

IN THE COURT OF REVIEW

Action No. 2 of 1980

Between:

PACIFIC LUMBER COMPANY LIMITED

Appellant

AND

THE COMMISSIONER OF INLAND REVENUE

Respondent

Mr. B. C. Patel for the Appellant
Mr. M.J. Scott for the Respondent.

JUDGMENT

This is an appeal under the Land Sales Act 1974 by the Pacific Lumber Co. Ltd (hereinafter called the taxpayer) with reference to the sale of a piece of land at Lautoka to K. Balram Ltd. In 1969 the taxpayer bought a piece of land from the Colonial Sugar Refining Co. Ltd. on the foreshore at Lautoka containing 11 acres 3 roods 38.5 perches and paid \$7,200 for it. The taxpayer has said that it spent \$47,000 on developing the site. It surveyed the land, subdivided it and relocated the vendor's power lines and water mains, all at a cost of \$5,711. The land was subdivided into four sections, one of which, containing 1 acre 2 roods 28 perches was sold by agreement in 1978 to K. Balram Ltd. The sale was completed and a transfer registered in November 1980. The Commissioner of Inland Revenue assessed the taxpayer to duty under the Land Sales Act 1974. He gave the taxpayer an allowance of 268/1841 of the costs of the development, relocation of power lines, and subdivision costs, that allowance being based on the proportion of the land sold to the land originally purchased and assessed the taxpayer at \$16,951.20. The taxpayer objected. Its objection was disallowed and it appealed.

When the Commissioner gave notice of disallowance of the taxpayer's objection on 10th January 1980 he stated in the notice that the taxpayer had 28 days within which to appeal. On 7th February the taxpayer's solicitor rang the Commissioner's office and asked for an extension and on 8th February the appeal was lodged with him and was filed in Court the same day. Mr. Holmes the officer concerned stated that he was quite prepared to allow an extension, but was advised that he had no power to do so. Mr. Scott on behalf of the Commissioner, therefore argued as a preliminary point that the appeal should be struck out as being out of time. It was conceded, that if the time ran from the date of the Commissioner's notice of disallowance of the objection, the appeal was out of time but Mr. Patel for the taxpayer contended that the time ran from the date of receipt by the taxpayer of the notice of objection, and that was agreed to be not later than 20th January 1980. Mr. Patel also submitted that the Commissioner had not proved that the

letter of disallowance was posted but I cannot accept that. Mr. Holmes the Commissioner's officer filed an affidavit in which he stated that he signed and caused to be posted a letter disallowing the objection on 10th January 1980. To my understanding that means that he signed a letter on that day and caused it to be posted that same day. After all, if Mr. Holmes' facts are wrong the taxpayer has only to produce the envelope containing the notice of disallowance, and the postmark would shew the true position. Mr. Patel then refers to ss.43 and 54 of the Act both of which provide for notices posted by the Commissioner to taxpayers and state that a letter shall be deemed to have been received at the expiration of 28 days from the date of posting, and he points to the last sentence of s.61(5) which reads "Any notices required to be given under this subsection may be given in the manner prescribed in subsection (2) of section 54 of the Act for the service of a notice of assessment."

Section 61 of the Income Tax Act has three provisions about time. Subsection (1) says that a taxpayer dissatisfied with an assessment may within 60 days of the date upon which the notice was served upon him lodge an objection, and subsection (2) gives the Commissioner power to extend the time of lodging an objection. Then subsection (3) states that the Commissioner in giving notice of allowance or disallowance has to specify a time, being not less than 21 days within which the taxpayer may exercise his right of appeal. Then comes the provision as to service which I have already set out. Then subsection (6) states that "a person.....may within the time limited appeal to the Court of Review....." Mr. Scott referred me to several authorities, but none of them help him very much. It is true that sections 43, 54 and 61(1) state explicitly that time runs from the date of receipt and section 61(5) is silent as to when the time begins to run, and therefore it might be inferred that the statute, in that subsection, does not intend the same as in the earlier portions of the section. Nevertheless after providing for the notice to be given, subsection (5) provides for it to be given as in section 54(2) which is by personal delivery or by posting it to the taxpayer's address for service. It is to be noted that the presumption as to service does not arise unless there is no evidence of service. Here there is. The fact that personal service is provided for indicates that Mr. Scott's authorities emphasise the point that once a time is fixed for appeal it cannot be extended. Here there is a fixed time for giving notice of appeal it cannot be extended. Here there is a fixed time for giving notice of appeal, but that is not the time in question. In my view the time from which notice of disallowance of an objection runs is the date when the notice is received. Mr. Scott therefore fails on his preliminary point.

I now turn to consider the appeal on the merits. The Notice of Appeal given by the taxpayer's solicitor follows precisely the objection given by the taxpayer's general manager six months previously. In this connection it must be remembered that section 61(6) requires that the notice of appeal must, except with leave of the Court of Review, contain the same grounds as stated in the objection. The grounds of appeal might have been more happily expressed, but I think that they amount to a complaint that the cost of development totaling \$52,711.00 should have been charged not against the sale price \$70,000 but against the purchase price of \$12,000.

I would think that proposition quite untenable. The long title to the Land Sales Act states that the Act is one to provide for the regulation of certain speculative and other dealings in land and the taxation of profits thereon. Conceding that there is nothing speculative in this dealing, it is still a dealing in land, and there is a profit arising therefrom. Ergo, one would expect it to be taxed. This is a statute, indeed, providing for a capital gains tax.

The scheme of the Act is that is that all profits arising from dealings are to be taxed, unless they are exempted. A dealing is defined to mean “any transaction.....by which land is affected under the provisions of the Land Transfer Act 1971.....” and although as a matter of syntax the wording might have been better had it been “by which land under the Land Transfer Act is affected” the meaning is clear enough. Section 3 is the operative section and the exemptions are set out in section 5. The only exemption which needs to be discussed here is that in subsection 5(b), so that the section would read: “Notwithstanding the provisions of section 3 of this Act no land sales tax shall be charged in any of the following transactions or cases (b) on land on which there has been substantial development by the seller or any predecessor in title.” Now the dealing which is under consideration here is the dealing affecting land sold to K. Balram Ltd. and it is on that land that the taxpayer has to show substantial development if it is to escape tax. Mr. Holmes, the Commissioner’s officer gave evidence that he was shown the land, and saw a vacant section. There was a gravel road but it is apparent from the titles annexed as part of the agreed facts that the road does not form part of the land sold to K. Balram Ltd., and there is no evidence as to whether the taxpayer developed the road reserve. Incidentally the taxpayer’s papers refer, quite incorrectly, to Certificate of Title 7489. That was the original title of the Colonial Sugar Refining Co. Ltd. from which a piece of land was sold to the taxpayer and is contained in C/T 13732. The company above mentioned retained the land over which their tramline runs and that is C/T 13748. Mr. Patel submitted that section 5 was not limited to the land which was sold. I do not see how it can be otherwise. The land which the taxpayer originally purchased is not the subject of a dealing. The land which the taxpayer sold to K. Balram Ltd. is. Mr Patel referred me to authority as to the meaning of ‘substantial’. I do not consider it relevant. The substantial development – and I think that the Commissioner concedes that it was substantial – took place on the land retained by the taxpayer and not on the land sold by it to K. Blaram Ltd. The appeal will be dismissed. The appeal was conducted in two parts, one for the preliminary objection in which the taxpayer succeeded, and the other on the merits in which the taxpayer failed. There will be no order as to costs.

.....
Court of Review

April, 1981.
SUVA.