Chief Assessor *v* HSBC Institutional Trust Services (Singapore) Ltd
[2012] SGHC 120

Case Number : Originating Summons No 422 of 2011

Decision Date : 04 June 2012

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Joanna Yap and Alvin Chia (Inland Revenue Authority of Singapore) for the applicant; Leung Yew Kwong, Novelle Chan and Tan Shao Tong (Wong Partnership LLP) for the respondent.

Parties : Chief Assessor — HSBC Institutional Trust Services (Singapore) Ltd

Revenue Law – Property Tax – Annual Value

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 80 of 2012 was dismissed by the Court of Appeal on 17 January 2013. See [2013] SGCA 4.]

4 June 2012 Judgment reserved.

Belinda Ang Saw Ean J:

1 This Originating Summons No 422 of 2011 ("OS 422/2011") is the Chief Assessor's appeal against the decision of the Valuation Review Board ("the Board") made on 24 May 2011 ("the Decision").

The relevant facts

2 There is no dispute as to the relevant facts underlying the valuations in dispute. The Respondent, HSBC Institutional Trust Services ("the Landlord"), is the trustee of CapitalMall Trust which owns the shopping centre known as Bugis Junction.

3 Bugis Junction has 180 units which are normally leased to tenants carrying on various types of businesses at the shopping centre.

4 In the computation of the annual value of the various tenanted units (collectively "the Premises") for the valuation years of 2004 and 2005, the Chief Assessor did not exclude a portion in the gross rent for depreciation arising from wear and tear of escalators, lifts, air-conditioning and fire safety systems installed in Bugis Junction (hereinafter referred to collectively as "the asset items" or individually as "the asset item").

The Board's Decision

5 Dissatisfied with the assessment made by the Chief Assessor, the Landlord appealed to the Board. The Board accepted the Landlord's contention and ruled that the claim for depreciation was a constituent part of the total cost of the services provided by the Landlord, and that it should be excluded from gross rent in the determination of annual value for the relevant tax years (see [8] & [10] below).

6 Ms Tan Gee Hong ("Ms Tan"), the property manager, testified before the Board. She explained in her affidavit that the tenants paid the Landlord a monthly gross rent that included a sum of $0.20 per square foot calculated on the basis of a 7.5% annual depreciation for air-conditioning plant, lifts and escalators, and 20% for the fire safety system. It was Ms Tan's evidence that the Landlord had contracted to let out the Premises located in a building with central air conditioning, escalators, lifts, and a fire safety system, and that the asset items were required to provide the services agreed to by the Landlord, and for that reason the claim for depreciation was an expense that related to services rather than rent or letting. She confirmed that this monthly sum of $0.20 per square foot was an integral part of gross rent but its purpose was not itemised in the tenancy agreements; that it was for depreciation in relation to the asset items; that the monthly service charge of $1.50 per square foot was to cover operating expenses [note: 1] and not depreciation of the asset items. It was argued on behalf of the Landlord that the Premises would yield higher rental as compared to a shopping mall without similar installations like central air-conditioning, lifts, escalators and fire safety systems.

7 Ms Tan's evidence was not seriously challenged by the Chief Assessor who did not call any witness.

8 The Board referred to *BCH Retail Investment Pte Ltd v Chief Assessor* [2007] 2 SLR(R) 580 ("*BCH(No 2)"*) for the principle that any component of gross rent that was for services and not related to rent must be excluded from the gross rent for purposes of calculating annual value. With that principle in mind, the Board accepted the Landlord's reasoning and stated (at [14]):

> In the first place the items in question were required to provide the services to the tenants. The [Landlord] would have to incur actual and notional expenditure, which refers to the depreciation of the equipment. Undoubtedly, these items cannot last forever and not only require maintenance but need replacement due to wear and tear. ... [T]he underlying premise remain (sic) that the [Landlord] would require these items to provide services to the tenants which they are contractually bound to.

9 In coming to its decision, the Board followed *Chartered Bank v The City Council of Singapore* [1959] SPTC 1 ("*Chartered Bank*"), a decision of Wee Chong Jin J (as he then was). In that case, Wee J excluded the cost of services and the landlord's profit for providing those services from the gross rent to determine annual value. In addition, the learned judge allowed for the exclusion of depreciation of equipment (lifts, air conditioners and fire extinguishers) from gross rent as well. The Board observed: [note: 2]

> A plain reading of the Chartered Bank case would be an implicit awareness of the learned judge that depreciation was a concept which he recognised and which ought to be excluded from the gross rent, if it had been so included, for the purposes of calculating annual value.

10 Applying *Chartered Bank* to the factual matrix of this particular case, the Board agreed (at [18]):

> ... that the depreciation of the [asset] items constituted part of the total cost of services and since the gross rents were formulated taking into consideration the depreciation, this ought to be excluded in the computation of the annual value.

11 Having concluded in favour of the Landlord that the amount claimed for depreciation of the asset items (*ie*, the notional expense) was part of the total cost of services and that it related to services rather than rent, the Board considered it irrelevant and saw no merit and legal implication in

the Chief Assessor's contention that the asset items were permanent features and as an integral part of the building in Bugis Junction were assessable to property tax together with the building.

