DIRECTOR-GENERAL OF INLAND REVENUE v CKK

[1974] 2 MLJ 104

FEDERAL COURT CIVIL APPEAL NO 152 OF 1973

FC KUALA LUMPUR

DECIDED-DATE-1: 12 JUNE 1974

SUFFIAN LP, LEE HUN HOE CJ (BORNEO) AND ONG HOCK SIM FJ

Cases referred to
E v Comptroller-General of Inland Revenue [1970] 2 MLJ 117 125
Edwards v Bairstow [1955] All ER 48 52
Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 2 KB 403 414
Ormond Investment Co v Betts [1928] AC 143 157
Martin v Lowry 11 TC 297
California Copper Syndicate (Limited and Reduced) v Harris 5 TC 159
Beynon v Ogg 7 TC 125
Cape Brandy Syndicate v Inland Revenue Commissioners 12 TC 358
Commissioner of Inland Revenue v Fraser 24 TC 498
Orchard Park Ltd v Pogson 42 TC 442
Leeming v Jones 15 TC 333
DEF v Comptroller of Income Tax [1961] MLJ 55
L Investment Ltd v Comptroller of Inland Revenue [1973] 2 MLJ 10
DR Fraser & Co Ltd v Minister of National Revenue [1949] AC 24 33
Barry v Cordy [1946] 2 All ER 396 398

GILL FJ:

[1] In the High Court the following judgment was delivered on December 2, 1973:

[2] This is an appeal by way of case stated from a decision of the Special Commissioners of Income Tax that the respondent is not liable to pay tax under section 10(1)(a) of the Income Tax Ordinance, 1947 on a profit which he made on the sale of his 1/20 undivided share in a piece of land.

[3] The facts of the case are as follows. The respondent has been a licensed auctioneer and appraiser in Kuala Lumpur since 1941. He owns three pieces of rubber land which are 10 acres, 9 acres and 4 acres in area respectively, the first two jointly with his two brothers and the third by himself. The first land was bought on 29th November 1955 and the other two on 18th July 1956.

[4] The respondent became a shareholder and director of Kumfort Limited which was incorporated on 4th November 1955. With its main trading activities being property development and housing, the company built many houses in Petaling Jaya. At a meeting of the Board of Directors on 16th July 1960, one Ting Chok, a major shareholder and a very active director, made it known that there was an offer for the sale of 44.809 acres of agricultural land under old rubber trees in the Mukim of Petaling which had prospects for housing development. The respondent together with certain directors of the company and some outsiders bought the land for $ 157,088.90 in August 1960. An undivided 10/20 share in the land was registered in the name of the company, an undivided 3/20 share in the name of Ting Chok, an undivided 1/20 share in the name of the respondent and the rest of the undivided shares in the names of seven outsiders.

[5] At a Board meeting held on 17th November 1960 Ting Chok proposed that two further lots with an approximate area of 18 acres be acquired in order to obtain direct access to the property in question. At a further meeting of the Board on 30th November 1960 Ting Chok stated that an option to purchase the two lots valid until 31st December 1960 had been granted to him. However, no purchase was in fact made.

[*104]

[6] On 30th January 1960 the company made an application to the Collector of Land Revenue, Kuala Lumpur for conversion of the land in question from agricultural to building land. The Collector replied on 8th August 1961 to say that the application could not be considered. At a directors' meeting held on 3rd may 1961 it was resolved that the company should sell its half interest in the land and that the price be fixed after offers to purchase were received by the company and the owners of the other half interest in the land. By his letter dated 11th May 1961 Ting Chok urged the co-owners to sell the land in view of the poor prospects of developing it. Four options were issued from 2nd June 1961 to 31st May 1964 to different co-owners for the sale of the land at prices ranging from $ 3,800 to $ 35,000 per acre. After some disagreement between the respondent and Ting Chok as to what the land should be utilised for, the land was finally sold on 15th September 1964 in almost the same condition in which it was purchased to Sim Nam Housing Development Company Limited for $ 1,344,270. The company on its half share in the proceeds of sale made a net profit of $ 576,595.03 on which it paid income tax.

