IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 233

Tax Appeal No 15 of 2020

Between

Bollywood Veggies Pte Ltd

… *Appellant*

And

Chief Assessor

… *Respondent*

JUDGMENT

[Revenue Law] — [Property tax] — [Annual value]
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Aedit Abdullah J:

1 This appeal engages the question of the basis for determining the annual value ("the AV") for the purposes of property tax, the standard of review for decisions of the Chief Assessor (hereinafter also referred to as "the respondent"), and the material that may be relied upon in such a review.

Background

2 The appellant operates a property in Lim Chu Kang ("the Property") which comprises a vegetable farm, and various buildings which amongst other things, include a bistro, event space, office, and workers' quarters.[1] The land is on a lease from the Singapore Land Authority ("SLA") for a term of 20 years from 15 April 2001.[2] On 1 December 2018, the Chief Assessor notified the

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1 Affidavit of Ong Shujuan ("Ong's Affidavit"), para 5.

2 Ong's Affidavit, para 5.

appellant that the AV for the Property was amended from $87,000 to $107,100, and proposed that this would take effect from the same date, in accordance with s 20(1) of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the PTA").[3]

3 The AV was assessed pursuant to s 2(3)(*a*) of the PTA, which provides that the Chief Assessor has the option of assessing 5% of the estimated value of a property as its AV.[4] This is typical for farms given that agricultural properties are rarely rented out.[5] As the Property consists of both land and buildings, the Chief Assessor's representative had to account for both.

(a) For the land, the Chief Assessor's representative took the annual rent payable by the appellant for the lease of the land as representative of the AV of the land.[6] This was increased from $57,300 to $77,400 for the Year of Assessment 2018.[7]

(b) For the buildings, as there was no evidence of their rental value, the Chief Assessor's representative adopted the figure of 5% of the total building costs, which had been provided as $593,000 on 25 October 2010, or $29,650.[8]

The assessed AV of $107,100 was therefore a summation of the annual land rent and the estimated value of the buildings, and rounded up from $107,050.[9]

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3 Ong's Affidavit, OSJ-4 (ROA, p 57).

4 Ong's Affidavit, paras 10–11.

5 Ong's Affidavit, para 10.

6 Ong's Affidavit, para 12.

7 Ong's Affidavit, para 7; ROA, p 85.

8 Ong's Affidavit, para 12; OSJ-5 (ROA, p 64).

9 Ong's Affidavit, para 13.

4 The figure in respect of the estimated value of the buildings had in fact been included in assessing the AV for the Property from 2015, following a review by the respondent in 2014.[10] The amendment to the AV which led to the present proceedings was however based on the change in the annual rent for the appellant's lease of the land.

5 The appellant appealed to the Valuation Review Board ("the VRB") against the Chief Assessor's amendment of the AV of the Property, arguing, *inter alia*, that the building costs should not be included in assessing AV.[11] The VRB dismissed the appeal.[12] The appellant then commenced the present appeal against the decision of the VRB.[13]

The decision below

6 The VRB found that the appellant was unable to establish that the Chief Assessor had erred in the amended assessment of the Property's AV. In its view, ss 2(1) and 6(1) of the PTA "make it clear that tax is chargeable on buildings".[14] In this regard, it did not see how a report by Jones Lang LaSalle ("the Report" and "JLL" respectively) valuing the market land rent of the Property at $77,400, which the appellant had tendered and relied on, assisted the appellant.[15] The Report had been prepared for a previous appeal by the appellant against an

10 Notes of Evidence ("NE") (3 September 2020) p 21 lines 1–25 (ROA, p 209).

11 ROA, pp 67 and 194–195.

12 ROA, p 9.

13 ROA, p 8.

14 Grounds of Decision ("GD"), para 17.

15 GD, paras 14–15.

increase in its land rent and the value of the buildings was not included in its terms of reference, as JLL had not been tasked to value them.[16]

7 In its view, these provisions also did not make exemptions for buildings that could not be sublet, or which had been erected on land on relatively short leases. This was contrary to the appellant's submission that farm structures ought not be included in the assessment of property tax as farmers were not allowed to sublet their property[17] and such structures were temporary, being on land of 20-year leases.[18]

8 The VRB also found that the Chief Assessor made no error in relying on s 2(3)(*a*) of the PTA in assessing the value of the buildings at $29,500 (*cf* [3(b)] above), being 5% of the building costs.[19] Further, it rejected the appellant's argument that the respondent had erred in waiting until 2014 to include the value of the buildings in assessing AV, even though some of the structures at the Property had existed even in 2001. This was because s 20(1) of the PTA allows the Chief Assessor to amend the AV of a property where it has become inaccurate in any material particular.[20]

Summary of the appellant's case

9 The appellant argues that the figure of $593,000 which the Chief Assessor relied on as building costs is unreliable. The figure was provided to the Inland Revenue Authority of Singapore ("IRAS") in an email on 25 October

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16 GD, para 15; NE (3 September 2020) p 35 lines 16–22 (ROA, p 223); ROA, p 265.

17 NE (3 September 2020) p 44 lines 13–16; p 61 lines 6–11 (ROA, pp 232 and 249).

18 NE (3 September 2020) p 7 lines 1–6; p 35 lines 22–23; p 37 lines 21–24; p 61 lines 6–11 (ROA, pp 195, 223, 225 and 249).

