# Glengary Pte Ltd *v* Chief Assessor
# [2012] SGHC 183

**Case Number** : Originating Summons No 1075 of 2011

**Decision Date** : 05 September 2012

**Tribunal/Court** : High Court

**Coram** : Lai Siu Chiu J

**Counsel Name(s)** : Tan Kay Kheng, Tan Shao Tong and Novella Chan (WongPartnership LLP) for the Appellant; Joyce Chee and Lau Kai Lee (Inland Revenue Authority of Singapore) for the Respondent.

**Parties** : Glengary Pte Ltd — Chief Assessor

*Revenue Law – Property tax – Annual value*

5 September 2012 Judgment reserved.

**Lai Siu Chiu J:**

**Introduction**

1 This is an appeal against the decision of the Valuation Review Board ("the VRB") in VRB Appeals No 236 of 2009 and No 237 of 2009: (see *Glengary Pte Ltd v Chief Assessor* [2012] SGVRB 1) in fixing the annual value of a piece of land at $51,409,000 for 2007 and 2008.

**Factual background**

2 The plot of land in question is TS 30 Lot LP 650 ("the Property"), the site on which a condominium development now known as The Sail@Marina Bay ("The Sail") was built. The Property, which is located at Marina Boulevard, was acquired by Glengary Pte Ltd ("the Appellant") from the state under the Government Land Sales scheme in 2002 on a 99-year lease with effect from 12 August 2002. The Sail comprises of a seven-storey car park/retail podium (which contains 22 retail units and the car park) and two residential tower blocks (consisting of 1,111 residential units).

3 In December 2003, the Appellant, through its architect, submitted an application to the Urban Redevelopment Authority ("URA") for provisional permission to build residential and retail units at The Sail. The URA granted provisional permission in February 2004.

4 According to Ms Chua Beng Ee ("Ms Chua"), the property valuer engaged by the Appellant, units which are intended to be constructed may be launched for sale once the written planning permission, building plan approval, surveyor's certificate on the floor areas of the units, and housing numbering certificate (collectively "the Approval Documents") have been issued. Ms Chua stated that there was no requirement for any construction to have commenced on the site before the sales of the units to be constructed can take place. Conversely, such sales cannot take place (and construction cannot even begin) if the Approval Documents have not been issued.

5 Before construction of The Sail began, the Appellant launched in October 2004, the sale of the residential units which it intended to construct. Possession was granted to the building contractor on 22 November 2004. The vast majority of the residential units (1,106 units) were sold by the end of

2005, with four units sold in 2006 and the last unit sold in January 2007. While The Sail was under construction in 2007, the Chief Assessor ("the Respondent") issued a notice under s 20 of the Property Tax Act (Cap 254, 2005 Rev Ed) ("the Act") increasing the annual value of the Property to $59,091,000 with effect from 1 April 2007. The Appellant objected to this notice. The Appellant also objected to the annual value of $59,091,000 in the 2008 Valuation List. The Respondent disallowed both objections, relying on s 2(3)(*b*) of the Act to disregard the committed sales of the units in assessing the annual value of the Property. The Appellant appealed to the VRB against the Respondent's decision.

6 The Temporary Occupation Permit ("TOP") for Phase 1 of The Sail was issued on 29 May 2008 and the TOP for Phase 2 was issued on 29 September 2008. The entire development received its Certificate of Statutory Completion ("CSC") on 17 April 2009.

**The statutory provisions**

7 Section 2 of the Act provides as follows:

> **Interpretation**
>
> 2.—(1) In this Act, unless the context otherwise requires —
>
> ...
>
> "annual value" ... means the gross amount at which the [house or building or land or tenement] can reasonably be expected to be let from year to year ...
>
> ...
>
> (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% —
>
> (*a*) on the estimated value of the property, including buildings, if any, thereon; or
>
> (*b*) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon...