[7] In re-assessing the respondent's income tax for the year of assessment 1965, by a notice of additional assessment dated 5th July 1969 the appellant levied tax on the profit which the respondent made on the sale of his 1/20 undivided share in the land. The respondent appealed to the Special Commissioners of Income Tax. His appeal was allowed on the ground that the respondent was not carrying on a trade or business of dealing in land, so that his share of the profit did not come within the meaning of section 10(1) of the Income Tax Ordinance, 1947. Accordingly, the Special Commissioners directed that the notice of additional assessment be amended so as to exclude therefrom the assessment on the said share of profits.

[8] The major ground of appeal against the Special Commissioners' decision is that the intention of the Syndicate which purchased the land, as evidenced by the minutes of the Board meeting held on

16th July 1960, was to sell the land at a profit either before or after development. Indeed, counsel for the appellant said that his case rested entirely on the minutes of that meeting. The minutes of meeting of course were binding on the company, but it is not the company with which we are concerned. The company paid the income tax on the profit which it made on the sale of the land obviously because their business was to buy and sell land. As regards the other individual co-owners of the land, they are liable to pay tax only if it can be shown that buying and selling land was their business or trade.

[9] It was argued before the Special Commissioners that right from the very beginning the object of the respondent in purchasing the property was to sell it at a profit either before or after development. It was stated that as a licensed auctioneer and appraiser he has close association with property transactions. It was further said that Kumfort Ltd. together with the respondent and other co-owners entered into a partnership in dealing with the property. All those grounds, however, were rejected by the Special Commissioners. In my judgment, the Special Commissioners were right in doing so. Holding property in undivided shares does not make the co-owners partners in the real sense of the word. As far as the respondent was concerned, this was an isolated transaction.

[10] The facts and the question involved in this case are not very different from those in the case of *E v Comptroller-General of Inland Revenue* [1970] 2 MLJ 117 125. In that case I said in the Federal Court:

> "In the final analysis the answer to this appeal is fairly simple. The transaction by the appellant in this case must be taken as an isolated transaction. As an isolated transaction, it was an adventure in the nature of trade. In the absence of a definition of 'trade' extending that term to an adventure in the nature of trade, as the English Income Tax Acts do, this single transaction did not constitute a trade of the appellant within the meaning of section 10(1)(a) of the Income Tax Ordinance, 1947. As it was but a single business transaction carried out by the appellant and not part of a business carried on by him, it did not constitute the business of the appellant either within the meaning of the same section. The profit arising therefrom is therefore not subject to tax under that section."

[11] In my judgment, what I said there applies equally to this case. I would therefore dismiss this appeal with costs and confirm the order of the Special Commissioners.

[12] *From the above judgment the appellant appealed to the Federal Court*.

LEE HUN HOE CJ (BORNEO):

[13] FEDERAL COURT.

[14] read by **Ong Hock Sim F.J.:** This appeal is concerned solely with the question whether or not respondent is liable to pay tax under section 10(1)(a) of the Income Tax Ordinance, 1947 on his

share of profit derived from the sale of land. When the matter came before the Special Commissioners, they decided in favour of respondent. They held that although respondent was a member of the syndicate which bought and sold certain land, he was, however, not carrying on a trade or business of dealing in the said land, and consequently the share of profit derived by him therefrom is not within the meaning of section 10(1) of the said Ordinance. Gill F.J., as he then was, sitting in the High Court at Kuala Lumpur upheld the decision and dismissed the appeal. Appellant appealed to this court.