19 GD, para 21.

20 GD, paras 22–24.

2010 from the architect for certain alteration and addition works at the Property ("the Architect") in respect of the total costs of those works (including professional fees), which had been completed on 31 March 2009.[21] However, the Architect wrote to IRAS the following day informing it that the appellant "has instructed us to inform you to write directly to them on such matters" and to "treat [its] earlier submission as void". The figure ought therefore be excluded from evidence, being hearsay as (a) the Architect was not called to give evidence at the hearing before the VRB; (b) the figure was a bare assertion by the Architect and not backed by documentary evidence; and (c) IRAS had been informed by the Architect to treat the 25 October 2010 email as void.[22] Alternatively, no weight should be given to this figure since there did not appear to be any nexus between the costs involved in building a project in 2009 and the estimated value of a property in 2018.[23] On this basis, the thrust of the appellant's argument is that the assessment methodology employed by the Chief Assessor was flawed, and cannot be remedied or justified by: (a) the fact that certain buildings on the Property, which were erected earlier in 2001 and 2004, were not included in the assessment of AV; and (b) that the figure of $593,000 was the only available information to IRAS.[24]

10 The appellant further argues that the approach taken by JLL in the Report ought to be preferred. This is because it was "fact-sensitive and contextual", with reference to, amongst other things, other market transactions, and the weaknesses and strengths of the Property.[25] In the appellant's view, such

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21 ROA, p 64.

22 Appellant's submissions dated 27 April 2021 ("AS1"), para 24.

23 AS1, para 25.

24 AS1, paras 26–29.

25 AS1, paras 41–43.

an approach usefully illustrates the threshold of reasonableness which ought to be expected of the assessments of the Chief Assessor.[26] Additionally, although the Report did not specifically value the buildings on the Property, it had made reference to them, suggesting that the valuation arrived at did include such a value.[27] Alternatively, JLL could have been of the view that the value of the buildings was negligible.[28]

11 In oral arguments, the primary argument put forward by the appellant was that on a proper interpretation of s 2(3)(*a*) of the PTA and case law, the buildings on the Property should be excluded from computation, as the evidence was clear that the buildings could not be let and could not reasonably be expected to be let. The appellant reiterated that even if the value of the buildings was to be included in computing the AV of the Property, the building costs in the 25 October 2010 email from the Architect should not be relied upon.

Summary of the respondent's case

12 The respondent argues that the burden lies on the appellant to make out that the Chief Assessor was in error,[29] *ie,* it must establish on the balance of probabilities that the Chief Assessor's decision was unfair and unreasonable.[30]

13 In response to the appellant's arguments on the lack of nexus between the building costs and the estimated value of the buildings, and the erroneous usage of the building costs figure of $593,000, the respondent submits that these

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26 AS1, para 47.

27 AS1, para 44.

28 AS1, para 45.

29 Respondent's submissions dated 6 July 2021 ("RS1"), paras 25–26.

30 Respondent's submissions dated 12 August 2021 ("RS2"), para 13.

arguments were not put to the Chief Assessor's representative in the proceedings before the VRB. As such, pursuant to the rule in *Browne v Dunn* (1893) 6 R 67, the appellant is precluded from presently raising these points.[31] In any event, the building costs could be used as the buildings had been inspected by JLL and found to be "generally in good condition", and no other method had been put forward by the appellant to determine the estimated value of the buildings.[32]

14 Further, the respondent argued that the VRB had not erred in admitting the 25 October 2010 email. The email was not hearsay evidence, *ie*, statements made out of court adduced to prove the facts contained therein (*Orion-One Development Pte Ltd (in liquidation) v Management Corporation Strata Title Plan No 3556 (suing on behalf of itself and all subsidiary proprietors of Northstar @ AMK) and another appeal* [2019] 2 SLR 793 at [9], citing *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 at [26]).[33] The email had merely been tendered to show the source of the figure for the building costs, in order to elaborate on the valuation process in respect of the Property. It was not adduced as proof of the truth of the said figure, which was not the evidential burden of the Chief Assessor to establish. The appellant also had not challenged the accuracy of the figure at any point during proceedings before the VRB.[34]

15 The respondent further argued that the appellant did not show that JLL's valuation was a viable alternative to the Chief Assessor's valuation of the Property as: (a) neither of its present contentions that the Report did include the

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31 RS1, paras 30–35; RS2, para 18.

32 RS1, paras 38–39.

33 RS1, para 48.

34 RS1, para 53.

value of the buildings on the Property or that JLL had concluded that the said value was negligible were put to the Chief Assessor's representative; and (b) these contentions were "baseless afterthoughts" in any case.[35]

16 In oral arguments, the respondent argued that although he had sought to obtain more information on building costs, the appellant was not forthcoming. The figure of $593,000 as provided by the Architect was therefore the only information available. Furthermore, such information was in the sole possession of the appellant and if there were truly any issues with the figure, the appellant ought to have raised it in subsequent correspondence following the 25 October 2010 email.

My decision

17 I am satisfied that the appeal should be dismissed.

18 Under the statutory scheme, the primary definition of the AV of a property under s 2(1) of the PTA refers to rent, or the "gross amount at which [a property] can reasonably be expected to be let from year to year" (*Chief Assessor v National Shipbreakers Pte Ltd* [1979–1980] SLR(R) 623 ("*National Shipbreakers*") at [6]–[7]. Yet, such rent is only a notional or hypothetical one. A prohibition against renting out a property – as in the present case where the lease with the SLA prohibited the appellant from subletting the Property without its approval[36] – does not prevent rental value from being ascribed to the same. Valuation under a hypothetical tenancy has been possible even where it is clear that there could be no hypothetical tenant other than the actual occupier (see for example *F R Evans (Leeds) Ltd v English Electric Co Ltd* [1978] 1 EGLR 93 at

35 RS1, paras 55–63.

36 ROA, p 42.

94–95, where Donaldson J observed that "monopoly positions on either or both sides do not render hypothetical agreements impossible").

19 In any event, the Chief Assessor had exercised the option under s 2(3)(*a*) of the PTA to assess the AV based on the capital value of the Property. In this regard, the Chief Assessor's decision to use the building costs as a proxy or indication of the value of the buildings was reasonable and should not be disturbed. The Chief Assessor was entitled to rely upon the information contained in the email from the Architect in determining these costs.