OS 422/2011

12 OS 422/2011 is brought pursuant to s 35 of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the PTA"). It was agreed between the parties that the question of law for this appeal is whether, as a matter of principle, a component in the gross rent for depreciation of the asset items (*ie*, escalators and lifts, air conditioning and fire safety systems) should be excluded from gross rent in the computation of annual value. This question requires a determination of what the annual value of the Premises is according to the definition of "annual value" in s 2(1) of the PTA, which focuses on the element of rent or letting. Some additional questions will necessarily flow from this definition read with s 2(2), as well as the charging provision in s 6(1) of the PTA, and they will be identified and discussed later in this Judgment.

The relevant statutory provisions

13 It is appropriate at this juncture to set out the relevant statutory provisions. The charging provision of the PTA is s 6(1) which provides:

> **Charge of property tax**
>
> 6.-(1) As from 1st January 1961, *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 the annual value* 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.
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> [emphasis added]

14 Section 2(1) defines "annual value" as follows:

> "annual value" —
>
> (a) in relation to a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means *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);
>
> ...
>
> [emphasis added]

15 Section 2(2) reads as follows:

> In assessing the annual value of any premises in or upon which there is any machinery used for any of the following purposes:
>
> (a) the making of any article or part thereof;
>
> (b) the altering, repairing, ornamenting or finishing of any article; or

(c) the adapting for sale of any article,

the enhanced value given to the premises by the presence of such machinery shall not be taken into consideration, and for this purpose "machinery" includes the steam engines, boilers and other motive power belonging to that machinery.

The competing arguments

Chief Assessor's Case

16 The Chief Assessor submits that the Board erred in allowing the exclusion of a portion of the gross rent for depreciation in the computation of annual value. First, the Chief Assessor argues that the Board had focussed on the wrong question, *viz*, whether the Landlord required the asset items to provide services to the tenants. It was an error that distracted it from what the Chief Assessor considers to be the correct approach pronounced by the Court of Appeal in *BCH (No 2)*, *viz*, whether the portion of the gross rent for depreciation is related to rent or letting. [note: 3] Second, the Board was wrong to have ruled as irrelevant its own findings that the asset items were permanent features and, hence, an integral part of the building. Third, *Chartered Bank* provides little guidance on whether, as a matter of principle, the depreciation of the asset items ought to be excluded from gross rent in arriving at the annual value of the Premises for the valuation years 2004 and 2005. There was no *ratio decidendi* in that case to give it binding authority to resolve the problem in the present case.

The Landlord's Case

17 The Landlord submits that the Board was correct in holding that the claim for depreciation ought to be excluded from the gross rent in order to arrive at the annual value of the Premises. The Landlord's argument is that as depreciation constituted part of the total cost of the services provided and the gross rent was formulated with the depreciation in mind, it ought to be excluded from the gross rent in order to arrive at the annual value of the property. *Chartered Bank* and *BCH (No 2)* were cited in support. [note: 4]

18 Finally, the Landlord accepts that the asset items are in the nature of plant and machinery, but disagrees that they formed "integral parts of the building". [note: 5] According to the Landlord, the Board rightly decided (at [17]):

> On the point made by [the Chief Assessor] that all the items are permanent features of the building and hence an integral part of the building, we are of the view that this is irrelevant. Just because an escalator form (sic) a permanent feature of the building does not necessarily mean it cannot remain an equipment at the same time, and whose moving parts must be replaced over time due to wear and tear. The case of *People's Park Chinatown Development Pte Ltd v Schindler Lifts (Singapore) Pte Ltd* [1992] 3 SLR(R) 236, ...was in a different context and turned on the passing of property or title of escalators which had been installed but not paid for. It provided little guidance to the issue at hand as to whether depreciation ought to be excluded in the computation of the annual value of the property.

Discussion and decision

General Overview

19 The Chief Assessor in computing the annual value of the Premises started with the gross rent

received by the Landlord. No point was taken that depreciation was never included in gross rent to begin with. The Chief Assessor did not challenge Ms Tan's evidence that although the annual depreciation of the asset items was not itemised separately in the tenancy agreements, the gross rent, however, was negotiated and formulated with depreciation of the asset items in mind. The main arguments that were canvassed before the Board were repeated in this appeal.

20 The question of law in this appeal is whether, as a matter of principle, the depreciation component in the gross rent should be excluded from gross rent in the computation of annual value of the property. In assessing annual value the touchstone is whether a component in the gross rent is related to rent or letting ("the touchstone question"). This is in turn determined by whether the machinery or equipment to which a component in the gross rent is directed is part of the property that is assessable to tax ("the threshold question"). It is, therefore, necessary to first determine the threshold question to ascertain whether the asset items in the present case are fixtures in or on immoveable property so as to be potentially assessable to tax together with the immoveable property under s 6(1) of the PTA. If the answer is in the affirmative, the next step is to look at the touchstone question. At this stage, the question of law in this appeal will be considered.

21 Depreciation as defined in the Financial Reporting Standards FRS 16 [note: 6] is the systematic allocation of the depreciable amount of an asset (*ie*, the cost of an asset, or other amount substituted for cost, less its residual value) over its useful life. Put simply, depreciation serves to match a fair proportion of the cost of an asset against income earned by a business in an accounting period as well as reflect the book value of the asset used in the business at each accounting period end. In this case, the Landlord has described depreciation as a "notional expense" for wear and tear of the asset items that would need to be replaced in the future, and this is usually at the end of the useful life of the asset item. On the matter of depreciation, the Board in its Decision stated (at [14]): [note: 7]

> ... the [Landlord] would have to incur actual and notional expenditure, which refers to depreciation of the equipment. Undoubtedly, these items cannot last forever and not only require maintenance but need replacement due to wear and tear.