[15] On 4th November, 1955 Kumfort Ltd. (hereinafter referred to as the company) was incorporated and its main activities were property development and housing. It had built many houses on lots subdivided by the Petaling Jaya Authorities. In 1955 respondent, a licensed auctioneer and appraiser, became a shareholder and director of the company. On 16th July, 1960, Ting Chok, a major shareholder and an active director informed the Board of Directors at a meeting that 44.809 acres of agricultural land under old rubber was for sale and which had prospects for housing development. Consequently, in August, 1960 they bought the land for $ 157,088.90. The company held 10/20th share, Ting Chok 3/10 share, respondent and six others holding 1/20th share each. Attempts to buy another 18 acres of land were not successful. On 30th January, 1960, the company, on behalf of all owners of the land, applied to the Collector of Land Revenue, Kuala Lumpur, for conversion of the said land for building purposes. [*105] However, on 8th August, 1961 the Collector informed the company that the application could not be considered. Meanwhile, certain disagreements arose between Ting Chok and respondent regarding the utilisation of the land. With the result the land was sold to Sim Nam Housing Development Company for $ 1,344,270. The half share profit of the company amounted to $ 672,310. After deducting expenses of $ 95,539.97 the company made a nett profit of $ 576,595.03. The company paid income tax on its profits. On the transaction respondent was assessed for additional income tax of $ 18,223.30 on the profit derived from the sale of his share in the land.

[16] Appellant contended that the company together with other co-owners including respondent not only formed a syndicate but also entered into a partnership in dealing with the said property. It was contended further that the syndicate never had any intention of working the rubber land as a rubber estate, but that its intention was to purchase and sell the rubber land at a profit either before or after development. It was submitted that the determination of the Special Commissioners could not stand because trading activities existed right from the time the rubber land was acquired and that the profit made by respondent was the result of the trading activities carried on by members of the partnership. For the respondent stress was made of the important distinction between a company and an individual. On the contrary, respondent maintained that when the rubber land, being agricultural land, was first purchased, the intention was to replant for production of rubber. This was clearly shown by the letter dated 8th August, 1961 of the respondent's accountant which, *inter alia,* stated that “we understand that the sole object for which the land was acquired was to carry on the business of working a rubber plantation.” Further, respondent contended that the particular purchase and sale of the rubber land was a single and isolated transaction and that he had never been engaged in the buying and selling of land. Consequently, respondent submitted that this was a case of capital profit and not capital investment, therefore not chargeable to tax. In the alternative, he submitted that the profit made was not chargeable under section 10(1) of the Income Tax Ordinance, 1947.

[17] In support of the various contentions, appellant clearly relied on the minutes of the meeting of the Board of the company. The minutes of the meeting were binding on the company. However, the court is not here concerned with the company, but with the individual co-owners. On its part the company had paid income tax on the profit made from the sale of the rubber land as its business was to buy and sell land. As the learned judge rightly pointed out the individual co-owners would only be liable to tax if it could be shown that buying and selling land was their business or trade.

[18] Great emphasis was made of the fact that respondent was a licensed auctioneer and appraiser and would therefore have close association with property transaction. It was further mentioned that he was a director and shareholder of the company and had played an active part in connection with the particular transaction right from the beginning when the land was acquired. Hence, he knew that the object of the syndicate or partnership was to buy and sell the property at a profit either before or after development. This line of argument impressed neither the Special Commissioners nor the learned judge.

[19] For the respondent, it was contended that this was a single and isolated transaction and it was not even an adventure in trade. On the other hand, appellant argued that respondent was carrying on a trade or business although the transaction in the rubber land was an isolated one. Numerous English authorities were cited in support of their respective contentions. I feel that I need not have to go into all the authorities, but will refer to a few which I consider relevant for the purpose of this judgment.

[20] On behalf of the appellant it was also submitted that the decisions of the Special Commissioners were unreasonable because they gave no reason for their finding. They had outlined the facts in great detail. They gave their opinion that respondent was a member of a syndicate but that he was not carrying on a trade or business in respect of that transaction and therefore not liable to tax under section 10(1) of the said Ordinance. This is clearly an inference they derived from a review of all the primary facts. There is sufficient material to enable them to reach such conclusion.