**The decision below**

8 Both parties tendered an Agreed Statement of Facts (which set out many of the facts outlined above) to the VRB. In particular, they agreed on the quantum of the annual value of the Property depending on the interpretation of section 2(3)(b) of the Property Tax Act as follows:

> (a) If the VRB were to decide that the basis of assessment under s 2(3)(*b*) of the Act is that any committed sales of the units in respect of the Property are to be disregarded ("Basis A"), the annual value shall be reduced to $51,409,000 with effect from 1 April 2007 and 1 January 2008 in respect of the two appeals; and
>
> (b) If the VRB were to decide that the basis of assessment under s 2(3)(*b*) of the Act is that the committed sales of the units in respect of the Property are to be taken into consideration ("Basis B"), the annual value shall be reduced to $27,000,000 with effect from 1 April 2007 and 1 January 2008 in respect of the two appeals.

9 The VRB decided that the Respondent was entitled to treat the land as vacant land and disregard the committed sales in the valuation. A plain reading of s 2(3)(*b*) of the Act fully entitled the Respondent to treat the land as vacant land and to disregard the fact that there were buildings on the land or buildings in the process of being constructed on the land. The Appellant's submission that the sale prices of the units were lower than the prices in 2007/2008 (due to the sharp increase in the interval) was held to be irrelevant as it was a commercial decision on the Appellant's part to launch sales before the units were physically completed.

10 The VRB agreed with the Respondent that the fact that the units had been sold was connected to the fact that there were buildings being erected on the vacant land. The VRB held (at [10]) that since the committed sales clearly flowed from the fact that the buildings were under construction, they had to be disregarded as the only logical and reasonable interpretation of s 2(3)(*b*) of the Act. The VRB then considered a speech of the Minister for Finance, Lim Kim San ("the Minister's speech"), during the second reading of the Property Tax (Amendment) Bill in Parliament (*Singapore Parliamentary Debates*, *Official Report* (30 December 1965) vol 24 at cols 774–775):

> The Bill now before Parliament envisages two major changes of substance to the existing Property Tax Ordinance. Section 2 of the Ordinance defines "annual value" and gives the Chief Assessor the option of adopting as an annual value a sum equal to five per cent of the capital value of the property in certain circumstances. But in the operation of the Ordinance, it has been found that the provision is not adequate to cover all cases. *Under the existing law, the option applies where buildings are erected on land and also where the land is vacant. There has been doubt as to whether the option applies while buildings are in the course of construction* and some litigation has already resulted from this doubt. *The amendment will make it clear beyond doubt that the Chief Assessor may adopt an annual value of five per cent of the capital value of any property whether vacant land, land with buildings erected thereon, or land with buildings being erected thereon*.
>
> [emphasis added in by the VRB]

11 The VRB found (at [13]) that it was "undeniably clear" from the Minister's speech that Parliament intended to provide the Chief Assessor with a straightforward formula to assess the annual value of a property as if it were vacant land in all cases. The VRB stated (at [10]) that if the building being erected was to be disregarded, then it logically followed that anything which related to or was connected to the building being erected should likewise be disregarded.

12 The VRB opined (at [14]) that if the Appellant's argument was accepted and the committed sales were taken into account, that would have been tantamount to including the value of the building on the land or the building to be erected on the land; the committed sales of the units in the development meant nothing more than a sale of the parts of a building which has yet to be fully constructed. The Appellant's interpretation of s 2(3)(*b*) of the Act would have necessarily rendered the legislative amendment in 1965 meaningless and had to be rejected. Hence, the VRB rejected the Appellant's arguments and, pursuant to Basis A, reduced the annual value of the Property to $51,409,000 for 2007 and 2008. The VRB also awarded costs of $3,000 to the Respondent.

**The Appellant's case**

13 The Appellant submits that the 1965 amendment to the Act was made to enable the Respondent to have recourse to what is now s 2(3)(*b*) of the Act in order to determine the annual value at 5% of the land value, notwithstanding the fact that buildings were being constructed on the

land. The Appellant notes that but for the 1965 amendment, this option might not have been available to the Respondent. The Appellant argues that the statutory fiction created by s 2(3)(*b*) of the Act only applies in relation to the *physical* state of the land and cannot be *extended* to create a further fiction that the units in respect of the Property have not been sold when they were in fact sold. The Appellant points out that there was no indication of such a further fiction in the Minister's speech in 1965 when moving the amendment.

14 The Appellant cites the decision of the High Court of Australia in *Spencer v The Commonwealth of Australia* (1907) 5 CLR 418 ("*Spencer*") for the proposition that all circumstances which might affect the value of the land must be taken into consideration. The Appellant submitted that the *sale of units* would clearly be one such circumstance, because once all units are sold the gross realisable sale proceeds for the project would have crystallised for the developer and the escalation of the market prices of units in the general market would not increase the gross development value of the particular site for the developer.

15 The Appellant also relies on a broader principle, of "the principle of reality", which is essentially that all circumstances which exist in reality should be taken into consideration in valuing land, except where not required by statute, citing *Hoare v National Trust* (1999) 77 P & CR 366 ("*Hoare*"), *Best Origin Ltd v Commissioner of Rating and Valuation* [2008] HKLT 7 ("*Best Origin*") (subsequently approved in *Best Origin Ltd v Commissioner of Rating and Valuation* [2010] HKCA 368), *Trocette Property Co Ltd v Greater London Council* [1974] RVR 306 ("*Trocette Property*") at 311, and *Federal Commissioner of Taxation v Comber* (1986) 64 ALR 451 ("*Comber*") at 458.

**The Respondent's case**

16 The Respondent advanced four principal arguments. First, it submitted that a valuation on Basis B would effectively "lock in" the annual value once all the units are sold, and that this would not be in accordance with the concept of "annual value" that encompasses a market value concept, whereby the value may fluctuate in accordance with the property market conditions from year to year. The Respondent argues that Basis A is more aligned to the concept that the "annual value" should be dependent on market value.

17 Secondly, the Respondent argues that Basis A better reflected Parliamentary intention for the following reasons:

(a) Where "deeming provisions", such as s 2(3)(*b*) of the Act, are in issue, one must treat as real the consequences and incidents that inevitably flow from or accompany that deemed state of affairs: *East End Dwellings Co Ld v Finsbury Borough Council* [1952] AC 109 ("*East End Dwellings*"), K Shanmukham ed *NS Bindra's Interpretation of Statutes* (The Law Book Company, 1997, 8th Ed) ("*Bindra*"). In the context of the deeming provision of s 2(3)(*b*) of the Act, the deemed state of affairs (*ie*, treating the land as if it was vacant land) gives rise to consequences and incidents which must be treated as real. According to the Respondent, these consequences and incidents include the fact that a piece of vacant land with no building being erected is incapable of having units which can be sold. Therefore, the Respondent argues, the committed sales of such units cannot be taken into consideration.

(b) Parliament had intended to provide a straightforward statutory formula to assess the annual value of a property as if it was vacant land in all cases. What the 1965 amendment did was to clarify the meaning of "vacant land" as land that is devoid of any development or process of development.

(c) The Appellant's interpretation would render s 2(3)(*b*) of the Act otiose. The taking into account of committed sales would be tantamount to including the value of the building on the land, given that committed sales of units in the development mean nothing more than a sale of the parts of a building which has yet to be fully constructed.

(d) It was presumed that Parliament did not intend an "absurd" result. Legislation should be interpreted in a manner which avoids an inconvenient, unworkable or impracticable result. The Appellant's approach would be administratively difficult because this would require the annual value to be adjusted each time there was a committed sale of a unit.