22 In this appeal, the parties' focus was on the touchstone question (see [20] above). If it is adjudged in this appeal that depreciation is not part of the total cost of services, it does not necessarily result in an outcome favourable to the Chief Assessor because the opposing views are, strictly, not different sides of the same coin such that if one view fails the other automatically prevails. As noted by the Chief Assessor, the Board had focused on the wrong question and should instead have asked whether the depreciation component in the gross rent related to rental or letting. The outcome of this appeal depends on whether the asset items are fixtures and, as fixtures, are assessable to tax together with the building that comprises the shopping centre, Bugis Junction. As fixtures, the asset items can enhance the value of a building, and they are to be taken into consideration in assessing annual value. From this perspective, the relevance of the asset items as fixtures to the question on appeal is clear: depreciation has something to do with *letting* of the Premises which, in turn, means that the depreciation component in the gross rent is related to rent or letting.

23 At the same time, the Landlord's use of the phrase "notional expense" to denote depreciation of the asset items due to wear and tear gives rise to complications. The term depreciation invites discussion on whether depreciation as "notional expense" or depreciation in the form of a notional provision for future replacement cost of the asset items is within the ambit of the qualifying words in s 2(1) of the PTA.

24 With these observations in mind, I now turn to examine the Board's Decision.

Analysis of the Board's Decision

25 The Board erred in several respects. Firstly, the Board did not consider whether the asset items were potentially assessable to tax together with the subject building under s 6(1) of the PTA. Under our local property tax regime, tax is payable on immoveable properties such as houses, buildings, lands and tenements. In other words, it is the immoveable property that is taxed. Thus, a building is assessable together with fixtures that are on or in the building unless the fixtures are manufacturing or industrial machinery exempted under s 2(2) of the PTA. The Board found that the asset items were fixtures and, hence, part of the building, but nevertheless ruled that its findings were irrelevant and had no application in law to this case. With respect, the Board's reasoning in the context of this particular case is misconceived. It detracted from settled jurisprudence in land law on the distinction between chattels and fixtures. Consequently, it cast aside the statutory imposition of tax on fixtures in or on immoveable property in the determining what constitutes "building" for property tax assessment (see generally Andrew Phang JA in *Pan-United Marine Ltd v Chief Assessor* [2008] 3 SLR(R) 569 ("*Pan-United*") at [104] and Phang JA's passing comment at [43] that a "building" would by its nature and definition constitute part of the land), or if outside the definition of "building", the asset items could still be affixed to land so as to become part of the land and, thus be potentially assessable to tax (see *Chief Assessor and another v First DCS Pte Ltd* [2008] 2 SLR(R) 724 at [46] ("*First DCS (CA)*"). By skipping this important step of the analysis, the Board arrived at the wrong conclusion in answer to the question of law before the Board.

26 For the sake of completeness, I should add that there may be occasions where on the facts it is possible to skip the threshold question to go straight into assessment of annual value (but not so in this case based on the present facts). To illustrate, in *BCH (No 2)*, the Court of Appeal sanctioned the use of the gross rent as a starting-point to see if there are components not related to rent or letting. The dispute on advertising and promotional ("A&P") contributions and its resolution is unconnected to the threshold question described in [20] above. Similarly, in *BCH Retail Investment Pte Ltd v Chief Assessor* [2002] 2 SLR(R) 973 ("*BCH (No 1)*"), the dispute related to the tenants' A&P contributions. In *BCH (No 2)*, Andrew Phang JA said (at [26]):

> Having regard to the analysis and (more importantly) general principles laid down above, *the correct approach to adopt in the present proceedings* (as in *BCH (No 1)*) would be to first ascertain whether or not the gross rent adopted as a starting point includes any elements that ought *not* to be included. If, in fact, there are such elements, then their value ought to be *excluded* for the purposes of computing the annual value. The corollary of such an approach is that where expenses have been incurred, but which have had nothing to do with rent or letting and have not been included in the gross rent, they are not to be considered at all.
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> [emphasis added]

27 Secondly, and this follows from the first error, the Board's focus on services led it to decide that its finding that the asset items were fixtures and an integral part of the building that comprises Bugis Junction was irrelevant to the issue before it. Contrary to the Board's views, as fixtures to the building the asset items are relevant to the question of including them in the assessment of the building's annual value. As the asset items are assessable to tax together with the building, in assessing annual value it cannot be said that depreciation of the asset items has nothing to do with *letting* of the Premises. This, in turn, means that the depreciation component in the gross rent is related to rent or letting.

28 Thirdly, the Board's ruling that a portion of the gross rent for depreciation was related to the total cost of services is wrong. In this case, the Board answered the question whether the claim for depreciation related to rent or letting by noting that the provision of the asset items related to the Landlord's contractual obligation to provide services to its tenants, and that without the asset items, those services could not have been provided. I disagree with this reasoning. The mere fact that there is a contractual obligation to provide services is neither here nor there. One reason why the Board's ruling is unsound in law is that the Board's decision is inconsistent with the principle that the statutory definition of annual value bespeaks of a hypothetical tenancy. The mode of finding out the annual value is laid down in the PTA, and it is to ascertain the rent which a hypothetical tenant (not *the* tenant) taking one year with another might reasonably be expected to pay. Even a property occupied by its owner is still subject to property tax, but the ascertainment of annual value there will be a hypothetical exercise. It is clear from *BCH (No 2)* that Parliament did not make the annual value of a property dependent on the terms on which the property was *actually* let, but upon the notion of a hypothetical tenant. Furthermore, the rent actually paid is only *prima facie* evidence but not conclusive evidence of the rent at which the premises might reasonably be expected to be let. The proposition – that the actual rent is only *prima facie* evidence of the gross rent on which to arrive at the true annual value – may be rebutted or supported by other evidence. It is precisely because the gross rent might, *on the actual facts*, comprise elements that have nothing to do with rent or letting that they have to be excluded (see *BCH (No 2)* at [24]). After alluding to the fact-sensitive dictates of any particular case such as *Chartered Bank*, Phang JA remarked (at 24):

> Certainly, whilst not necessarily conclusive, we would highlight that the actual rent paid would often be an important factor and/or starting-point in the assessment of the annual value of the property concerned.

29 Fourthly, apart from the similarity of the facts in *Chartered Bank* and in this case, it is difficult to be sure of the legal principle enunciated in the former decision that excluded depreciation from gross rent in the computation of annual value. It seems to me that the Board accepted and applied *Chartered Bank* to the present case basically because the facts in *Chartered Bank* were similar. It is noticeable that the rates of depreciation were, coincidentally, the same in both cases. For instance, in *Chartered Bank*, depreciation of lifts and air conditioners were stated as 7½% of cost and fire extinguishers at 20% of cost. In this case, the same rate of 7.5% was used for the more modern central air conditioning system, lifts and escalators and 20% for the fire safety system (as opposed to "fire extinguishers" in 1959). As a matter of impression, the story-board, one reasonably suspects, was for the sole purpose of enabling the Landlord to argue that the facts fall within the decision of that case. Be that as it may, the Landlord's contention that *Chartered Bank* is now binding authority because Phang JA approved it in *BCH* (No 2) is misplaced. I do not agree with the Landlord's submissions that the *Chartered Bank* case was expressly approved by the Court of Appeal in *BCH (No 2)*. Phang JA did not have in mind the same question before this court in the earlier case, nor was he expressing approval of the point for decision in this OS 422/2011. Passages from *BCH (No 2)* to which reference have been made do not bear out the assertions. In fact, in a subsequent case, *Tan Hee Liang v Chief Assessor* [2009] 1 SLR(R) 335 ("*Tan Hee Liang (CA)*"), counsel for the Chief Assessor invited Phang JA sitting in the Court of Appeal to consider the correctness of the *Chartered Bank* case (see [35] of the Judgment). As it transpired, it was not necessary in that case for the appellate court to take up the call of the Chief Assessor. That said, the fact that *Chartered Bank* was decided as far back as 1959, that it probably has since been acted upon, and that it has been referred to in later cases without express disapproval are not reasons why it should not be questioned and even disregarded if that case is of no value as a binding authority on the issue in this appeal. I will be discussing the *Chartered Bank* case in detail later on in this Judgment.

Immoveable Property is assessable to tax – what of permanent fixtures in or on the property?

30 In this part of the judgment, I will consider the threshold question: "Are the asset items an integral part of the subject building, such that the building together with the asset items is assessable to tax under s 6(1)?" There is no doubt that property tax is a tax on immoveable property, and any plant and machinery in or on such property is assessable to tax if the plant and machinery is affixed so as to become part of the immoveable property. The significance of the existence of fixtures in a building is potentially the enhancement in value that is added to the annual value of the building. Conversely, if the plant and machinery is not affixed to the building, the question of including it in the assessment of the building's annual value does not even arise. Hence, the difference between fixtures and chattels is important in relation to the calculation of the annual value for property tax purposes. Section 2(2) of the PTA is relevant in that not all fixtures are taken into account in determining the annual value. Certain types of machinery, especially trade machinery, are excluded from computation of the annual value of the subject premises.

31 The decision of *First DCS Pte Ltd v Chief Assessor and another* [2007] 3 SLR(R) 326 ("*First DCS*") is instructive. Andrew Ang J explained s 2(2) of the PTA at [27] & [28]:

> [27] In contrast, under s 2(2) of the Act, only machinery used for the purposes of making, altering or adapting for sale of articles is excluded from assessment. In general, as property tax is a tax on immoveable property, machinery on such property is not assessable unless such machinery is affixed so as to become part of the immoveable property. If machinery is so affixed, the annual value of such immoveable property will be enhanced owing to such machinery. Section 2(2) of the Act provides relief in that the enhancement in value due to qualifying machinery used for the purposes stated therein is not to be taken into account.
>
> [28] The question then arises: what was the Legislature's intention in excluding only certain kinds of machinery? Although no express statement in this regard may be found, it seems to be likely that the object behind s 2(2) was to encourage investments in plant and machinery for manufacturing, processing and other industrial purposes. As such, a distinction may be made between two separate classes of machinery.
>
> (a) machines affixed to the land for manufacturing or processing or industrial purposes (*ie*, machinery used for the purposes of making, altering repairing, or ornamenting, finishing or adapting for sale of articles); and
>
> (b) *machines affixed to the land for non-manufacturing or processing or industrial purposes* (*ie*, machinery used for the purpose of storage or for the enhancement of the enjoyment of property).
>
> *The latter class would include escalators which become fixtures by virtue of their resting on their weight in the parts of the building specially constructed for them*: *People's Park Chinatown Development Pte Ltd v Schindler Lifts (Singapore) Pte Ltd* [1992] 3 SLR(R) 236. *The value of the property is enhanced owing to the presence of the escalators which make the property more accessible. Other examples of machinery that fall under the second class include lifts and air-conditioning units.* With these prefatory remarks, we now examine whether the machinery in the present case qualifies under any of the limbs in s 2(2) of the Act.
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> [emphasis added]