Analysis

20 The analysis will proceed first to consider:

(a) The standard of review;

(b) The burden of proof; and

(c) The statutory basis for taxation.

Standard of Review

21 The present appeal to the General Division of the High Court from the decision of the VRB constitutes a rehearing. As provided in s 35 of the PTA:

> **Appeals to General Division of the High Court**
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> **35.**—(1) Any owner dissatisfied with the decision made by the [VRB] may, within 21 days of the date of the decision, appeal to the General Division of the High Court.
>
> (2) An appeal under subsection (1) shall be by way of rehearing.

22 The question that needs to be answered is what level of deference, if any, should be given to the decision of the Chief Assessor. The burden does lie on

the taxpayer to show that the Chief Assessor was wrong, but the burden does not resolve the question of what degree that error must reach.

23 The respondent argues that while the appellate court has discretion to consider the entire evidence before it and "venture beyond determining the propriety of [the VRB's] decision or inquiring into whether there had been manifest errors of fact or law", this does not mean that the appellate court is to determine the substantive merits afresh, citing *Valentino Globe BV v Pacific Rim Industries Inc* [2009] 4 SLR(R) 577 ("*Valentino Globe*") at [11].[37] Further, on findings of fact, the question to answer would be whether "no reasonable body of members constituting [the VRB] could have reached the findings reached by [it]", citing *Comptroller of Income Tax v AQQ and another appeal* [2014] 2 SLR 847 ("*AQQ*") at [123]. The respondent submits that although *AQQ* concerned an appeal from the Income Tax Board of Review, the same standard ought to apply to appeals from the VRB. This is because both types of appeal deal with "any question of law or of mixed law and fact" (s 81(2) of the Income Tax Act (Cap 134, 2014 Rev Ed) ("ITA"); s 35(3) of the PTA).[38]

24 The appellant argues that the apparent reference to an applicable standard of *Wednesbury* unreasonableness (*Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223) with regards an appeal from the VRB is a "novel proposition".[39] It argues that this standard was not used in cases such as *HSBC Institutional Trust Services (Singapore) Ltd (trustee of Capitaland Mall Trust) v Chief Assessor* [2020] 3 SLR 510 ("*HSBC (HC)*") and *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339

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37 RS1, para 23.

38 RS1, para 24.

39 Appellant's Submissions dated 26 July 2021 ("AS2"), para 2(e).

("*Glengary*").[40] In response, the respondent observes that Chionh JC in *HSBC (HC)* had adopted the "fair and reasonable" threshold in scrutinising the VRB's decision.[41]

25 Bearing in mind that the burden is on the appellant to show that the Chief Assessor was wrong, and the broad ambit given by the statutory regime to the Chief Assessor to determine the AV of a property, I find that the appropriate standard to be adopted by an appellate court is one of reasonableness and fairness in his ascribing of value. This is apparent from the case law, although the point does not appear to have been specifically argued before in respect of the PTA.

26 The question of whether the assessed AV was reasonable and fair was the standard adopted in *HSBC (HC)* (upheld on appeal in *HSBC Institutional Trust Services (Singapore) Ltd (trustee of Capitaland Mall Trust) v Chief Assessor* [2020] 1 SLR 621), in respect of, *inter alia*, AV as defined under s 2(1) of the PTA (at [131], [136], [152] and [165]). I note however that in *City Developments Ltd v Chief Assessor* [2008] 4 SLR(R) 150 ("*City Developments*"), where the appellant argued that the Chief Assessor had: (a) acted unfairly in exercising his discretion under s 2(3)(*b*) of the PTA; and (b) acted *ultra vires* in having regard to wider planning considerations in determining AV, the Court of Appeal stated that "this being, in essence, a case of administrative law, there were effectively only two ways in which [the appellant] could challenge the Chief Assessor's exercise of discretion under s 2(3) of the Act, *viz*, that the Chief Assessor had either acted illegally, or he

40 AS2, para 56.

41 RS2, para 12.

had acted irrationally, in adopting the policy of discouraging land hoarding" (at [9]).

27 Yet, parties in the present case did not approach this appeal on the basis of these administrative law principles. These standards were also not applied in the subsequent case of *Glengary* concerning an appeal in respect of s 2(3)(*b*) of the PTA, albeit that it was approached by Lai J and the Court of Appeal as a question of interpretation, namely, whether committed sales could be taken into consideration in an assessment under s 2(3)(*b*). Subsequent appeals to the VRB in respect of s 2(3) of the PTA also dealt variously with whether the Chief Assessor's assessments of various properties under the provision was excessive (*The Legends Fort Canning Park Pte Ltd v Chief Assessor* [2015] SGVRB 1 ("*The Legends*") on s 2(3)(*a*) and *City Developments Ltd v Chief Assessor* [2021] SGVRB 3 on s 2(3)(*b*)); and how the Chief Assessor should arrive at estimating the value of the property, in particular whether the common law principle of *rebus sic stantibus* should apply (*HSBC Trustee (Singapore) Ltd v Chief Assessor and Comptroller of Property Tax* [2018] SGVRB 2 on s 2(3)(*a*)).

28 As such, the Court of Appeal's observation in *City Developments* may be explained on the basis that the appellant had pursued an argument of *ultra vires* as a ground of appeal (*City Developments Ltd v Chief Assessor* [2008] 2 SLR(R) 397 at [1(a)]; *City Developments* at [8(a)]). It has less relevance in the present case, where parties' submissions focused on whether the Chief Assessor's assessment was reasonable and fair.