[21] Under paragraph 37(a) of Schedule 5 of the Income Tax Act, 1967 it is provided that a case stated "shall set forth the facts as found by the Special Commissioners and the deciding order." This paragraph was amended under section 4 of the Income Tax (Amendment) Act, 1974 (Act A.225) by the addition of "and grounds of their decision." Although the amending Act specifies the operative date of sections 2 and 3 to be 1st January, 1974, nothing was said of the operative date of the other sections. The date of the Royal Assent of the amending Act was on 26th February, 1974 and the date of publication of the amending Act was on 28th February, 1974. Under section 19 of the Interpretation Act it is provided that:–

"The commencement of an Act or subsidiary legislation shall be the date provided in or under the Act or subsidiary legislation or, where no date is provided, the date immediately following the date of its publication in pursuance of section 18."

[22] Section 18 merely deals with matters of publication. So it would seem that the remaining sections of the amending Act came into operation on 1st March, 1974. In any case the amending Act

was published more than two years after the case stated and therefore has no application. The finding of the Special Commissioners on purely question of facts should not be disturbed unless it was so perverse that, as a matter of law, it could not stand. See *Edwards v Bairstow* [1955] All ER 48 52. All the facts before this court were also before the Special Commissioners and the learned judge. They must be assumed to be aware of the surrounding circumstances. I consider that the learned judge was entitled on the particular facts of this case to say that:–

"Holding property in individual shares does not make the co-owners partners in the real sense of the word. As far as the respondent was concerned this was an isolated transaction."

[*106]

[23] Section 10(1)(a) of the Income Tax Ordinance, 1947 reads as follows:–

"10(1). Income tax shall, subject to the provisions of this Ordinance, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from the States of Malaya or received in the States of Malaya from outside the States of Malaya in respect of–

(a) gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised."

[24] Section 526 of the English Tax Act, 1952 and the earlier statutes define "trade" to include "every trade, manufacture, adventure, or concern in the nature of trade." Neither "trade" nor "business" is defined in our Ordinance. It is necessary when considering English authorities to bear in mind the differences between the English taxing legislation and our Ordinance. However, "business' is defined under the Income Tax Act, 1967 to include an "adventure or concern in the nature of trade." This Act was clearly enacted to correct defects in the earlier law. It has created a new liability by casting its net over a wider area. In his judgment Lord Sterndale in *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 2 KB 403 414 stated:–

"I think it is clearly established in *Attorney-General v Clarkson* [1900] 1 QB 156; 16 TLR 51 that subsequent legislation on the same subject may be looked to in order to see what is the roper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation, if it proceeds upon an erroneous construction of previous legislation, cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier."

[25] Lord Buckmaster in *Ormond Investment Co v Betts* [1928] AC 143 157 referred to the above

passage and said:–

"This is, in my opinion, an accurate expression of the law, if by 'any ambiguity' is meant a phrase fairly and equally open to diverse meanings, but in this case the difficulty is not due to ambiguity but to the application or rules suitable for one purpose to another for which they are wholly unfit."

[26] There is nothing ambiguous in the word "trade" in the 1947 Ordinance. There may be scope for argument as to how far one can carry the word or how many transactions are covered, but that is surely not ambiguity. It cannot be said that the creation of a new liability under the 1967 Act is meant to extend to the earlier Ordinance. There is, therefore, no need to have recourse to the later legislation for its interpretation.