32 I pause here to mention that Ang J's distinction between two separate classes of machinery in s 2(2) was accepted by the Court of Appeal in *First DCS (CA)*. VK Rajah JA (delivering the decision of

the court), agreeing with Ang J on fixtures on or in immoveable property, said (at [46]):

> As pointed out by the Judge at [27] of the Judgment, for machinery on immoveable property to be potentially assessable for property tax, it must first be affixed to the property such that it is part of the property. Even if the machinery does not come under the definition of "building", it could still be affixed to land so as to become part of the land and, thus, be potentially assessable. Whether or not the machinery is such a scenario is actually to be included when assessing the land's annual value will depend on whether the machinery falls under s 2(2) of the PTA. This has nothing to do with the definition of "building" in s 2(1) of the PTA.

33 I now turn to Ang J's confirmation that escalators, lifts and air-conditioning units would fall under the second category of non-manufacturing or processing or industrial machinery. The significance and effect of this confirmation is that this second category of non-exempted machinery is in fact fixtures in or on the immoveable property and are, thus, included in the assessment of the building's annual value. This leaves the fire safety system in the present case. I should imagine this also falls under the same category of non-exempted machinery as escalators, lifts and air-conditioning units. Fire safety systems comprise different parts: indicator panels, alarms, sprinklers, heat sensors, hose reels, systems of piping forming part of the fire safety equipment of the building. As the Board found on the facts in evidence, the asset items were fixtures and they formed integral parts of the building. Therefore, the asset items for property tax purposes are part of immoveable property and, hence, are to be included in the assessment of the immoveable property's annual value.

34 Ang J also considered the factors to be considered when determining whether an item is a fixture or a chattel for property tax purposes (at [44]):

> The general rule at common law is that everything substantially attached to land is part of the land: *quicquid plantatur solo, solo cedit*. However, the rule is subject to two exceptions. Megarry & Wade, *The Law of Real Property* (Charles Harpum gen ed) (Sweet & Maxwell, 6th ed, 2000) at para 14-314, describes them as follows:
>
> > First, certain kinds of chattels were held to remain chattels even after annexation, if the purpose of the annexation is for the better enjoyment of the object as a chattel rather than to improve the land permanently. Secondly, even though an object was clearly a fixture and therefore part of the land, a tenant for years or for life was allowed to sever and remove it if he had annexed it to the land for certain purposes.

35 In the later case of *Pan-United*, the Court of Appeal had occasion to discuss the fixture test and the enhancement test. In that case, the appellate court did not apply either of the tests as the structure in question was found to be within the meaning of "building" in the PTA and, therefore, taxable. It is pertinent to note that once the structure in question was determined to be a building the inquiry comes to an end. Consequently, the Court of Appeal made no authoritative decision as to which of the tests should be applied to ascertain if the plant and machinery was affixed to land for the purposes of tax under the PTA. However, the appellate court's *obiter* remarks at [43] to [53] are instructive on the application of each test.

36 As a starting point, the appellate court cited the English decision of *Holland v Hodgson* [1872] LR 7 CP 328 as authority that the two considerations for determining whether objects are fixtures or chattels are: (a) the degree of annexation; and (b) the object of annexation. In regard to the object of annexation, the observations made by the English High Court in the decision of *Hamp v Bygrave* (1983) 266 EG 720 at 724 were approved:

> The second test is: What was the purpose of the annexation? Was it in order to enjoy the chattel as a chattel or was it to improve the freehold in a permanent way? There is, in my judgment, authority for the following propositions: (a) Items which are firmly fixed to the land may yet remain chattels if (1) the purpose of the annexation was to enjoy them as chattels and (2) the degree of annexation was no more than was necessary for that purpose. See *Re de Falbe, Ward v Taylor* [1901] 1 Ch 523, which was a case concerning valuable tapestries. (b) Articles which are intended to improve, in the sense of being a feature of, the land though their annexation is by no more than their own weight may be regarded as fixtures. See *D'Eyncourt v Gregory* (1866) LR 3 Eq 382. (c) *While the earlier law attached greater importance to the mode and degree of annexation, more recent authorities suggest that the relative importance of their considerations has declined and that the purpose of the annexation is now of first importance.* In judging the purpose of annexation regard must be had to all the circumstances, including the manner of annexation and the intention of the annexor or occupier of the land at the relevant time. See *Leigh v Taylor* [1902] AC 157. (d) Nevertheless, in the absence of evidence of a contrary intention, the prima facie inference to be drawn from the mode and degree of annexation will not be displaced ...
>
> [emphasis added by the Court of Appeal]

37 Phang JA (delivering the Judgment of the Court of Appeal) also approved of the summary of the fixture test in Kevin Gray & Susan Francis Gray, *Elements of Land Law* (Oxford University Press, 4th Ed, 2005), where it was opined that the "contemporary borderline between fixtures and chattels may now be more case-specific and more context-dependent than was once believed." Thus, "relatively few guidelines remain in the modern law which are capable of unambiguous application to particular facts." Purpose, and not degree, of annexation is now the primary consideration and "[i]nferences drawn from the physical mode of annexation may well be overridden by more subtle considerations relating to the objectively understood motivation underlying the annexation in question."