29 I turn to consider *AQQ*, as submitted by the respondent. There, the Court of Appeal in the context of the ITA held that the Comptroller of Income Tax ("the Comptroller") had to exercise his powers in a "fair and reasonable

manner" (at [124]). In coming to this conclusion, the Court of Appeal reserved any endorsement of *Wednesbury* unreasonableness in cases not concerned with administrative law (at [121]). It observed, *inter alia*, that the statutory provisions for appeals against "assessments" of the Comptroller also applied to the Comptroller's exercise of discretion under the relevant provision of the ITA. This indicated that there was no need to have recourse to judicial review to challenge the Comptroller's discretion. Given that reservation, I do not consider that it would be appropriate to apply the judicial review standard of *Wednesbury* unreasonableness. Judicial review is concerned with the legality of government actions, *ie*, the lawfulness of acts undertaken by other branches of the government, not with their merits (*Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [56]; *Tan Seet Eng v Attorney-General and another matter* [2016] 1 SLR 779 at [47]). In contrast, the present appeal is concerned with the merits: s 20A of the PTA provides for "any owner aggrieved by…the [AV] ascribed [to his property]" to lodge an objection with the Chief Assessor, and for further appeal to the VRB if he is dissatisfied with the ensuing decision of the Chief Assessor (with further recourse to the General Division of the High Court under s 35 of the PTA).

30 It is also important, on the other side of the coin, to note that in *AQQ*, the Court of Appeal also did not endorse a full rehearing on the merits, at least as a norm in all cases. This was because regard should be had to the manner in which the Comptroller "did in fact exercise his discretion" (at [122]). It also noted that deference is extended in respect of findings of fact by the ITBR (at [123]). Such deference has similarly been shown in cases under the PTA. In *First DCS Pte Ltd v Chief Assessor and another* [2007] 3 SLR(R) 326 ("*First DCS*"), where the appellant appealed against an assessment of AV using the contractor's test method and proposed an approach which included having

regard to the rental value of a comparable property, Andrew Ang J noted that the VRB had rejected that other property as comparable and observed (at [51]):

> It is a question of fact what are comparable properties. An appellate judge should be slow to intervene in findings of fact made by a lower court. In *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43, Lord Diplock stated:
>
> > Finally, their Lordships would observe that land valuation inevitably involves an element of appreciation and impression. There is room for divergence of opinion. As in the case of appeals against assessments of damages or against apportionment of blame in actions for negligence *an appellate court ought not reject the judge's assessment and to embark upon a fresh valuation of its own unless it is satisfied for good reason that the judge's assessment must be wrong.*
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> [High Court's emphasis in *First DCS* in italics]

31 While the guidance in *AQQ* was laid down in the context of the ITA, there is no reason why there cannot be a transposition of this approach to the PTA: the language and framework are fairly similar and there is nothing in the nature of the different taxes levied to call for a different approach.

Burden of Proof

32 As noted above, the respondent argued, correctly, on the case law, that the burden of proof lay on the appellant to show that the Chief Assessor was wrong (*HSBC (HC)* at [36]), and that the legal burden does not shift (*Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [58]). There is a presumption that an administrative official such as the Chief Assessor has exercised his power in good faith and for public benefit, as observed by the VRB in *Poh Hee Construction Pte Ltd v Chief Assessor* (1992) 1 MSTC 5100, where it was argued that the Chief Assessor had erred in using the predecessor provision to s 2(3)(*b*) of the PTA (at 5103).

Statutory basis for taxation of property

33 The operative provision is s 6 of the PTA:

> **Charge of property tax**
>
> **6.**—(1) … a property tax shall, subject to the provisions of this Act, be payable at the rate or rates specified in this Act for each year upon of all houses, buildings, lands and tenements whatsoever included in the Valuation List and amended from time to time in accordance with the provisions of this Act.

The AV is the basis of taxation of property. AV is defined in s 2(1) of the PTA as: "the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax)."

34 AV is thus tied to the amount that can be obtained from an annual lease. I do not see any intention or language in this definition that imports treating the amount obtained from leasing the property to be more than a notional one. That is, it is not any actual rent. Hence the reference in the definition is to the amount that can reasonably be obtained (*The London County Council v The Churchwardens and Overseers of the Poor of the Parish of Erith in the County of Kent, and the Assessment Committee of the Dartford Union* [1893] AC 562 ("*Erith*") at 587–588; *Management Corporation Strata Title Plans Nos 1298 and 1304 v Chief Assessor and another* [2006] 1 SLR(R) 465 ("*MCST 1298*") at [48]–[51]; *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2013] 2 SLR 173 at [13]).

35 Section 2(3) of the PTA then expands AV, at the option of the Chief Assessor, to be equivalent to 5% of the estimated value of the property, including buildings:

> (3) In assessing the annual value of any property, the annual value of the property shall, at the option of the Chief

> Assessor, be deemed to be the annual value as defined in this Act or the sum which is equivalent to the annual interest at 5% —
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> (*a*) on the estimated value of the property, including buildings, if any, thereon; or
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> (*b*) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon.

36 Section 2(4) also allows the Chief Assessor to choose to equate AV to the annual equivalent of the gross rent at which the property is let:

> (4) In estimating the annual value of any house, building, land or tenement, the annual value of the house, building, land or tenement shall, at the option of the Chief Assessor, mean the annual equivalent of the gross rent at which the same is let or licensed to the occupier or occupiers, as the case may be, and in arriving at that annual equivalent the Chief Assessor may also give consideration to any capital or periodical sums or any other consideration whatsoever, if any, which, it appears to the Chief Assessor, may have also been paid.

37 The appellant argues that a contractual prohibition on leasing or renting out is material. It argues that s 2(3)(*a*) of the PTA ought to be read subject to the definition of AV in s 2(1). That is, in considering the capital value of a property under s 2(3)(*a*), the court must consider how much rent the owner can reasonably be expected to receive. If it can be proven that the building cannot reasonably be expected to be let out, no rent would be receivable and AV would be zero.[42] The appellant submits that this is supported by s 2(4), which also refers to the concept of rent.

38 The appellant cites *HSBC (HC)* in support of this proposition. There, Chionh JC considered an appeal against the VRB's decision to uphold the Chief Assessor's assessment of the AV for a property that included a cinema complex

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42 Minutes from 17 August 2021 hearing ("Hearing minutes"), p 2.

which had been leased as a bare shell. The tenant had then carried out various works to fit it out as a cinema complex. In that case, the appellant had argued that no value should be ascribed to these fitting works in the assessment of AV as the hypothetical tenant would not reuse the brand-specific fittings. Chionh JC rejected this argument as no evidence was produced by the appellant that "a hypothetical cinema operator would have found all these fittings unusable" (at [117]). In the present case, the appellant notes that a similar argument was rejected by the VRB in *FC Retail Trustee Pte Ltd v Chief Assessor and another* [2021] SGVRB 2 ("*FC Retail*") in relation to fittings in a food court (at [29]–[32]). The appellant argues that the "short cut" of s 2(3)(*a*) of the PTA was not used in either case, so as to assess AV to include the value of the fittings with reference to their cost. Rather, it was crucial to inquire into the value a reasonable tenant would ascribe to the fittings.

39 I am not convinced by the appellant's submission that the valuation of a building depends on whether it can reasonably be let out. In my view, a prohibition against subleasing does not prevent the Chief Assessor from ascribing value to a property under s 2(1), much less s 2(3)(*a*) of the PTA, for the following reasons.

40 Firstly, the inquiry into the AV of a property has been said to be a "primarily economic" one into the real value of the property (*Robinson Brothers (Brewers), Ltd v Assessment Committee for the No 7 or Houghton and Chester-le-Street Area of the County of Durham* [1937] 2 KB 445 at 470–471). The test is whether the occupation under the hypothetical tenancy is such as to be of value (*Telereal Trillium v Hewitt (Valuation Officer)* [2019] UKSC 23 at [16], citing the decision of the Upper Tribunal in *Hewitt (Valuation Officer) v Telereal Trillium* [2016] UKUT 258 (LC) ("*Telereal (UT)*" at [97]). In this regard, it is no impediment that the actual occupier is the only possible tenant.

For example, in *Erith*, the London County Council were the owners and occupiers of a pumping station and works, which they used as part of the Metropolitan sewage system and to enable them to discharge their statutory duties. The House of Lords held that the Council was to be considered as a possible hypothetical tenant in assessing rateable value, even if it was practically the only possible tenant and did not have the statutory power to become tenants of the property. It follows from this that the appellant's submission that a building which cannot reasonably be expected to let out should receive a nil valuation cannot be supported.

41 Secondly, the statutory scheme and case law do not support the appellant's proposition that s 2(3)(*a*) of the PTA should be read subject to the definition of AV in s 2(1). While the definition of AV is in the first place linked to annual rent, through the definition section in s 2 of the PTA, this is only a notional relationship. Section 2(3) of the PTA incorporates an alternative determination, based not on rental but 5% of the value of the property. The fact that an alternative definition is provided for in the same section of the PTA points to the fact that rental is only one possible measure. The provision also does not on its face make any reference to rental value, or impose any requirement that the property must be let out or reasonably capable of being let out. Section 2(4) of the PTA only allows an expanded notion of gross rent to cover consideration in any form, and is intended to "assess the person who is enjoying the full rental value paid by the occupier or occupiers of rateable premises" (*Report of the Select Committee on the Local Government Bill 1956* (Second Session of the First Legislative Assembly, Part II) (16 May 1957) vol 3, col 114; *MCST 1298* at [57]). This would include, for example, where a premium is paid for a tenancy (Leung Yew Kwong and See Wei Hwa, *Property Tax in Singapore* (LexisNexis, 3rd Ed, 2015) ("Leung and See, *Property Tax*") at p 138).

42 Thus, the Court of Appeal in *Glengary* noted, in relation to s 2(3)(*b*) of the PTA, that the provision was "not introduced to provide a wholly different measure [to s (2)(1)]" but "intended to provide an alternative method of assessing [AV] to the one based on reasonably obtainable rental which proved inadequate in particular situations" (at [33]–[34]). Section 2(3), as observed by the VRB in *Bata Shoe Co Ltd v Chief Assessor* [1959–86] SPTC 71, in relation to the predecessor provision of s 2(b) of the Property Tax Ordinance 1960 (No 72 of 1960), was "designed…for a property which has no rental or where the landlord has assigned a rental which is palpably low" and so cannot be accepted by the Chief Assessor (at 84; *Glengary* at [33]). That being said, the Court of Appeal in *Glengary* emphasised that whether AV was assessed based on rental value or on capital value, "the assessment must always rest on the current market value" (at [34]).

43 Thirdly, it is clear from the language of s 2(3) of the PTA, which refers to "the option of the Chief Assessor", that he has "the sole discretion" of when the provision is to apply and in which circumstances it is appropriate (*National Shipbreakers* at [32]; *Lee Tat Development (Pte) Ltd v Chief Assessor* [1995] 2 SLR(R) 785 at [19], on the predecessor provision of s 2(*b*) of the Property Tax Act (Cap 254, 1985 Rev Ed)). As stated by the Court of Appeal in *City Developments*, there is "no doubt" that s 2(3) of the PTA expressly confers on the Chief Assessor the discretion to use the provision over other methods of assessment in s 2 (at [3]). It therefore does not assist the appellant to argue that s 2(3)(*a*) of the PTA was not employed in *HSBC (HC)* or *FC Retail*. Those cases involved an assessment of AV under s 2(1) of the PTA and therefore inquired into the amount that is reasonably expected to be paid by a hypothetical tenant.

