

[IN THE PRIVY COUNCIL]

1965 *Present*: Lord Reid, Lord Morris of Borth-y-Gest, Lord Pearce,
Lord Donovan, and Lord Pearson

LILY H. RAM ISWERA, Appellant, and THE COMMISSIONER OF
INLAND REVENUE, Respondent

PRIVY COUNCIL APPEAL No. 31 OF 1964

S. C. 3 of 1962—Income Tax Case Stated BRA 303

Income tax—“Adventure or concern in the nature of trade”—Purchase of land—Subsequent blocking up of the land and sale of the blocks—Reservation of one block for purchaser—Profits derived from such transaction—Assessability to income tax.

The appellant wished to put up a house near a Convent School which her children were attending. She found a building site of about 2½ acres for sale and tried to buy a part of it. But the owner was only willing to sell the site as a whole. The appellant therefore entered into negotiations with the vendor for the purchase of the whole land for Rs. 450,000. As the full sum was not immediately available, she divided the land into twelve building lots (excluding sites for the necessary roads). She sold nine lots to sub-purchasers and kept two lots for her own house and one for reconveyance to the vendor. It was arranged that each of the nine sub-purchasers would get a direct conveyance of his lot from the vendor. The gross profit made by the appellant in respect of the site which she acquired for her own house was Rs. 71,765—the difference between the price which she actually paid for it and its market value. On the net profit she was assessed to income tax for the years 1950/51 and 1951/52 on the basis that the whole transaction was “an adventure or concern in the nature of trade”.

Held, that the facts and circumstances justified the inference that the transaction was an adventure or concern in the nature of trade. No doubt the assessee acquired the part of the site which she retained as a capital investment, but in order to acquire it she had to buy, divide, and immediately resell the rest of the site.

“If, in order to get what he wants, the taxpayer has to embark on an adventure which has all the characteristics of trading, his purpose or object alone cannot prevail over what he in fact does. But if his acts are equivocal his purpose or object may be a very material factor when weighing the total effect of all the circumstances.”

APPPEAL from a judgment of the Supreme Court reported in (1962) 65 N. L. R. 393.

E. F. N. Gratiaen, Q.C., with *Neil Ellis* and *Sir Learie Constantine*, for the Assessee-Appellant.

H. H. Monroe, Q.C., with *R. K. Handoo*, for the Respondent.

Cur. adv. vult.

March 30, 1965. [*Delivered by LORD REID*]—

This is an appeal from a judgment of the Supreme Court of Ceylon which answered in the affirmative the question in a case stated by the Board of Review under section 78 of the Income Tax Ordinance. The question was whether in the facts and circumstances proved in the case the inference that the transaction in question was an adventure or concern in the nature of trade was justified. The case arises out of assessments to income tax for the year 1950/51 and 1951/52 made on the late Mr. Ram Iswera in respect of profits made by his wife, the present appellant.

The facts are set out in the case stated and their Lordships need only set out briefly those which are important. In and after 1950 the present appellant, her late husband and their five daughters were living at Hulftsdorf, Colombo. Four of their daughters were attending St. Bridget's Convent School in Alexandra Place, and the appellant wished to move to a house nearer the school. She found out that there was a building site of about $2\frac{1}{2}$ acres for sale in Alexandra Place close to the school and tried to buy a part of it. But the owner was only willing to sell the site as a whole.

The appellant then entered into negotiations for the purchase of the whole site but she did not have large sums immediately available. She owned certain houses in Colombo but they could not be readily sold as she could not give vacant possession. But on 3rd March 1951 she made an agreement with the owner of the site to buy it for Rs. 450,000. She had to pay immediately a deposit of Rs. 45,000 and to pay the balance of Rs. 405,000 on or before 20th April 1951, and it was provided that, in the event of her failing so to pay the balance, the deposit of Rs. 45,000 should be forfeited to the vendor as liquidated damages. Under the agreement she was further bound to reconvey a site of 60 perches to the vendor and to make the necessary roads at her own expense.

The appellant borrowed the amount of the deposit by two loans and she then caused a plan of the site to be prepared. This showed twelve building lots as well as sites for the roads and she or her husband found purchasers for nine of these lots. She kept two lots for her own house and one for reconveyance to the vendor. It was arranged that each of the nine sub-purchasers would get a direct conveyance of his lot from the vendor.

The prices paid by the nine sub-purchasers amounted in all to Rs. 434,725 and out of this the balance of Rs. 405,000 was duly paid, so the result was that the appellant only had to find Rs. 15,275 of her own money and that she got the site for her house. The market value of that site at the time was Rs. 87,040. The assessments under appeal are based on the view that the whole transaction was an adventure or concern in the nature of trade, and that the site purchased by the appellant for her house must be brought into the computation of profit

from such adventure at its market value. A gross profit of Rs. 71,765 was thus brought out. It was agreed by the appellant without prejudice to the question of liability, that the net profit was Rs. 66,331. The ground of appeal is that this transaction was not an adventure or concern in the nature of trade.