38 It is clear that according to the fixture test as described, the asset items in question are undoubtedly part of land, being annexed to the building that comprises Bugis Junction. The photographs of the escalators, lifts, air conditioning and fire safety systems adduced as evidence in this case show that these have been built-in to or affixed to the building. [note: 8] Accordingly, they therefore satisfy the first consideration stated in *Holland v Hodgson*. In regard to the object of annexation, there are no facts in evidence to rebut the *prima facie* inference to be drawn from the fact that the asset items have been annexed to the building. I note that there was not a great deal of difference between the parties on the question of whether the asset items were fixtures or chattels. On the present facts, neither common law exceptions mentioned at [34] above applies. Given the nature of and the manner in which the escalators, lifts, air conditioning and fire safety systems are usually utilised, their function or purpose is to be served by annexation to the building, where they will remain in place for a substantial period of time. It is quite clear that escalators, lifts, air conditioning and fire safety systems are incapable of utility on a free standing basis and cannot be enjoyed as mere chattels. Air conditioners with vents, ducts and piping form a cooling system that functions together to cool the building in question. Escalators and lifts are mainly or usually used for shoppers and visitors. In the case of the fire safety system, it consists of several components. For example, the indicator boards, piping, alarms, heat sensors, hose reels, and sprinklers. All these components function together to form the system. Each component also performs its own discrete function independent of the others, but taken as a whole, they are affixed to the building to serve as protection from fire and are intended to remain in place for a substantial period of time. As the Board found on the facts in evidence, the asset items were fixtures and they formed integral parts of the building.

39 The alternative test is the enhancement test. The Court of Appeal noted in *Pan-United* (at [48]):

> The second test ("the enhancement test") is also embodied in the English case law – notably, in the House of Lords decision of *London County Council v Wilkins* [1957] AC 362 ("*Wilkins*") and the English Court of Appeal decision of *Field Place Caravan Park Ltd v Harding* [1966] 2 QB 484 ("*Field Place Caravan Park*"), as well as in the more recent (also) English Court of Appeal decision of *Rudd v Cinderella Rockerfellas Ltd* [2003] 1 WLR 2423 ("*Rudd*") (reference may also be made to *Ryde on Rating* ([43] *supra*) at pp 148 – 152). Briefly put, pursuant to the enhancement test, if a *chattel is enjoyed with the land and enhances its value*, it forms part of the land for property tax purposes. More importantly, however, for the purposes of the present appeal, the key issue is whether the enhancement test is not (like the fixture test) only embodied in the English law but is also (and more importantly) considered, in the context of *property tax*, as being the operative test (the fixture test being consequently held, in this last-mentioned regard, to be *irrelevant*).
>
> [emphasis added by the Court of Appeal]

40 Phang JA cited the judgment of Lord Denning MR in *Field Place Caravan Park* as a succinct statement of the enhancement test (at [49]):

> Whatever the cases may have said in the past, I think that the law on this subject has been revolutionised or, perhaps I ought to say, made clear, by the decision of the House of Lords in *London County Council v. Wilkins*. The House considered at length whether a chattel which was placed on land could be a rateable hereditament. The Lord Chancellor, Lord Kilmuir, said: "In my view a chattel to be rateable must be enjoyed with the land on which it rests." Lord Radcliffe said: "A structure placed upon another person's land can with it form a rateable hereditament, even though the structure remains in law a chattel and as such the property of the person who placed it there." Lord Oaksey agreed.
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> Mr. Albery [lead counsel for the appellants] urged us to hold that Lord Radcliffe was wrong. I am not prepared to do so. If I may respectfully say so, I think he was right. The correct proposition today is that, although a chattel is not a rateable hereditament by itself, nevertheless it may become rateable together with land, if it is placed on a piece of land and *enjoyed with it in such circumstances and with such a degree of permanence that the chattel with the land can together be regarded as one unit of occupation*.
>
> [emphasis added]

41 Lord Denning did not mention the requirement that the value of the land be enhanced. However, that requirement was present in the judgment of Lord Kilmuir which he cited. The observations relating to the fixture test apply equally here. The items have been annexed to the building with a significant degree of permanence. They are enjoyed with the building, and indeed significantly influence the enjoyment and use of the building, rather than being enjoyed as mere chattels. The principle requirement of the enhancement test is that the thing concerned must enhance the value of the land. In context "value" here should be understood to refer to how much a property is worth in the lay sense. For example, a building with the asset items installed would be worth more than one that is not is self-evident. The same point is evident using the analogy of a sale of the property with fixtures. In a sale of property, the transfer of the real estate would include the fixtures and the transfer instrument to be assessed for duty would include the transferor's title to or interest in the fixtures.