[27] The mere fact that this is an isolated transaction does not automatically take the profit arising therefrom out of the category of chargeable property. Such cases as *Martin v Lowry* 11 TC 297; *California Copper Syndicate (Limited and Reduced) v Harris* 5 TC 159; *Beynon v Ogg* 7 TC 125; *Cape Brandy Syndicate v Commissioner of Inland Revenue* 12 TC 358; *Commissioner of Inland Revenue v Fraser* 24 TC 498 and many other cases are in effect cases of one enterprise. It does not matter whether it is one purchase and sale or one purchase and many sales. Because that does not preclude the court from holding that the subject matter of the transaction to be a trade or an adventure in the nature of a trade. On the other hand, it is also easy to put clear cases of one enterprise where the profits arising therefrom were held not to be chargeable. All these cases merely show that each case must be decided according to its particular facts.

[28] Since we are here deciding whether the profit derived from the purchase and sale of land is taxable or not, it would be useful to refer to some cases bearing on such transactions. The question in *Orchard Park Ltd v Pogson* 42 TC 442 was whether the company was, when selling certain land and property, and in particular when selling certain land and property to Hull Corporation in 1961, carrying on trade or adventure or concern in the nature of trade, so as to be chargeable to income tax in respect of profit arising therefrom. The Special Commissioners decided that the company was liable to tax. They found that the land was acquired by the company as trading stock and remained trading stock when it was sold. Buckley J. upheld the decision of the Special Commissioners on the ground that there was ample material on which they could reach such conclusion.

[29] In *California Copper Syndicate (Limited and Reduced) v Harris* 5 TC 159 a company was formed for the purpose, *inter alia,* of acquiring and reselling mining property. After acquiring and working various property, it resold the whole to a second company in exchange for fully paid shares of the latter company. It was held that the company had carried on an adventure or concern in the nature of trade and that profits arising from such purchase and resales, whether in cash or in shares of another company, were assessable to tax.

[30] *Leeming v Jones* 15 TC 333 is of particular interest as it is concerned with the purchase and sale of rubber estates. There appellant was a member of a syndicate of four persons formed to acquire an option over a rubber estate near Ipoh with a view to resale. As the estate was considered to be too

small for resale to a company to be formed the syndicate obtained an option over another adjoining estate. The two estates were eventually taken over by a company called Ipoh Rubber Estate Co. Ltd. The Syndicate received £3000 and after deducting certain expenses the balance was divided among the members of the syndicate. Appellant was assessed to income tax in respect of his share. Rowlatt J. sent the case back to the General Commissioners to find whether there was or not a concern in the nature of trade. They decided that the transaction was not a concern in the nature of trade, therefore, there was no liability to assessment. The Court of Appeal agreed with the learned judge and dismissed the appeal. It is interesting to note what Lord Hanworth M.R. said at page 346:–

"Now Mr. Justice Rowlatt, and I think this court, might perhaps have taken the course of saying that having regard to what he had called attention to in this case, the particular facts, of organising the speculation, of maturing the property, and the diligence in discovering a second property to add to the first, and the disposing of the property, there ought to be and there must be a finding that it was an adventure in the nature of trade; but Mr. Justice Rowlatt withheld his hand from so doing and I think he was right, for however strongly one may feet as to the facts, the facts are for the decision of the Commissioners. It would make an inroad upon their sphere if one were to say in a case such as the present that there could only be one conclusion. The Commissioners are far better judges of these commercial transactions than the courts, and although their attention has been drawn to what happened, they have in their final case negatived anything in the nature of an adventure or trade."

[*107]

[31] One thing is clear, however, that is under the English Income Tax legislation, if an isolated transaction of purchase and sale of property is considered to be a trade or an adventure or concern in the nature of trade then the profit derived therefrom would be assessable to tax. On the other hand, in view of the absence of a definition of the word "trade" in our Ordinance a profit derived from the purchase and sale of property would not be liable to income tax under section 10(1) (a) if such transaction is held to be an adventure or concern in the nature of trade. Under our Ordinance it is just not possible to construe trade as including an adventure in the nature of trade. Of course it is difficult to find facts of two cases similar in every detail. However, the facts in *Leeming v Jones* 15 TC 333 seem to be as closely parallel to the present case as any case could well be in the sense that each case involves individual making profit from the purchase and sale of land by a syndicate of which the individual is a member. So, if I accept the conclusion of the Special Commissioners that respondent did not carry on a trade or business in respect of the transaction, then appellant must fail in this appeal.

