an existing tenancy. He did not mention to the purchaser that the lease would be terminated in September 1996.

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- 18.13 The property could be sold at a higher price if it could be delivered with vacant possession. He did not ask University E for written confirmation about the termination of tenancy before he sold the subject property. As to why not ask for confirmation, he only wanted to sell it at that time, because of the divorce, because he could not wait.
- 18.14 After he signed the contract for the purchase of the subject property on 6 February, they asked him whether he wanted to sell. He told them no. The agent asked him if the price offered was good, they would get in touch with him and asked him if that was okay. He said yes. He said it was up to him. Later on, when he got in touch with him and asked him if he wanted to sell, he said yes. That is how it came about.
- 18.15 He cannot recall whether the agent mentioned any price to him in February 1996. From February to April 1996 the agent contacted him to discuss the selling price. He incessantly called him, stating that there was a potential buyer and asking him to sell. He told the agent that when the price was better, he would sell. He answered that way because he did not want to sell.
- 18.16 The agent would ring once or twice a week. [He was asked why he did not tell the agent that he did not want to sell the property.] He did tell him, but every time a different agent called him. He told them if the offer was 9,000,000 then call him. 9,000,000 was a ridiculous sum. Still they kept calling him.
- 18.17 [He was shown a letter dated 21 October 1999 from an estate agent, Company M, to the IRD (Doc 3) which reads:
- ‘ Re: The Subject Property
- With reference to your letter dated 19 October 1999, the required information is shown as follows:
- (1) Mr A put up the captioned property for sale through our company on 6 February 1996. There was no appointment letter as we received the appointment instruction from Mr A to sell the property verbally.’
- (2) The initial asking price of the captioned property was \$6,500,000 and was revised to \$7,000,000 on 16 April 1996.

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(3) Mr A had not appointed us as an agent to let the above property.'

He was referred to paragraph (2) of Doc 3 and was asked whether those two figures were provided by him to the agent.]

- 18.18 No. Not him. He only told them if the price was good then called him, but they added the figure themselves. The figure he told them was much higher.
- 18.19 In May 1996 he did try to lease out the subject property.
- 18.20 [He was asked to comment on paragraph (3) of Doc 3 (see paragraph 18.17 above).] He cannot recall.
- 18.21 He did put up the property for lease in May 1996 but could not remember through which agent.
- 18.22 In 1996 and 1997, apart from the mortgage instalments he spent some \$20,000 per month, including money he needed to spend and money he contributed towards the maintenance of his parents. Before separation, his wife made no fixed, regular contributions to household expenses. When he had no money, she would pay one or two instalments for him. He contributed \$3,000 to his father and \$4,000 to his mother. He has four sisters and one brother. All working in 1996 and 1997 except one. He contributes at the present moment on average \$5,000 per month for both parents.
- 18.23 He cannot recall the exact date when because of financial difficulties he had to sell the subject property. It should be around mid-May when he started to have problems with his ex-wife. All along she paid the instalment. When they purchased the flat she said she would contribute towards the instalment. She did contribute. She did not want to put her name down. They did not talk about this problem. All along it was in his name because the majority of the funding was from him. They did not say for sure how much she would contribute, but she knew that whenever he failed to meet the payment she would contribute. She knew that he could not afford to pay the instalments for two properties.
- 18.24 In the middle of May he did not mention an asking price to Company M. They proposed to him what asking price he could ask. At the time he was quite busy and emotionally unstable. He only asked them to sell it as soon as possible. That was after he decided to separate.

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- 18.25 There was an agreement to separate. His wife moved out. Upon moving out, they then started separation. She moved out between mid-May and end of May.
- 18.26 He cannot recall what was the price suggested by Company M, or whether it was \$7,000,000, or what was the initial price given by the purchaser or whether it was equal to the selling price of the property. At the time of sale, he knew it was sold below the market price. It was not so easy to dispose of it.
- 18.27 [He was asked how much cash he paid his ex-wife in 1997.] It should be more than \$546,000. Plus \$200,000. About that. He repaid her some money in 1996 and some in 1997, but mainly in 1997. The \$40,000 should be included.
- 18.28 He applied for a divorce in 1997. They had a relationship problem.
- 18.29 [He was shown his tax return for the year of assessment 1995/96, completed 23 July 1996 (Doc 4). The word 'married' was written by him in the middle of page 69. On the left-hand side of the word 'married' the return required the Taxpayer to state whether single, married, widowed, divorced or separated and the answer from Mr A is 'married'. On the right-hand side he was invited to complete the column 'if marital status has changed during or after this year' .]
- 18.30 [He was shown his tax return for the year of assessment 1996/97, completed on 10 May 1997 (Doc 5). At page 74, he declared that his residential address was at Property 1. He was shown his ex-wife's tax return for the year of assessment 1995/96, completed on 31 May 1996 (Doc 6). Ms C declared Property 1 as her residential address and wrote a telephone number which was the telephone number of Property 1. He was shown Ms C's tax return for the year of assessment 1996/97, completed on 1 June 1997 (Doc 7). At page 81, Ms C declared Property 1 as her residential address and also declared the same telephone number.]
- He had legal advice that they were still married. That is why they put it that way. He continued to live there and his ex-wife just filled in the address. He thinks she was just copying it. He does not know.
- 18.31 [It was suggested to him that he did not separate from his wife in May 1996.] That is not true.

