

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D9/03

**Profits tax** – whether trading activities – flats purchased and sold within short duration.

Panel: Ronny Wong Fook Hum SC (chairman), Kwong Kok Shi and Dianthus Tong Lau Mui Sum.

Date of hearing: 20 January 2003.

Date of decision: 7 May 2003.

On 14 June 1997, the appellant purchased a flat of a house and sold it on 4 July 1997. On 10 July 1997, he purchased another flat of the same house but sold it on 20 September 1997. He made substantial profits in both cases.

The appellant said that he purchased both flats for self use originally but found them unsuitable later. Therefore, he had to sell them.

#### **Held:**

The Board found both flats were purchased and sold within short duration. No real attempt was made to use any of them as family home. The appellant was trading the flats.

#### **Appeal dismissed.**

Chow Cheong Po for the Commissioner of Inland Revenue.

Taxpayer in person.

#### **Decision:**

#### **Background**

1. By a provisional agreement dated 14 June 1997, the Appellant purchased the ground floor of a house in Village A ('the Ground Floor Flat') for \$1,320,000. By another provisional agreement dated 4 July 1997, the Appellant sold the Ground Floor Flat for \$1,500,000.

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2. By a provisional agreement dated 10 July 1997, the Appellant purchased the second floor and roof of the same house in Village A ('the Second Floor Flat') for \$1,750,000. The purchase was scheduled to be completed on 25 August 1997. The Appellant duly completed this purchase with the aid of a mortgage loan of \$1,225,000 from Bank B repayable by 240 monthly instalments of \$11,290 each. By a provisional agreement dated 20 September 1997, the Appellant sold the Second Floor Flat for \$2,815,000.

3. By an agreement dated 10 September 1998, the Appellant together with Madam C purchased as tenants in common a flat in Building D ('the Building D Flat') for \$1,150,000.

4. The Appellant informed the Revenue in a questionnaire dated 18 May 2000 that he purchased the Ground Floor and the Second Floor Flats for self use. He sold the Ground Floor Flat because of its poor lighting. He sold the Second Floor Flat because of poor security and he wanted to move to the Building D Flat.

5. According to the Appellant, he was a construction worker in 1996 with no fixed income. He worked as an estate agent between February and June 1997 earning \$11,000 per month. He became a salesman in a jewellery shop in February 1998 earning \$9,500 per month. He resumed working as an estate agent in October 1998 earning \$9,000 per month.

6. The Revenue takes the view that the gains of the Appellant arising from his dealings of the Ground Floor Flat and the Second Floor Flat are assessable to profits tax. By a determination dated 30 September 2002, the Commissioner confirmed the assessments on the Appellant. This is the Appellant's appeal against those assessments.

### **The hearing before us**

7. The Appellant was in a highly emotional state at the commencement of the appeal before us. He admitted that he is chargeable to tax but blamed the Revenue for its alleged delay in levying the assessments. He said he would not have contested his liability had the assessments been levied during the height of the property boom. He told us that he is now in serious financial difficulties. By virtue of the alleged delay on the part of the Revenue, he could not afford to pay any tax.

8. We succeeded to calm the Appellant and he gave the following sworn testimony:

- (a) His father passed away in September 1996 leaving his mother, two elder and two younger brothers.
- (b) Prior to his purchase of the Ground Floor Flat, he was residing in a 753 square feet flat in a housing estate with his mother and two younger brothers.

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- (c) He was in a financial position to improve his living environments in June 1997. The village houses in Village A were within his budget. He inspected the Ground Floor Flat with his elder brother but not with his mother or younger brother.
- (d) After acquiring the Ground Floor Flat, his mother was not satisfied with the purchase. The Second Floor Flat was then available with the benefit of a car park. It was much more attractive than the Ground Floor Flat. He decided to switch the Ground Floor Flat for the Second Floor Flat.
- (e) After obtaining vacant possession of the Second Floor Flat, he spent about two weeks renovating the same. He stayed there for two to three weeks. His elder brother also resided in that flat whilst his mother spent a night or two there.
- (f) He decided to sell the Second Floor Flat as the transportation to and fro the flat was poor; petty thefts were prevalent in properties across the road and there were better choices elsewhere.
- (g) There would not be any difficulty in supporting the purchase on a long term basis. His brothers were decorator and construction workers earning approximately \$15,000 and \$13,000 per month. They would be able to contribute towards the acquisition.

9. At the conclusion of the Appellant's testimony before us, we explained to him the importance of adducing credible evidence in support of his testimony. With the consent of the Revenue, we adjourned the hearing so as to enable the Appellant to see what documentary or other evidence that he can gather in support of his contentions. We directed that he should submit such evidence by 10 February 2003.

10. The Appellant placed no further evidence before us. We have to decide this appeal on the basis of the materials placed before us at the hearing on 20 January 2003.

11. We are of the view that there is no credible evidence before us to suggest that the Appellant purchased the Ground Floor Flat and the Second Floor Flat with the intention of using the same as his family home. The Ground Floor Flat was sold less than a month after his acquisition. He held the Second Floor Flat for a slightly longer duration. No real attempt was made to use any of these premises as the family home. We have little information as to his state of wealth at the dates of acquisition. On the available evidence before us, we entertain serious doubts as to his ability to hold these premises on a long term basis.

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12. The Appellant frankly admitted that on paper his activities do amount to trading in properties. We gave him every opportunity to dispel such inference. He failed to discharge his onus. We dismiss his appeal and confirm the assessments.