[32] Reference was also made to the case of *E v Comptroller-General of Inland Revenue* [1970] 2 MLJ 117 125. There appellant with four other persons purchased a rubber estate near Seremban for $ 197,837.60. Later, they sold the estate to a company one of whose objects was developing land into housing sites in exchange for fully paid up shares in the company to the value of $ 765,000. Appellant was entitled to shares to the value of $ 382,500. He was assessed for additional tax in

respect of the amount in excess of the value of the shares in the company to which he was entitled over the value of his share of the purchase price of the land, on the basis that this amount represented profit from business chargeable to income tax under section 10(1)(a) of the Income Tax Ordinance, 1947. Appellant failed in his appeal before the Special Commissioners and the High Court, but was successful in the Federal Court when his appeal was allowed. It was held that the transaction was an isolated transaction and although it was an adventure in the nature of trade, it did not constitute a trade of the appellant within the meaning of section 10(1)(a) of the Income Tax Ordinance, 1947. As it was a single business transaction carried out by the appellant and not part of a business carried on by him, it did not constitute the business of the appellant either within the meaning of that section. The profit arising therefrom was, therefore, not subject to tax under the section.

[33] Provisions identical to our section 10(1)(a) were discussed in the Singapore case of *DEF v The Comptroller of Income Tax* [1961] MLJ 55 which was also referred to by the learned judge in *E v Comptroller-General of Inland Revenue* [1970] 2 MLJ 117 125. Although the Court of Appeal unanimously allowed the appeal it is interesting to note that the learned judges took divergent views as to whether the transaction was "an adventure in the nature of trade." Rose C.J. and Buttrose J. considered that the bare purchase and sale of the rubber estate would not constitute an adventure in the nature of trade. On the other hand, Ambrose J. held that the transaction was an adventure in the nature of trade. He further opined that neither "business" nor "trade" could be construed to include an adventure in the nature of trade in the absence of any statutory definition as in other legislations.

[34] Perhaps, I should also refer to the case of *I Investment Ltd v Comptroller of Inland Revenue* [1973] 2 MLJ 10 where appellant company, one of whose objects was to traffic and otherwise deal in or turn into account immovable property, had acquired certain lands and constructed a building thereon. Subsequently, it agreed to sell the lands and building to another company in exchange for shares in the company. The value of the shares exceeded the cost of the property. The respondent assessed the company for tax on the profits so obtained. It was urged on behalf of appellant that the company was not carrying on the business of buying and selling property, but investment business. Appellant further contended that this was an isolated transaction and not even an adventure or concern in the nature of trade. The Special Commissioners held that the profits were assessable to tax as the company was carrying on the business of trafficking in land. H. S. Ong F.J., in dismissing the appeal, held that the facts in that case supported the decision of the Special Commissioners and that although there was only one isolated transaction it was carried on with the intention of dealing with property. In his judgment he pointed out that the decision of *E v Comptroller-General of Inland Revenue* [1970] 2 MLJ 117 125 was based on facts entirely different from the case before him. He was dealing not with an individual but with a company. In the present case Kumfort Ltd. had paid income tax on the profits arising from the sale of the rubber land as the main activities of the company were property development and housing. Here the court has to decide whether respondent, a member of the syndicate, is liable to tax under the 1947 Ordinance.