42 In my judgment, either test should reach the conclusion that the asset items are affixed to land so as to become part of the land and, thus, be assessable to tax together with the building concerned under s 6(1).

Whether depreciation of the asset items should be included

43 Given the Board's finding that the asset items are fixtures that form part of the building comprising the shopping centre known as Bugis Junction, the asset items are, in my view, assessable to tax together with immoveable property under s 6(1) of the PTA. Put another way, as fixtures the asset items enhance the value of the building, and they are, thus, included in the assessment of the building's annual value. It follows that the portion of the gross rent for depreciation of the asset items in question has to do with the letting of the Premises, which, in turn, means that the depreciation component in the gross rent is related to rent or letting of the Premises. Therefore, the depreciation component in the gross rent has to be included in the computation of annual value in the valuation years of 2004 and 2005.

44 Given the analysis in [43] above, how is *Chartered Bank* to be explained?

45 While the statute applicable at the time was the Local Government Ordinance 1957, the provision regarding annual value there was *in pari materia* with the current version of the PTA. The Chief Assessor argues that the decision in that case is not binding as there is no *ratio decidendi* applicable to the present case. In that case, the learned judge had to decide on the quantum of expenditure for lifts, air conditioners and fire extinguishers to be deducted in arriving at the annual value of the property, but he did not decide whether in principle depreciation of equipment should be included or excluded. The learned judge's attention was directed towards whether amortization or depreciation was the correct method for ascertaining the cost of such equipment. While the Chief Assessor's contentions appear to be, strictly speaking, correct, this seems a rather fine technical argument. As the Board noted, there appeared to have been an implicit awareness on the part of the learned judge that depreciation ought to be excluded from the gross rent for the purposes of calculating annual value.

46 I have already explained in [29] above why the Landlord's contention that *Chartered Bank* has been made binding authority by *BCH (No 2)* is misplaced. While *Chartered Bank* was mentioned in *BCH (No 2)*, depreciation was not an issue before the Court of Appeal. Reference to *Chartered Bank* was to show that previous cases, of which *Chartered Bank* was one, were consistent with its holding that the concept and language of exclusion rather than deduction be used for expenses not related to rent or letting.

47 The Landlord cited the English case of *Caltex Trading and Transport v Cane* (1962) 9 RRC 313 ("Caltex Trading") as an example of depreciation being excluded from annual value. Again the legal basis for the court's reasoning is not discernable. If the legal principle in *Caltex Trading* is that in addition to the cost of annual repairs, the landlord is allowed a further sum to meet or provide for depreciation of lifts, central heating and boiler house and ultimately their replacement cost in the future, the short answer is that the property tax regime here is different.

4 8 *Chartered Bank* might not be as unambiguous a case as might at first appear. The learned judge allowed the exclusion of expenses related to services from the gross rent in calculating annual value. Such services were (a) watchmen and cleaning; (b) lifts; (c) air conditioning; (d) common parts, and (e) cost of supervision. In addition to the cost of these services, an additional exclusion (f) was allowed for the landlord's profit on services. However, a seventh exclusion (g) was allowed for the depreciation of equipment (lifts, air conditioners and fire extinguishers). The sum on which the

allowance for the landlord's profit on services was calculated on only the first five heads (a) to (e) which were for services but not (g) which was a different genre. This is a positive indication that lifts, air conditioners and fire extinguishers were considered on a different footing from services generally. Another indication was Wee J's use of the phrase "total cost of services, *etc*" at page 5 of the report to refer to the seven heads collectively: "total cost of services" ostensibly referred to only (a) to (f), while the abbreviation "*etc*" referred to (g). These two points suggest that it was through inadvertence that Wee J later referred to all seven heads as simply "total cost of services" when determining the total money sum to be excluded. It would appear that this contributed to the Landlord and the Board being led astray in the present case. In any event, there is no trace of an identifiable legal basis upon which depreciation for equipment installed in the building was excluded from gross rent in computing annual value for property tax purposes.

49 The validity of the distinction made in [48] can withstand scrutiny in light of *BCH (No 2)*. In assessing annual value the touchstone is whether a component in the gross rent is related to rent or letting. This is in turn determined by whether the machinery or equipment to which a component in the gross rent is directed is part of the property or not. In relation to services identified as (a) to (e) and the profits on services, item (f), the expenses were clearly for services and had nothing to do with the subject property. If the conclusion is that the equipment, *ie*, item (g), formed part of land (admittedly it is a stretch to consider "fire extinguishers" part of the property), the expense ought to be related to rent or letting of the property and included in annual value (see also [27] & [43] above).

50 There is, however, one further question still to be answered: To what extent does depreciation described as the notional expense for the wear and tear of the asset items relate to the qualifying words in s 2(1) of the PTA for the purposes of ascertaining the annual value of the subject property? This question arises from the Landlord's use of the term depreciation as a notional expense. The term depreciation invites discussion on whether depreciation as "notional expense" or depreciation in the form of a notional provision for future replacement cost of the asset items is within the ambit of the qualifying words in s 2(1) of the PTA.

