

IN THE COURT OF REVIEW
AT SUVA

INCOME TAX APPEAL NO. 001 OF 2001

BETWEEN : SARJOS PROPRIETARY LIMITED

PLAINTIFF

AND : THE COMMISSIONER OF INLAND REVENUE

DEFENDANT

JUDGEMENT

The Notice of Appeal in this Action we filed on 3/4/2001. The Appellant stated three grounds of Appeal as follows:

1. Calculation of profit on disposal

The Commissioner erred in law in calculating the profit on sale in that he failed to properly treat as loan repayments, funds which had been lent by the Taxpayer. Instead, the Commissioner incorrectly treated loan repayment proceeds as sale of property/assets when there was no evidence to support such findings. See Annexure "C" for further detail.

2. Inclusion of Tax exempt profit as chargeable income

The Commissioner erred in law and fact in applying section 11(e) of the *Income Tax Act* to the sale of the Taxpayer's property. This is because the Commissioner incorrectly held that the Taxpayer, in selling the property, was dealing properly when there were no facts present to support such a conclusion. The Commissioner, had he properly directed himself in accordance with the relevant law, would have found that the profit in question was capital in nature and exempt from income tax. For further detail, refer to Annexure "D".

3. Imposition of Penalty

The Commissioner erred in law and fact in imposing penalties against the Taxpayer under section 94 of the *Income Tax Act* when he had no basis, legal or factual, to impose the same. Had the Commissioner properly directed himself, he would have found that the Taxpayer had diligently filed income tax returns and fully disclosed particulars of the sale and related capital gain.

Before the Appeal came up for hearing before this Court, the respondent on 9th January 2002 withdrew the assessment the subject matter of the appeal.

The Appellant however proceeded with the Appeal submitting that the appeal against the respondent be upheld and cost awarded against the respondent.

Having heard the submissions on both sides, I am of the view that there is really no merit in considering the reasons as to why the respondent withdrew the assessment. The Appellant has already succeeded in having the assessment withdrawn. How can this court now uphold the appeal against the respondent when the grounds of appeal no longer exist.

Since the court is not looking into the deciding on the merit of the appeal, it cannot look at the issue of cost either.

The appeal therefore is dismissed. There is no order as to cost.

**ARUNA PRASAD
COURT OF REVIEW**