[35] Appellant tried to distinguish the case of *E v Comptroller-General of Inland Revenue* [1970] 2 MLJ 117 125 from the present case. He contended that in that case there was an adventure in the nature of trade whereas in the present case a trade itself existed right from the time the land was acquired. Further, he argued that in that case appellant only bought one estate whereas in the present case the syndicate bought 23 lots of land from three different owners. So, it was incorrect to say that

there was only one isolated transaction. This is strange as there are indications that appellant accepted the transaction of purchase and eventual sale was a single isolated transaction. Whether or not an isolated transaction amounts to a trade or adventure or concern in the nature of trade depends very much on the facts of a particular case. In that case Gill F.J., as he then was, delivered the judgment with which the other two members of the court agreed. He considered that the facts and the question involved in the present case were not very different from those in that case. In particular, he referred to what he said in that case:–

> "In the final analysis the answer to this appeal is fairly simple. The transaction by the appellant in this case must be taken as an isolated transaction. As an isolated transaction, it was an adventure in the nature of trade. In the absence of a definition of 'trade' extending that term to an adventure in the nature of trade, as the English Income Tax Acts do, this single transaction did not constitute a trade of the appellant within the meaning of section 10(1)(a) of the Income [*108] Tax Ordinance, 1947. As it was but a single business transaction carried out by the appellant and not part of a business carried on by him, it did not constitute the business of the appellant either within the meaning of the same section. The profit arising therefrom is therefore not subject to tax under that section."

[36] He came to the conclusion that what he said above applied equally to the present case. With respect, I agree with his views on the particular facts of the present case.

[37] For reasons given, I would dismiss the appeal with costs here and in the court below.

ONG HOCK SIM FJ:

[38] This is an appeal by the Inland Revenue against the decision of Mr. Justice Gill F.J. on December 6, 1973 confirming the Deciding Order of the Special Commissioners of Income Tax of November 27, 1971, that the sum of $ 57,659 which the respondent made from the sale of his 2/40th share of the lands, comprising 23 titles held under E.M.R.'s in area 44,809 acres, more or less, was not chargeable to tax under the provisions of section 10(1) of the Income Tax Ordinance, 1947 and that the notice of additional assessment of July 5, 1969, be accordingly amended to exclude the said sum.

[39] The brief facts are as follows: The respondent is a licensed auctioneer and appraiser, and has been since 1941. He is also a landed proprietor of three pieces of property, two of which were shared with his two brothers. These properties are not involved in the present appeal.

[40] In 1955, the respondent became a shareholder of Kumfort Ltd., a company incorporated on November 4, 1955 with its main activities, property development and housing. This company, certain Directors (including the respondent) and others not connected with the company, purchased in their personal and private capacity the said 23 parcels of land. Application for conversion from agricultural to building titles was unsuccessful, due to water not being available at the site at the

time. The co-owners agreed, since development could not be pursued, to sell the land at $ 30,000 an acre. On September 15, 1964, the said lands were sold to Sim Nam Housing Development Co. Ltd. for $ 1,344,270 in almost the same condition as at the time of purchase. 20/40 shares amounted to $ 672,135 which after deduction of expenses of $ 95,539.97 showed a nett profit of $ 576,595.03. For this half-share, the company paid income tax.

[41] The appellant relied on the minutes of the meeting of the Board of Directors of Kumfort Ltd. held on July 16, 1960 that the intention behind the purchase of the lands was to re-sell at a profit either before or after development. Mr. V. D. Nair, the Rubber Industry Adviser, was called by the Appellant and testified that since each title was less than 10 acres, a 100% replanting subsidy could have been obtained. No application for replanting aid was made and it could be inferred that the intention of the co-owners was to hold the land, which was close to town, for resale as housing land. It was argued that as a licensed auctioneer and appraiser of some years standing and close association with property transactions, the respondent right from the very start purchased the property for re-sale at a profit. It was urged that the respondent and the other co-owners had entered into a partnership to deal in property. We were referred to section 192 and section 206 of the Contracts (Malay States) Ordinance (No. 14 of 1950). In my view, the learned judge was correct in holding that co-ownership is not co-terminous with partnership. In a partnership, a partner would be restrained, expressly or impliedly, from dealing with his interests in the property. There is no evidence that consent of the other partners was insisted upon. I am of opinion that the second ground of appeal as to respondent's occupation and his activities in connection with the purchase of the lands must fail, as it discloses no more than an isolated transaction by the respondent, which as his counsel submitted before the learned judge was no more than an investment of a personal nature.