51 I start with the function of the qualifying words. The tax base in relation to the category of properties under s 2(1) of the PTA is the annual value, which includes an amount which the landlord charges the tenant to cover his responsibility for repairs and other annual outgoings as described by the qualifying words. This is clear from the various statements of principle made by the Court of Appeal in *Tan Hee Liang (CA)*. In that case, Andrew Phang JA (delivering the judgment of the court) reiterated (a) that the "very premise underlying the ascertainment of annual value, *viz*, the relation to the rent or letting of the subject property, which in turn approximates the real value of the property" (at [40]), and (b) that the function of the qualifying words in the definition of "annual value" is that the annual value would *include* the element of the landlord's expenses for repair, insurance, maintenance or upkeep and all taxes except Goods and Services Tax (at [43]). Phang JA said (at [44]):

> In this respect, the function of the qualifying words...in this category of properties [s 2(1)(*a*)] is to affix the responsibility of paying all the expenses of property tax, repair, maintenance and insurance *on the landlord*. Indeed, as the Judge pointed out on the Judgment (at [8]), "[t]he effect of that definition is that the landlord may be assumed to include, within the rental charged to the tenant, an amount to recoup his expenses of repair, insurance, maintenance or upkeep of the premises let."
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> [emphasis added by the Court of Appeal]

52 Two consequences flow from the meaning ascribed to the qualifying words: (a) the landlord's

actual expenses have to be expended in the year of valuation and (b) the expenses must relate to repairs, insurance, maintenance or upkeep of the subject property.

53 In contrast, conceptually depreciation is not an expense in the true sense of the word. The claim for depreciation of the asset items, referred to as a notional expense, is in respect of any contingent or future replacement cost of the asset items. It seems to me that what is envisaged in the depreciation claim is the Landlord notionally expending from year to year such sum as will in the future replace the asset items at the end of their useful life. Depreciation for escalators, lifts, air conditioning and fire safety systems installed in Bugis Junction were calculated by reference to the same depreciation rate adopted in *Chartered Bank*, and by attributing to those asset items a depreciable notional useful life and calculating the appropriate allowance to be made so that the relevant asset item would be able to be replaced at the end of its notional useful life. In assigning $0.20 per square foot per month to the depreciation of the asset items, the Landlord appears to be referring to either a notional provision or a notional account of its replacement cost but given its "notional" character, no eventuality to replace need follow. In reality, no expenditure falling within the qualifying words has occurred in the valuation year. In the context of a sinking fund, such as that discussed in *Tan Hee Liang (CA)*, the money for major maintenance and repairs comes from the sinking fund and will be included in the assessment of the annual value for purposes of property tax when the money is spent or specifically allocated in the future. As to when money can be considered to be specifically allocated is something which Phang JA has called upon the Chief Assessor to provide firm guidelines. In *Tan Hee Liang* the Chief Assessor excluded from the gross rent contributions payable towards the sinking fund in the computation of annual value when no money from the sinking fund was spent towards major repairs in the valuation year. Notably, contributions to a sinking fund in the gross rent is conceptually different from the depreciation component in the gross rent in respect of the asset items. In the present case, the claim for depreciation is a "notional expense" in respect of contingent or future replacement cost of the asset. By parity of reasoning (and not by analogy), Phang JA's observations are instructive to clarify that landlords' expenses within the meaning of the qualifying words must be expended in the valuation year if the expenditure is to be included in the annual value. Phang JA said (at [73]):

> ... [T]here arises the issue of *when* the funds utilised from the sinking fund for the purposes of maintenance and repair can be included in the assessment of the annual value for the purposes of property tax. We are of the view that such inclusion can take place only *when the maintenance and repairs are in fact effected or at least specifically allocated (which would, in the nature of things, be a major undertaking* (see above at [55]). Thus, in so far as present maintenance preserves the value and hence goes towards the present value, this should be included. As for future maintenance, we think this might enhance (or preserve) the value of the property and hence is related to the annual value. However, just when "specific allocation" of funds for such future maintenance takes place is something which we think the Chief Assessor would be in a better position to provide some firm guidelines on after consultation with the relevant industry stakeholders. Apart from the precise timing when the payments ought to be taken into account, there is a further issue of whether one-off payments have a permanent effect on the property tax payable.
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> [emphasis added by the Court of Appeal]

54 In my judgment, a notional expense is outside the ambit of the qualifying words in the statutory definition of annual value. The sum of $0.20 per square feet per month in the gross rent is a payment related to rent or letting of the Premises for the reasons set out in [43], and is, therefore, included in the computation of annual value for the valuation years of 2004 and 2005.

Result

Result

For the reasons stated, the Chief Assessor's appeal in OS 422/2011 is allowed with costs. Since the parties have agreed to the annual values applicable if depreciation of the asset items is to be included in the computation of annual value, the figures in Column E of the Schedules marked as "A-1" and "A-2" in the Agreed Statement of Facts are to apply. [note: 9]

[note: 1] ROA Vol 3 at p 1649

[note: 2] ROA Vol 1 at p 6 para 10

[note: 3] Chief Assessor's Skeletal Submissions at para 7

[note: 4] Respondent's Submissions at paras 35(a) & (b)

[note: 5] Respondent's Submissions at para 28

[note: 6] Chief Assessor's Bundle of Authorities, Tab 9 at p 96

[note: 7] Board's Decision at para 14

[note: 8] ROA Vol 3 Tab 18

[note: 9] ROA Vol 3 Tab 17 p 1712