This was an isolated transaction and it is not disputed that in order to determine its nature it is necessary to have regard to all the relevant facts and circumstances. The case is unusual in that on the one hand there are here many of the ordinary characteristics of trading while on the other hand the result was that the appellant, in addition to making a profit, obtained what she had been seeking—an opportunity to reside near her daughters' school. There appears to be little authority dealing with a case of this kind and the appellant relied on the judgment of Centlivres, C.J. in *Commissioner of Inland Revenue v. Paul*¹. In that case the taxpayer had been looking for a small holding of 30 or 40 acres. He found a suitable place but the owner was not willing to sell less than 167 acres. In 1946 he bought and paid for this larger area. The Special Court for Income Tax Appeals in a case stated accepted the taxpayer's evidence that he intended to sell off the land which he did not want to best advantage—at a profit if he could. At various times during the next seven years he sold twelve lots and he was assessed to income tax on a profit of £758 in respect of three sales in 1953. The Special Court held—“There seems no room for reasonable doubt that the appellant's intention in acquiring the property originally was what he stated in evidence, and, that being so, we are unanimously of the view that he intended to make a capital investment. We are also satisfied that at all relevant times his object was to sell the surplus over and above his own requirements and to do so at a profit if he could. It seems to us that, had he been in a position to sell the surplus in one block in a single transaction, such a transaction would probably not have attracted the notice of the Receiver of Revenue. But the fact that he has seen fit to divide the land and sell it off in parcels, and to various people, over a number of years not unnaturally gives rise to the notion that he is making a business of it. It seems to us, however, that this idea is sufficiently rebutted by his own evidence and also by . . . (facts which the Appellate Division held to be irrelevant)”.

Centlivres, C.J. said after citing these findings “There is no evidence to show that when the respondent bought the 167 acres he did so because he had decided to embark upon the business of a land-jobber . . . The real question in this case is whether no reasonable person could have arrived at the finding of the Special Court that the respondent ‘intended to make a capital investment’ . . . there is no right of appeal from a Special Court on a question of fact. The question whether a person bought a property for a specific purpose is a question of fact and in no sense a question of law . . . The evidence read as a whole shows that the respondent bought the whole of the 167 acres because he wished

¹ (1956) 3 S.A.R. 335.

to carve out of those acres a small holding for himself of about 30 to 40 acres and not because he had a speculative purpose of reselling the surplus land at a profit”.

Their Lordships do not doubt the correctness of that decision but it does not assist the present appellant. Clearly she did not buy the whole site as a capital investment. It was an essential part of her plan that the greater part of it should immediately be sold to sub-purchasers because without the money paid by them she could not have found the money to pay the balance due to the vendor. No doubt she acquired the part of the site which she retained as a capital investment but in order to acquire it she had to buy, divide, and immediately resell the rest of the site.

The Board of Review, after setting out in their decision facts which they considered relevant, said “in these circumstances, it seems necessary to determine the dominant motivation, and ascertain whether this motivation connotes an adventure in the nature of a trade”. Then they examined the facts from that point of view, and they concluded: “We therefore feel that although Mrs. Ram Iswera may have been motivated by a desire to leave her home at Hulftsdorf and reside in a house near St. Bridget’s Convent, nevertheless the dominant motivation of the transaction which she ultimately undertook appears to us to be a blocking up of the premises and the selling of these blocks so as to make a profit on the transaction and obtaining a block for herself below the market value”.

The judgment of the Supreme Court was delivered by Sri Skanda Rajah, J. Having said that it is the total effect of all relevant factors and circumstances that determines the character of the transaction, he said: “What is the ‘total impression’ or ‘picture’ that these facts would leave on the mind of any reasonable person? Having considered all these matters in conjunction with the evidence that Mrs. Ram Iswera had a desire to live near St. Bridget’s Convent for the sake of education of the four girls attending that institution, the Board of Review arrived at the conclusion that the dominant motive or intention was not this desire of hers and that the transaction presented a ‘picture’ of an adventure in the nature of trade”. He then dealt with matters which do not appear to their Lordships to be relevant and concluded that the order of the Board of Review indicated that they had applied the relevant legal principles correctly.

It may seem that too much emphasis has been put on motivation, but that is probably due to the nature of the argument submitted for the appellant. Before their Lordships, Counsel for the appellant came near to submitting that, if it is a purpose of the taxpayer to acquire something for his own use and enjoyment, that is sufficient to show that the steps which he takes in order to acquire it cannot be an adventure in the nature of trade. In their Lordships’ judgment that is going much too far. If, in order to get what he wants, the taxpayer has to embark on an adventure which has all the characteristics of trading, his purpose or object alone cannot prevail over what he in fact does.

But if his acts are equivocal his purpose or object may be a very material factor when weighing the total effect of all the circumstances.

In the present case not only has it been held that the appellant's dominant motive was to make a profit, but her actions are suggestive of trading as regards the greater part of the site which she bought. She had to and did make arrangements for its subdivision and immediate sale to the nine sub-purchasers before she could carry out her contract with the vendor of the site. The case may be a borderline one in the sense that the Board of Review might have taken a different view of some of the evidence. But, on the facts as found by the Board, their Lordships find it impossible to hold that in law they were not entitled to reach their conclusion.

Their Lordships will therefore humbly advise Her Majesty that this appeal should be dismissed. The appellant must pay the costs of the appeal.

Appeal dismissed.