[42] Coming now to the first ground of appeal that the learned judge erred in holding that the sale of land by the respondent did not constitute trade, it has been held by this court that an isolated sale of land was not trade or business within the meaning of section 10(1) (a) of the 1947 Ordinance, which reads:

"Income tax shall … be payable … upon the income of any person accruing
… in respect of

(a) gains or profits from any trade, business, profession or
vocation, for whatever period of time such trade, business,
profession or vocation may have been carried on or exercised;"

[43] "Trade" is not defined in the Ordinance though section 4 of the Income Tax Act, 1967 enacts chargeable income to include "(a) gains or profits from a business, for whatever period of time carried out" and section 2 defines "business" as including "profession, vocation and trade and every manufacture, adventure or concern in the nature of trade, but excludes employment."

[44] As Lord MacMillan in giving the opinion of the Judicial Committee in *DR Fraser & Co Ltd v Minister of National Revenue* [1949] AC 24 33 said:

"When an amending Act alters the language of the principal statute, the

alteration must be taken to have been made deliberately. In tax legislation it is far from uncommon to find amendments introduced at the instance of the revenue department to obviate judicial decisions which the department considers to be attended with undesirable results."

[45] It is apparent therefore that a restricted meaning must be given to the word: "trade". As Scott L.J. said in *Barry v Cordy* [1946] 2 All ER 396 398:

"The word 'trade' is given a statutory meaning, as I have already said, by the definition in section 237. As the definition includes the very word 'trade' without qualification, that word must be used in its ordinary dictionary sense *and the other words must necessarily be intended to enlarge the statutory scope to be given to the word 'trade' in Sched. D.* Whether the word 'adventure' is intended to be read like the word 'manufacture' as equally independent of the opening word 'trade ' or like the word 'concern' as qualified by the attribute 'in the nature of trade' does not, we think, matter in this appeal, though we incline to think it should be read as independent. The Oxford Dictionary gives several meanings of 'adventure', but the most appropriate is that numbered 7:

'A pecuniary risk, a venture, a speculation, a commercial enterprise.' … To the word 'trade' the most appropriate meanings assigned are No. 3(a) and (b), and No. 5(a) and (b):

3(a) Course, way or manner of life; course of action; mode of procedure, method. (b) A way or method of attaining an end; a contrivance, expedient. 5(a) the practice of some … business … habitually carried on, esp. when practised as a [*109] means of livelihood or gain; a calling; formerly used very widely, including professions; now usually applied to a mercantile occupation and to a skilled handicraft, as distinguished from a profession."

[46] In confirming the finding of the Special Commissioners that the respondent was not carrying on a trade or business of dealing in the said lands the learned judge reiterated what he said in *E v Comptroller of Inland Revenue* [1970] 2 MLJ 117 125:

"In the final analysis the answer to this appeal is fairly simple. The transaction by the appellant in this case must be taken as an isolated transaction. *As an isolated transaction, it was an adventure in the nature of trade. In the absence of a definition of 'trade' extending that term to an adventure in the nature of trade,* as the English Income Tax Acts do, *this single transaction did not constitute a trade of the appellant within the meaning of section 10(1)(a) of the Income Tax Ordinance, 1947*. As it was but a single business

transaction carried out by the appellant and not part of a business carried on by him, it did not constitute the business of the appellant either within the meaning of the same section. The profit arising therefrom is therefore not subject to tax under that section."

[47] The third ground is without merit.

[48] I would therefore dismiss the appeal with costs and affirm the decision of the learned judge.

[49] Suffian L.P. concurred.