New points being raised on appeal

44 The respondent argues that the appellant is precluded from raising the points mentioned at [9]–[10] which it invoked on appeal, due to the appellant's breach of the rule in *Browne v Dunn*. The appellant contends that these are not new points as such, but arose directly from the evidence of the Chief Assessor's representative.[43] In respect of the argument that the building costs of $593,000 is unreliable, the appellant argues that the Chief Assessor's representative had in the course of re-examination stated that the building costs were not subsequently confirmed since the Architect "withdrew and void[ed] the submission".[44] The representative had also stated that the figure was adopted at first instance since it "was the only available information then".[45] Given that the respondent re-examined the representative at length on the figure and why it had been included, it was therefore apparently an issue in contention.[46] As such, the appellant submits that the respondent was not deprived of an opportunity to explain.[47] As for the argument that there was no nexus between the building costs and the estimated value of the buildings, the appellant had clearly taken the position that the building costs should not be included in the Chief Assessor's methodology.[48] According to the appellant, the issue of a nexus is a "natural corollary" of that argument. The Chief Assessor's representative also had an opportunity to explain this as she was questioned on why and how the building costs were included in the assessment.[49] Further, the appellant argues

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43 AS2, para 16(a).

44 NE (3 September 2020), p 20 lines 11–15 (ROA, p 208); AS2, para 18.

45 NE (3 September 2020), p 21 lines 23–25 (ROA, p 209); AS2, para 19.

46 AS2, para 20.

47 AS2, para 22.

48 AS2, para 30.

49 NE (3 September 2020), p 20 line 2 to p 22 line 18 (ROA, pp 208 to 210); AS2, para 31.

that the submission that the building costs was a bare assertion is a submission of law and not fact, and the rule in *Browne v Dunn* does not apply to preclude the former. The appellant also emphasises that since it was not legally represented in the hearing before the VRB, it would not be appropriate to place undue weight on the appellant's failure to put its case.[50]

45 In my view, it is open to me to consider the arguments presently raised by the appellant. As noted at [21] above, the appeal before me operates as a rehearing brought pursuant to O 55 of the Rules of Court (Cap 322, R5, 2014 Rev Ed). This entails that, according to the commentary in *Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 55/2/2, citing *Valentino Globe*:

> … The Court is not constrained to determine only whether the tribunal's decision as proper and/or contained manifest errors of fact and law. If it wished to, the court in its discretion may consider all the evidence before it and beyond determining the propriety of the tribunal's decision or inquiring into whether there had been manifest errors of fact or law. However, the court does not bear an irrevocable burden to hear the matter anew so that the substantive merits fall to be determined afresh.

That said, cost consequences may follow if the matters were not ventilated below. Furthermore, insofar as certain of the appellant's arguments are based on contradictory facts which were not put to the Chief Assessor's representative in the proceedings below, they cannot stand by virtue of the rule in *Browne v Dunn*, as I will subsequently address.

Nexus between building costs and the value of buildings

46 The appellant argues that there is no connection between the two. Apart from arguing that the assessment of AV should exclude buildings that are not

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[50] AS2, paras 12 to 13.

let and not reasonably expected to be let, it also submits that buildings could be "worthless or not commensurate with the costs involved in [their] construction" even where these costs had been substantial.[51] The appellant submits that what is required under s 2(3)(*a*) of the PTA is a determination of the estimated value of a property; the provision does not refer to the mere costs of construction.[52]

47 Aside from taking issue with this argument on nexus not being raised below, the respondent maintains that the burden is on the appellant to show that the Chief Assessor was wrong.[53] It is argued that the appellant did not adduce any evidence to support its assertion that the eventual value of the buildings could be worthless or not commensurate with building costs, and failed to explain how such a fact would make the valuation presently incorrect.[54] The buildings furthermore have been apparently generating profits as they currently house activities such as a bistro, and were observed by JLL to be "generally in good condition".[55] The appellant also did not put forward any alternative valuation of the buildings, and did not produce any evidence to support its desired AV of $87,000 for the Property (the AV for the Property prior to the amendment on 1 December 2018).[56] In any event, the appellant benefitted from the decision to utilise the building costs figure of $593,000, which only pertained to the construction of a museum and cooking school, and not the majority of buildings that had been erected on the land in preceding years.[57]

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51 AS1, para 25.

52 AS1, para 17.

53 RS1, para 41.

54 RS1, para 37, Hearing minutes, p 5.

55 RS1, para 38.

56 RS1, paras 14 and 38.

57 NE (3 September 2020) p 33 line 23–p 34 line 4 (ROA, pp 221–222); RS1, para 40; RS2, paras 3 and 6.

48 In my determination, the existence of a connection between building costs and the value of property is readily apparent: the addition of a building would be expected generally to add value to the property, and the cost of the erection of that building would generally influence the value of the property as a whole. Even with many years of use of the building, it would be expected that there would be some connection still between the two values. Choosing building costs as a proxy is thus reasonable, especially in the absence of any other measure. Indeed, the building costs of a property was used in estimating the value of the building under s 2(3)(*a*) of the PTA in *The Legends*, where the Chief Assessor referred to an earlier agreement to adopt the costs of refurbishing the building with effect from 1997 in order to estimate the building value for 2003. This was upheld by the VRB as reasonable (at [32]). Such building costs also forms part of an assessment under the contractor's test method for assessing AV as defined in s 2(1) of the PTA (involving, *inter alia*, an estimation of the cost of a property which is then decapitalised), although this is different from the application of the statutory formula in s 2(3) (*National Shipbreakers* at [31]–[33]).

