

**China Map Limited
China Name Limited
Comebright Development Limited
Chance Investment Limited**

(Appellants)

and

Commissioner of Inland Revenue

(Respondent)

**Court of First Instance
(Inland Revenue Appeal No. 4, 5, 6 and 7 of 2005)**

**Hon High Court Judge Chung
Dates of Hearing : 5 and 6 June 2006
Date of Judgment : 4 August 2006**

**Court of Appeal
(Civil Appeal No. 341, 342, 343 and 344 of 2006)**

**Hon Rogers VP, Suffiad and Saunders JJ
Date of Hearing : 26 June 2007
Date of Judgment : 4 July 2007**

**Court of Final Appeal
(Final Appeal No. 28, 29,30 and 31 of 2007, Civil)**

**Mr Justice Bokhary PJ, Mr Justice Chan PJ, Mr Justice Ribeiro
PJ, Mr Justice Mortimer, NPJ and Mr Justice Gault, NPJ
Date of Hearing and Decision: 16 April 2008
Date of Judgment : 28 April 2008**

Inland Revenue Ordinance (Cap. 112) – Profits Tax – whether properties were acquired as trading stock or capital assets – whether profits arising on sale are assessable to profits tax – whether it is open to the Board to conclude taxpayers’ stated intention of redevelopment for long term investment not genuinely held without making positive finding taxpayer embarked upon trade of property development for resale – rely on ground of appeal not contained in statement of grounds of appeal given in accordance with s66(1)

The Taxpayers were property holding companies. They were subsidiaries of the same parent company. The Taxpayers purchased nine blocks of contiguous landed properties during the period from July 1988 to April 1993 and sold them to one buyer in 1994/95 at a profit. The Commissioner assessed the profits to profits tax. The Taxpayers appealed to the Board of Review. The Board agreed with the Commissioner that the profits were not of capital nature and concluded that the Taxpayers had failed to discharge the onus placed on them under s.68(4) of the Inland Revenue Ordinance (Cap.112) of proving that the assessments were excessive or incorrect. The Board found that it was unable to conclude the Taxpayers’ stated intention for the redevelopment for long term investment was genuinely held, realistic or realizable. The Taxpayers pursued the appeal on the sole question of whether the profits in questions were capital in nature and were not assessable to profits tax.

The Court of First Instance and the Court of Appeal upheld the Board’s decision and considered that it was not a case where the Board decided the matter simply on the basis where the onus lay on an appeal to the Board. Rather, the Board had rejected the evidence of the Taxpayers when it reached to the conclusion.

The Taxpayers appealed to the Court of Final Appeal. The Taxpayers contended that it was incumbent for the Board to make a finding that the Taxpayers were carrying on a trade or an adventure in the nature of trade within the meaning of s.14 of the Ordinance.

Held, dismissing the appeal, that:

- (1) It was a question of fact whether the Taxpayers’ stated intention of acquiring the properties concerned with view to redevelopment for long term investment was their actual intention. The Board decided against the Taxpayers on this factual issue. Thus it cannot be said that the Board had resorted to the onus of proof so as to abdicate its duty to find the facts.
- (2) If and whenever s.66(3) consent (to rely on a fresh ground of appeal) is sought, it should be sought fairly, squarely, and unambiguously.

In the Court of First Instance

Mr Benjamin Chain and Ms Catrina Lam (instructed by Messrs Tsang, Chau & Shuen) for the appellants

Mr Ambrose Ho, SC and Mr Michael Yin (instructed by the Department of Justice) for the respondent

In the Court of Appeal

Mr Robert G Kotewall and Ms Catrina Lam (instructed by Messrs Tsang, Chau & Shuen) for the appellants

Mr Ambrose Ho, SC and Mr Michael Yin (instructed by the Department of Justice) for the respondent

In the Court of Final Appeal

Mr Patrick Fung SC and Ms Catrina Lam (instructed by Messrs Tsang, Chau & Shuen) for the appellants

Mr Ambrose Ho, SC and Mr Michael Yin (instructed by the Department of Justice) for the respondent

Cases referred to in the judgment of the Court of Final Appeal:
