

BQY and another v Comptroller of Income Tax
[2018] SGHC 75

Case Number : HC/Tax Appeal No 24 of 2017
Decision Date : 29 March 2018
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Ong Sim Ho, Khoo Puay Pin Joanne and Keith Lam (Ong Sim Ho) for the appellants; Lau Kai Lee and Zheng Sicong (Law Division, Inland Revenue Authority of Singapore) for the respondent.
Parties : BQY — BQZ — Comptroller of Income Tax

Revenue law – income taxation

29 March 2018

Judgment reserved.

Choo Han Teck J:

1 The first appellant is a wealthy businessman. He and his wife, the second appellant, are the only directors and shareholders of a construction company that specialises in the construction of infrastructures, such as roads. They have four children and were living in a house at West Coast Road until they moved to their present house at Binjai Park in 2012.

2 The appellants bought three properties, each classified as a “Good Class Bungalow” and all within two kilometres of each other. The first was at Wilby Road, bought on 29 June 2005 for \$5.4m, and re-sold by them about nine months later on 17 March 2006 for \$6.25m, thus making a gain of \$580,255. The second property was a house at Brizay Park, bought on 21 October 2009 for \$20.4m and resold on 26 July 2010 for \$35m, making them a profit of \$13,617,092. The third was a house at Garlick Avenue, purchased for \$18.7m on 19 October 2010 and resold on 11 January 2011 for \$21.8m, making a profit of \$1,849,989.

3 The total profits made by the appellants from the resale of the three properties was \$16,047,336. This profit was made between 29 June 2005 and 11 January 2011. The Comptroller of Income Tax (the “Comptroller”) took the view that the \$16,047,336 profits from the resale of the properties were subject to income tax. The appellants opposed that view and took the matter before the Income Tax Board of Review (the “Board”), on appeal against the Comptroller’s decision. On 6 October 2017 the Board dismissed the appellants’ appeal. The appellants then appealed before me.

4 Section 10(1)(g) of the Income Tax Act (Cap 134, 2014 Rev Ed) (the “Act”) provides for the obligation to pay tax on any “gains or profits of an income nature” not specifically included. Mr Ong Sim Ho appeared on behalf of the appellants and submitted that the Board was wrong to have found that the profits made by the appellants in the resale of the three properties resulted in a taxable income.

5 When a person makes a profit from a house initially purchased as a residential home, he should not be taxed, under s 10(1)(g) of the Act, on any gains made because that gain cannot be described as a “gain or profit of an income nature”. The gain would merely a capital gain. This is undisputed. Mr Ong argued that the fact that the appellants bought and sold three properties does not change

the taxability of the profits from the transactions. One should only look at the intention of the buyer at the time he bought the property. If he intended it as his residential home, then any gain from a resale cannot be a taxable income, the intention not being to make a gain of an income nature. It does not matter, he submits, that the appellants did it three times in less than six years.

6 The matter is to be decided by a determination of the buyer's intention at the time he purchased the property. But how does one ascertain his intention? When parties disagree as to what the true intention of a person was, the court as a finder of fact, can only look at the action or conduct of that person and see on the balance of probabilities, whether the conduct was more consistent with one intention or the other. There is no magical or fail-safe method. So, when we put all the evidence in this case together, what do we see? Do we see a couple who bought three houses to be used as their residential home, but resold for the reason that the houses did not suit them? Or do we see a couple which was aware of the opportunities for making a good profit, who went ahead and made the most of the opportunities? If it were the latter, the profits they made would surely be taxable.

7 Mr Ong submitted that the Board fell into error because they "adopted a 'reasonable man' test" and held that it was not reasonable for the appellants to have conducted themselves as they did. Mr Ong argued that only the "actual intention" of the taxpayer counts and that intention must be "objectively inferred from the actual surrounding circumstances".

8 Counsel also disputed the findings of the Board in respect of each of the individual properties. Insofar as these concerned details such as whether the appellants and their architect were fully truthful or had been untruthful or, had merely glossed over certain events, I will treat them tenderly, bearing in mind that they may possibly be true. But where the dispute concerns facts such as whether the Wilby Road property had a private inspection chamber or a public manhole, I would not disturb the findings and observations of the Board. There were three members assessing the evidence of the witnesses. I would have intervened had I found obvious discrepancies and errors but I do not see any. Insofar as inferences are drawn from the specific facts in dispute are concerned, I accept that the versions so ably promoted by Mr Ong may be reasonable; but as counsel for the Comptroller, Mr Lau, submitted, the findings of fact by the Board were properly made and ought not to be disturbed.

9 I agree with Mr Lau. I am unable to see where there could have been any error in finding a fact that there was insufficient evidence to find, or in drawing an inference that cannot reasonably be accepted. That being the case, this appeal could have been dismissed without more.

10 But there is more. When we try to ascertain what dwelt in a man's mind, we have often (and this case is one such instance) to examine his conduct. To ascertain what dwelt in the appellants' minds, we thus need to see beyond the three properties in question, or we may not see the whole picture.

11 From 1 April 1997 to 19 June 2012, the appellants purchased five properties (not including two others that were mentioned in passing by the Board, and of which nothing more was said). The first was the property at West Coast Road. The last was the Binjai Park property. Between them, the appellants bought and sold the three properties in question. The Comptroller asserts that those three properties were bought and sold with the intention of realising a profit. The appellants claimed that that was not their intention. They say that those properties were bought with a view of making each of them their family home. It so turned out, they say, that after purchasing each property, they found them unsuitable.

12 Looking at all the five properties, it is clear that the first was never sold. The three in dispute were turned over in about nine, ten, and three months respectively. The appellants never moved into any of them. They moved into the Binjai property which was bought in June 2012 — but that was after the Comptroller had started asking questions in February 2012, concerning the previous three properties. All this while, and to date, the original home at West Coast remains theirs. This is the forest. The facts found by the Board are the trees.

13 From the above, I do not think that the Board had erred when it found that the intention of the appellants was to purchase those properties for resale with a view of making a profit.

14 This appeal is therefore dismissed. I will hear arguments on costs if parties are unable to agree.

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