49 The fact that the buildings could not be let out in practice or reality is immaterial, as pointed out by the respondent and discussed at [37]–[43] above. The statutory language as considered above is clear that it is only concerned with hypothetical or notional leases. A legal prohibition against subleasing does not affect the exercise: the Chief Assessor may still be able to ascribe some rental value. There are several exceptional circumstances where a nil valuation could be appropriate, for example, where there is something in the property that makes occupation of it "intrinsically valueless", such as for reasons of vehicular access or the layout of the premises; or where "the responsibilities of a tenancy [*eg*, maintaining a historical house] are so great as to result in the occupation being burdensome rather than beneficial in the commercial sense" (*Telereal*

(UT) at [98]–[99]; citing *Lambeth London Borough v English Property Corporation Ltd and Shepherd (Valuation Officer)* [1980] RA 279 and *Hoare (Valuation Officer) v National Trust* [1998] RA 391). Neither was the case here; in fact, there were several economic activities in the buildings on the Property, as noted by the respondent. More importantly, the Chief Assessor in the present case had not relied on hypothetical tenancy but s 2(3) of the PTA, which is based on an exercise of the Chief Assessor's discretion and focuses instead on capital value. As noted in Ang Sock Tiang, *Property Tax in Singapore – A Practical Guide* (Bold Ink Magazines, 2020), the estimated value of a property under s 2(3)(*a*) of the PTA considers both the land and building improvements and "is usually estimated using the cost method of valuation which sums up the market value of the land and the depreciated cost of the building improvements" (at para 11.1). There is therefore no question of assessing the rental value of the property and a consideration of building costs was nothing unusual.

50 As for the argument that the buildings would become worthless eventually, this does not help the appellant at all. AV is determined with respect to a particular period of time: the AV would be revised from time to time, as is seen in s 20(1) of the PTA (as noted at [8] above). Thus, the fact that buildings may become worthless at some point in the future is immaterial if what is being disputed is the value before that point in the future. All things will perish under the sun, and only death and taxes will endure.

Evidence for annual value

51 There was sufficient evidence of the value of the buildings and hence the AV.

Hearing and reception of evidence

52 With regards to the evidence to be presented in the hearing before the VRB, the PTA and the Valuation Review Board (Appeals Procedure) Regulations 1990 reg 2 ("VRB Regulations") contemplate that evidence will be given. It is also expected that figures or valuations underlying the various concepts used in determining the AV would be prime candidates for evidential disputes.

53 Section 32 of the PTA provides that:

> **Time and place for hearing of appeals**
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> **32.**—(1) On receipt of the notice of appeal, the secretary shall, as soon as may be thereafter, appoint a time and place for the hearing of the appeal and shall give 14 days' notice thereof both to the appellant and the Chief Assessor or the Comptroller [of Property Tax], as the case may be.
>
> ....
>
> (4) Upon such day or days as are appointed under subsection (1), the Board shall hear such representations as may then be made and record the evidence given both by the appellant or his authorised agent and by the Chief Assessor or his representative, or the Comptroller or his representative, as the case may be, at such hearing.

Regulation 5(2) of the VRB Regulations in turn provides that the VRB may require an appellant to submit a statement "setting out the contentions or particulars of any facts which the appellant intends to rely on during the hearing of the appeal, including particulars of comparable rents or sales". The VRB will then forward a copy of the statement to the Chief Assessor and may require him to submit a response to the statement (Regulation 5(4)). Such a submission would include the basis of his assessment of the AV (Leung and See, *Property Tax* at p 388). Furthermore, Regulation 9 provides for the taking of evidence in an appeal before the VRB, and expresses that these are "subject to" the

provisions of the Regulations, the Evidence Act (Cap 97, 1997 Rev Ed) and "any other written law relating to evidence". As such, although proceedings before the VRB are generally informal, there would be the expectation that the general evidential rules apply.

Assessment on the facts

54 I am satisfied that on the evidence before the Court, the Chief Assessor's assessment should not be disturbed.

55 The appellant argues that it is unsafe to rely on the Architect's email. It was initially argued by the appellant that the email was hearsay, and inadmissible or of little probative weight (as noted at [9] above).[58] The respondent has conceded that the email was not adduced as proof of the figure. This precludes reliance on it. The appellant argues that the VRB was similarly in error.[59] There was also no support for the Architect's figure, which was withdrawn a day later.[60] The appellant thus argues that the error in law and fact that arose was not curable simply because it benefited as costs of buildings erected in 2001 and 2004 were not included.[61] While the burden lay on the appellant to prove that the Chief Assessor's decision was wrong, it was not appropriate for the Chief Assessor to rely on information that was outdated and unreliable.[62]

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58 AS2, paras 6–7.

59 AS1, para 23.

60 AS1, paras 18–22.

61 AS1, paras 26–27.

62 AS1, paras 30–31.

56 The appellant submits that unlike the approach adopted by the Chief Assessor in *HSBC (HC)*, the method here was not reasonable or fair.[63] It was also not necessary for the appellant to put forward an alternative method: the obligation was only to show that the Chief Assessor was wrong.[64] It argues that the use of an unconfirmed figure was not reasonable and fair.[65] Rather, the Report ought to be preferred, as it was based on the annual market land rent, obtained by direct comparison, looking at market transactions.[66] According to the appellant, it could be inferred that the valuation therein did take into consideration the value of the buildings.[67] Alternatively, the inference would be that the building's value was negligible.[68]

57 The respondent argues that the building costs was justifiably used.[69] The appellant did not put forward any alternative method to determine the estimated value of the buildings.[70] The Chief Assessor's decision to use the figure for building costs also could not be unreasonable or unfair: the figure used was only for two buildings and did not include the cost of other buildings on the Property.[71] The burden lay on the appellant to convince the court that the Chief Assessor had come to a wrong decision, and the Chief Assessor is not required to justify every aspect of his decision (*Cho Chih Yee v Chief Assessor*

63 AS1, para 33.

64 AS2, para 39.

65 AS2, para 41.

66 AS1, paras 39–42.

67 AS1, para 44.

68 AS1, para 45.

69 RS1, paras 36–46.

70 RS1, para 39.

71 RS1, para 40.

[1968] 2 MLJ xxxii at xxxvi; *HSBC (HC)* at [29]–[30]).[72] Rather, the taxpayer should put forward his version of the appropriate methodology (*HSBC (HC)* at [33]).[73] The respondent therefore argues that the appellant must have had a position as to the value of the buildings, which should be made clear.