18 Thirdly, the Respondent points out that its practice is to rely on s 2(3)(*b*) of the Act in the case of vacant land or development land with disused or insignificant buildings, or buildings which were going to be demolished to make way for development. The Respondent submits that when construction commences on the land and during the progress of construction works, the annual value will *continue* to be determined on the basis of 5% of the vacant land value. The Respondent cites *Ean Lian (Pte) Ltd v Chief Assessor* [1975] 1 MLJ xlvi (Valuation Review Board Appeal No 434 of 1973) ("*Ean Lian*") in support of this proposition. The Respondent highlights that it does not impose property tax on the unit owners once the sale has been made, and that the unit-owners only have to pay property tax when the TOP has been issued in respect of their units. The Respondent would then reassess the whole property upon the issuance of the TOP for the buildings erected on site.

19 Finally, the Respondent argues that because the Act is meant "to provide for the levy of a tax on immovable properties and to regulate the collection thereof", property tax is a liability *in rem* (not a liability *in personam*). The tax liability is attached to the property being taxed, and not to the owner of the property. The Respondent submitted that for this reason it should not have regard to the *in personam* arrangements of the Appellant in respect of the sale of units.

**The court's decision**

***Statutory interpretation***

20 Given that this case essentially turns on the interpretation of s 2(3)(*b*) of the Act, the starting point in any such exercise must be s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed), which provides that a purposive approach must be adopted when interpreting statutory provisions:

**Purposive interpretation of written law and use of extrinsic materials**

9A.—(1) *In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object*.

(2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —

(*a*) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or

(*b*) to ascertain the meaning of the provision when —

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

(3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include —

(*a*) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;

(*b*) *any explanatory statement relating to the Bill containing the provision*;

(*c*) *the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament*;

(*d*) any relevant material in any official record of debates in Parliament;

...

[emphasis added]

21 In *Chief Assessor and another v First DCS Pte Ltd* [2008] 2 SLR(R) 724 ("*First DCS*"), the Court of Appeal explained (at [10]) the effect of s 9A(1) of the Interpretation Act as follows:

> 10 When construing statutory provisions, it is important to consider the purpose for which Parliament enacted the provision in question. It would be incorrect to read the provision as if it existed in a vacuum. Indeed, by virtue of s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed), the courts must prefer an interpretation which supports the intended purpose of a provision over an interpretation that does not. The effect of that section is to make the purposive approach the paramount rule of construction in our jurisprudence: *PP v Low Kok Heng* [2007] 4 SLR(R) 183.

Bearing this principle in mind, I will now consider s 2(3)(*b*) of the Act in detail, beginning with its legislative history.

***Legislative history***

22 Property tax legislation in Singapore originated from the Indian Acts Nos 25 and 27 of 1856, which provided for the assessment and collection of municipal rates and taxes in Calcutta, Madras and Bombay (as they were then known), as well as the Settlement of Prince of Wales' Island, Singapore and Malacca: see *First DCS* at [17]. Section 4 of the Indian Act No 25 of 1856 stated as follows:

> The *estimated gross annual rent* at which the houses, buildings, and lands liable to the rate *might reasonably be expected to let* from year to year shall, for the purposes of the rate, be *held and deemed to be the annual value* of such houses, buildings, and lands. ...
>
> [emphasis added]

23 This concept of annual value was a narrow one, using as its sole measure the reasonable *gross annual rent*. By the time of the Municipal Ordinance (No 15 of 1896) ("the 1896 Ordinance"), the concept of annual value was widened to include a measure based on the *value of the land*. Section 3 of the 1896 Ordinance provided as follows:

> "Annual value" as used of a house or building or land... means the gross amount at which the same can reasonably be expected to let in average years...
>
> Provided also that where land situate within the area which is from time to time defined by the Commissioners ... is *not the site of or occupied as appurtenant to any house or building but is reserved for building purposes its "annual value" for the purpose of this Ordinance shall be deemed to be the sum which is equivalent to the annual interest at two and a half per centum per annum on the estimated value of such land valued as building land*.
>
> [emphasis added]

The definition of "annual value" in s 3 of the Municipal Ordinance (No 8 of 1913) ("the 1913 Ordinance") was materially the same.