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- 18.32 [He was referred to his reply to a letter dated 21 May 1997 from the IRD (Doc 8), wherein he stated:

‘ In respect of (the subject property) ... I sold the property because in mid-1996 I encountered financial difficulty. At the time I bought the property my only objective is for letting. That is why I bought a property with lease. However at a later stage I was informed by University E that they will terminate the lease. Under those circumstances I have no alternative but to sell the property.’

He was also referred to his objection letter (see paragraph 9 above from the words ‘ Because I was informed’). He was asked why he did not mention the separation in this letter.]

He never thought of it. Without someone to help to contribute the scenario is already quite bad but, without somebody to help to contribute plus the fact that the tenancy will not be there, then the scenario will be worse.

- 18.33 He agrees that the purchase and sale of the shares in the two companies Company G and Company H are trading transactions.

The law

19. Trade includes every trade and manufacture, and every adventure and concern in the nature of trade (section 2 of the IRO).

20. The onus of proving that the assessment appealed against is excessive or incorrect shall be on the Taxpayer (section 68(4) of the IRO).

21. In Simmons v IRC [1980] 1 WLR 1196, Lord Wilberforce stated at page 1199:

‘ *Trade requires an intention to trade: normally the question to be asked is whether this intention existed at the time of the acquisition of the asset. Was it acquired with the intention of disposing of it at a profit, or was it acquired as a permanent investment? ... What I think is not possible is for an asset to be both trading stock and permanent investment at the same time, nor to possess an indeterminate status – neither trading stock nor permanent asset.*’

22. In All Best Wishes Limited v CIR 3 HKTC 750, Mortimer J stated at page 771:

‘ *The intention of the taxpayer, at the time of acquisition, and at the time when*

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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 single 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.'

Findings and reasons

The Taxpayer's case

23. The Taxpayer's case has undergone changes as the Revenue's investigation developed.

23.1 In his reply dated 8 June 1997 to the questionnaire from the Revenue (see Doc 8 in paragraph 18.32 above), he claimed that the subject property was purchased for letting purposes. To quote his own words: 'At the time I bought the property my only objective is for letting.' He further claimed that he had to sell the subject property because of the early termination of the lease to University E (see Doc 8).

23.2 In his objection letter dated about 7 January 1998 (see paragraph 9 above), he stated that the property was bought 'for long-term investment with lease to University E up to September 1997'. He sold the property only because of 'financial difficulty' caused by the early termination of the lease. 'And I therefore cannot afford the monthly mortgage and I therefore sell it.'

23.3 In his reply dated about 19 March 1998 to the Revenue's request for 'details of your financial difficulty which caused you to sell the property', the Taxpayer mentioned the deterioration of his relationship with his wife and their agreement to separate and that she would cease to contribute to pay the mortgage loan (see paragraph 5 above). Further, he also had to pay instalments of \$40,000 per month per month towards a mortgage loan on his Property 1. 'I hence encountered serious financial difficulty.'

23.4 In his notice of appeal dated 25 June 1999, the Taxpayer stated that 'it is

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not his objective' to generate short-term profit from rent. He made the investment because the property had long-term potential (see paragraph 16.2 above). He would still face serious financial problems even if he could let the property out, as the breakdown shows (see paragraph 16.5 above). 'Only \$68,000 left for one year' s living expenses.'

24. Thus, the Taxpayer' s case at the hearing of the appeal was that he had to sell the subject property because of the serious financial difficulty caused by the deterioration of his relationship with his wife, the ensuing separation and the stoppage of the wife' s financial contributions.

Analysis

25. In cross-examination the Taxpayer was asked why it was that he did not mention the separation in his letter dated 8 June 1997 to the Revenue (Doc 8) (see paragraph 23.1 above) and his objection letter dated 7 January 1998 (see paragraph 23.2 above). He replied that he never thought of it. In both those letters he was stating the cause of the sale, and in both he ascribed the sale to the early termination of the University E lease. We do not believe that his failure to mention the separation in both letters was an accident. He says he never thought of it. That raises a doubt in our minds as to whether the sale of the subject property had anything to do with any separation following by financial embarrassment.

26. In the notice of appeal, the Taxpayer was at pains to point out that, even if he could continue to let out the subject property and enjoy the rental income, that would not have solved his serious financial problems, because that would only leave ' \$68,000 for one year' s living expenses' (see paragraph 23.4 above and also paragraph 18.6 above). Then why did he name the early termination of the University E lease as the cause of the sale in his letters dated 8 June 1997 and 7 January 1998 to the Revenue (see paragraphs 23.1 and 23.2 above)? The Taxpayer has not told us why he did so, but the fact that he did so can only add to the confusion as to the true nature of the cause of the sale.