58 As for the contents of the 25 October 2010 email, the respondent submits that the Architect's statement that the email was void did not bar the Chief Assessor from relying on it, given that the reason for this was not because of any doubt about the accuracy of the figure.[74] The Architect's recanting of the email did not affect the reliability or accuracy of the email. The Architect's position was that the Chief Assessor was to communicate with the appellant's representatives directly, and not the Architect. No evidence was given to contradict the figure of $593,000 provided.[75] Moreover, the VRB had not erred in admitting the email. It was not hearsay.[76] JLL's valuation was also not a viable alternative.[77] The respondent argues that the appellant's interpretations of the Report as including the buildings in its valuation or assessing their value as negligible were not put to the Chief Assessor's representative at the hearing, and these interpretations were not supported by the evidence.[78] The interpretations were at odds with the language and considerations in the Report: JLL was commissioned to assess the land, and the buildings on the Property

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72 RS1, para 41; RS2, para 27.

73 RS2, para 28.

74 RS1, paras 43–44.

75 RS1, para 45.

76 RS1, para 53.

77 RS1, para 55.

78 RS1, paras 56 and 59–61.

were not considered. The respondent submits that the appellant's arguments are only afterthoughts.[79]

59 It was to my mind a valid objection by the respondent in respect of the appellant's interpretations of the Report not being put to the Chief Assessor's representative. This is indeed a situation in which the *Browne v Dunn* rule would operate, since the Chief Assessor was precluded from putting his response in through his representative. The fact that the appellant acted in person below is not a sufficient excuse justifying a departure from *Browne v Dunn*. The appellant's position on the Report, namely that it did take into account the value of the buildings, ought to have put before the Chief Assessor's representative, so evidence could be given for the Chief Assessor's position.

60 In any event, no other evidence was put forward to substantiate a competing AV based on the value derived from the Report. On the face of it, the Report put forward a value without the buildings, and this was not therefore a useful comparator against what the Chief Assessor did. The Report was not, for this reason, material in showing that the Chief Assessor's assessment was not reasonable or fair. The burden was on the appellant to bring in evidence to show that the Chief Assessor was wrong in the determination of the AV. Given the problems with the Report, the appellant did not discharge this burden.

61 I also find that the information from the Architect was obtained by the Chief Assessor and could be relied on in the determination. Firstly, the appellant does not dispute the authenticity or genuineness of the 25 October 2010 email, *ie*, that it had been sent from the Architect to the respondent. Further, contrary to the appellant's argument, the hearsay rule was not offended in the premises.

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79 RS1, para 62.

The use of the 25 October 2010 email in the proceedings before the VRB was simply to show that this was the information used by the Chief Assessor. It was not hearsay for that purpose (see *Saga Foodstuffs Manufacturing v Best Food* [1994] 3 SLR(R) 1013 at [11]). It might have been hearsay had the email been adduced before the VRB for it to consider the cost of the buildings, but this was not what happened here.

62 The fact that the information from the Architect was retracted subsequently does not by itself mean that it cannot be used. The reasons for the retraction would of course be relevant, and may discount the information to a degree that little weight ought to be placed on it. But in the absence of any explanation, the Chief Assessor would be entitled to rely on that information. The information was well within his power to obtain under s 16(1) of the PTA, which permits him to serve notice on "any person" in order to obtain information for the purposes of the PTA.[80] It is also relevant that the appellant did not contest the accuracy of the figure of $593,000 provided by the Architect, even though the information on building costs would have been well within its knowledge.[81] The appellant had also been asked to clarify the building costs in a letter from the respondent on 12 December 2014, but did not do so.[82] In subsequent correspondence between an IRAS staff and the appellant, the former had also offered on 5 January 2015 to review the building costs if these differed from the latter's records.[83] However, the appellant also did not object to the AV

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80 ROA, p 62.

81 RS2, para 31.

82 NE (3 September 2020) p 22 lines 3–10 (ROA, p 210).

83 NE (3 September 2020) p 41 lines 1–10 (ROA, p 229); ROA, p 292.

which was revised at the time to take into account the value of the buildings.[84] This suggests that the figure of $593,000 was indeed correct.

Use of a lower figure

63 Finally, as argued by the respondent, the fact the appellant benefitted from a lower AV from the Chief Assessor's decision to use the building costs only in respect of a portion of the buildings on the Property does indicate that the decision to use the figure of $593,000 was appropriate. The estimated value of these two buildings was also only included in the assessment of AV from 2015 although the buildings on the Property had been constructed in 2001, 2004 and 2009.[85] This was a further benefit to the appellant, as the VRB had rightly found.[86]

Conclusion

64 In view of the above, the appeal is without merit, and is thus dismissed.

65 Directions will be given separately for cost submissions.

Aedit Abdullah
Judge of the High Court

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84 NE (3 September 2020) p 21 lines 13–16 (ROA, p 209).

85 NE (3 September 2020) p 33 lines 6–19 (ROA, p 221).

86 GD, para 24.

Suang Wijaya and Eugene Singarajah Thuraisingam (Eugene Thuraisingam LLP) for the appellant;
Rajiv Rai and Sonia Khoo Meng (Inland Revenue Authority of Singapore) for the respondent.