24 In 1919, the concept of annual value was further widened by the Municipal (Amendment) Ordinance 1919 (No 12 of 1919) ("the 1919 Ordinance") which inserted the following paragraph into s 3 of the 1913 Ordinance:

> Provided also that *in estimating the annual value of any house or building the 'annual value' of such house or building shall*, ***at the option of the Commissioners*** , be deemed to be the annual value as hereinbefore defined *or the sum which is equivalent to the annual interest at two and a half per centum* ***on the estimated value of the land*** *, on which such house or building stands and which is appurtenant to such house or building*, if the estimated value is at the rate of less than $1,000 per acre, and at five per centum on the estimated value of such land, if the estimated value is at the rate of not less than $1,000 per acre.
>
> [emphasis added in italics and bold italics]

25 The purpose of this amendment was to create an alternative method of assessing the annual value of a house or building: by estimating the *value of the land*. Previously, the only way of assessing the annual value of a house or building was by reference to the reasonable gross annual rent (see [22] above). This was because the proviso to s 3 of the 1896 Ordinance (see [23] above), which allowed for the calculation of annual value by reference to the *value of the land*, did not apply where the land was in fact the site of and was appurtenant to such house or building. The explanatory statement to the 1919 Ordinance states as follows (*Straits Settlement Government Gazette* (16 Jan 1919)):

> **OBJECTS AND REASONS**
>
> The amendments proposed to be made by this Bill to the principal Ordinance are the following:—
>
> (a) Land, which is not occupied as appurtenant to any house but which is suitable for building purposes, shall be rated on a sum which is equivalent to the annual interest at 2½ per cent or 8 per cent on the estimated value of such land...
>
> ...

(d) *Land on which a house stands and the land appurtenant to such house may be rated as if there was no house just as the land mentioned in paragraph (*a*) above is liable to be rated*...

[emphasis added]

26 A perusal of the legislative debates confirms the purpose of the amendment. During the first reading of the Ordinance, the Attorney-General stated as follows (*Proceedings of the Legislative Council of the Straits Settlements for the Year 1919* (13 January 1919) at p B6):

The next amendment is the fourth amendment, *and that relates to mean houses built on valuable sites with valuable land appurtenant thereto*. It provides that where the annual rental of the house is less than a sum equal to 2½ per cent. on the value of the land, if the land is valued at less than $1,000 per acre, or where the annual rental is less than a sum equal to 8 per cent. on the value of the value where the value of the land is 1,000 per acre or more, *the Municipality can elect to rate on that sum*, either the 2½ per cent. or the 8 per cent., as the case may be *instead of rating on the annual rental of the house*. On that point, too, we find that the Housing Commissioners have a word to say—it is in paragraph 84.

"*There are many cases in the 'built-over' part of Singapore where extremely valuable sites are occupied by small mean dwellings, and where a Capital Land Value Tax on the land of 2 per cent. would considerably exceed the assessment of the annual rental*. In much cases, this Capital Land Value Tax will act as an incentive to the erection of a suitable building. ..."

Then further on, in paragraph 85, I find this:

"We think that in addition to the powers under the English Finance Act, the Improvement Commissioners should be given power to declare land to be undeveloped where the house standing on it is manifestly unfit for the site; *e.g*., where in an important street and on a valuable site there stands an old building out of all keeping with its surroundings and unsuitable to the neighbourhood."

*Therefore it is proposed that where there is a house on a piece of land and the annual rental of that house is less than the annual value of the land, or, to put it differently and more accurately, is less than the annual value which is computed on the basis of 2½ per cent. or 8 per cent., according to the value of the land, the Municipality shall have the right to elect to put its assessment on the greater sum*. ...

[emphasis added]

The purpose of the amendment in the 1919 Ordinance was clearly to *increase* the amount of property tax that could be collected by the authorities. While the pre-existing statutory provisions empowered the authorities to calculate the annual value of a house or building by reference to the reasonable gross annual rent, the amendment in the 1919 Ordinance created an alternative method of calculating the annual value of a house or building which, it was contemplated, would be chosen by the authorities where this was more beneficial to the public interest.