27. According to the Taxpayer, in early May 1996 the relationship between him and his wife had deteriorated and they agreed that they should separate and that she would not make any contribution towards meeting the loan instalments (see paragraph 10(c) above). Upon his wife moving out of Property 1, they started separation. She moved out between mid-May and end of May 1996 (see paragraph 18.25 above).

28. In his tax return for the year of assessment 1996/97, completed on 10 May 1997, the Taxpayer declared that his residential address was at Property 1. His wife' s tax returns for the year of assessment 1995/96, completed on 31 May 1996, and for the year of assessment 1996/97, completed on 1 June 1997, both contained her declaration that Property 1 was her residential address and the telephone number of Property 1 was filled in as her telephone number. His answer

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was that he continued to live at Property 1, while ‘ his ex-wife just filled in the address. He thinks she was just copying it. He does not know.’ (see paragraph 18.30 above).

29. These tax returns show that at all material times the Taxpayer and his wife lived together. If this is true, the story of the separation leading to serious financial difficulty and eventually to the sale cannot stand. That story, if it happened at all, must happen before 30 May 1996 because the subject property was sold on that day, but the parties have declared in their tax returns that they lived together in May 1996 and before and after.

30. Ms C, a crucial witness on the whole separation issue, was not called and no explanation was given. The Taxpayer’s explanation that she was just copying it is not plausible (see paragraph 28 above). Why should she say that her residential address was Property 1, thereby implying that she was living together with the Taxpayer, if the truth was that she was living apart from him, having moved out during the latter half of May? Further, it is not in dispute that the Taxpayer signed his wife’s tax return immediately below her own signature and she did the same to his. This makes his statement that he does not know why she declared Property 1 as her residential address (see paragraph 28 above) particularly unconvincing.

31. The inconsistencies do not stop there. The letter from the estate agent to the Revenue (see paragraph 18.17 and Doc 3) through whom the Taxpayer had purchased and later sold the subject property contains some startling revelations. According to the estate agent, the Taxpayer put up the subject property for sale through the agent on 6 February 1996, the same day he had purchased it. The initial asking price was \$6,500,000 and was revised to \$7,000,000 on 16 April 1996. The Taxpayer did not appoint the agent to let the property.

32. (a) According to the Taxpayer, after he purchased the subject property on 6 February 1996, the agent asked him if he wanted to sell. He said no. The agent then asked if it was okay to get in touch with him if the price offered was good. He said yes. ‘ He said it was up to him.’ (see paragraph 18.14 above.) In our view, there was no clear-cut refusal to sell, but rather a veiled intention to sell at a profit. The statement that he said it was up to the agent was in our view an attempt to tone down the intention to sell at a profit.
- (b) The Taxpayer stated that he could not recall whether the agent mentioned any price to him in February 1996. From February to April 1996, the agent discussed the selling price with him. He told the agent that when the price was better, he would sell (see paragraph 18.15 above). He did not provide the figures of \$7,000,000 and \$6,500,000 to the agent. He only told them if the price was good, then call him, but they added the figures themselves (see paragraph 18.18 above). He cannot recall whether he appointed the agent to let the property (see paragraph 18.20 above). It seems that the Taxpayer’s evidence continued to reflect an intention to sell at a profit while denying the

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details of the agent's letter. We find that the letter gives a clear, business-like account of the agent's dealings with the Taxpayer and we cannot see the agent having any motive for telling any untruth against the Taxpayer. We prefer the agent's letter to the Taxpayer's explanation.

Recapitulation

33. The Taxpayer purchased the subject property on 6 February 1996 and sold it on 30 May 1996 at a profit. This is an example of what is commonly known as a quick sale and is inconsistent with the long-term-investment intention he declared he had towards the subject property at the time of acquisition. It is for the Taxpayer to explain away the quick sale. In our view, he has failed to do so. To recapitulate:

- 33.1 He failed to mention the separation, but instead mentioned the early termination of the University E lease, as the cause of the sale (see paragraph 25 above) in the early stages of his correspondence with the Revenue.
- 33.2 He later abandoned the early termination of the lease as the cause of the sale and relied on the separation and the loss of the wife's financial support as the cause for the purposes of the hearing (see paragraphs 26 and 27 above).
- 33.3 The tax returns show that at all material times the wife was not living apart from the Taxpayer but living with him at the same residential address. There was, in other words, no separation at any material time (see paragraphs 28, 29 and 30 above).
- 33.4 The agent's letter, which we accept, raises the inference that, in acquiring the subject property, the Taxpayer had an intention to sell it at a profit (see paragraph 31 and 32 above). And so we find.

Conclusion

34. In conclusion, we find that the Taxpayer has failed to establish a long-term-investment intention towards the subject property. And we will go further and find that he acquired the property with the intention of disposing of it at a profit. It follows that this appeal is dismissed and that the revised assessment in question is hereby confirmed.