27 The broader definition of annual value after the 1919 Ordinance was preserved (except for changes to the statutory interest rate) in s 3 of the Municipal Ordinance (SS Cap 133, 1936 Rev Ed), s 3 of the Local Government Ordinance 1957 (No 24 of 1957) and s 2(*b*) of the Property Tax Ordinance (No 72 of 1960) ("the 1960 Ordinance").

***Purpose of the 1965 amendment***

***Purpose of the 1965 amendment***

28 Section 2(*b*) of the 1960 Ordinance was amended in 1965 ("the 1965 amendment"). The amended s 2(*b*) of the 1960 Ordinance stated as follows:

> In assessing the annual value of any property the "annual value" of such property shall, at the option of the Chief Assessor, be deemed to be the annual value as hereinbefore defined or the sum which is equivalent to the annual interest at five per centum –
>
> (i) on the estimated value of such property, including buildings, if any, thereon; or
>
> (ii) *on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon*;
>
> [emphasis added]

The purpose of the 1965 amendment was explained in the Minister's speech as set out at [10] above. That amendment was intended to remove any doubt about whether the Respondent was empowered to calculate the annual value of land by reference to its capital value even where there were buildings being erected thereon. In other words, the amended s 2(*b*) of the 1960 Ordinance was *intended* to *allow* the Respondent to calculate the annual value of land, where buildings were being erected thereon, by reference to its *capital value*. This was a crucial amendment from the perspective of the tax authorities because it had already been decided, albeit at the VRB level, that the Respondent could *only* calculate the annual value of such land by reference to the reasonable *gross annual rent*: (see *Chief Assessor v Town and City Properties Ltd* [1965–1967] SLR(R) 477 ("*Town and City Properties*") at [9] which refers to the VRB's decision that "there [was] no provision in the [1960] Ordinance whereby buildings in the course of erection can be assessed"). For completeness, it should be noted that the appeal in *Town and City Properties* was dismissed on an unrelated ground. There, the High Court judge had expressly declined to decide whether the VRB's decision was correct on this point.

29 Section 2(3)(*b*) of the Act is *in pari materia* with s 2(*b*) of the 1960 Ordinance (as amended in 1965). Hence it is evident that the statutory fiction created by s 2(3)(*b*) was intended by Parliament to allow the Chief Assessor to assess the annual value of property based on its *capital value*, even when buildings are under construction.

30 In *Ean Lian* (cited at [18] above) at xlvii, TS Sinnathuray (as Chairman of the Board) stated:

> What [section 2(b) of the 1960 Ordinance] says is this. To determine the annual value of land, the Chief Assessor has an option. He may use the formula of the lettable value; or he may make an option. If he decides on the latter and there is nothing on the land, he will make an estimate of the value of the land, and the annual value will be five per cent of that estimated value. *But if on that land there is a building, he has a further decision to make — to decide either to value the land and what is on it*,*or, fictionally treat the land as if there was nothing on it, that is, as vacant land*. Having made that decision he will make the estimation and the annual value will be five per cent of that estimation. ...
>
> ... In the present appeal... *the Chief Assessor is seeking to increase the annual value of the land per se. He has fictionally treated the land as vacant land though there is a 22-storey building in the course of construction on it*. ...
>
> [emphasis added]

The VRB's remarks in *Ean Lian* on the Respondent's "further decision" as to whether "to value the land and what is on it" were probably a reference to a choice between, on the one hand, s 2(*b*)(i) of the 1960 Ordinance which is now s 2(3)(*a*) of the Act, and, on the other hand, s 2(*b*)(ii) of the 1960 Ordinance which is now s 2(3)(*b*) of the Act.

***Committed sales and the assessment of annual value***

*The proper scope of s 2(3)(b) of the Act*

31 Both parties agree that s 2(3)(*b*) of the Act is a deeming provision: it creates a statutory fiction that, for the purposes of the assessment of annual value, there are no existing buildings or buildings being erected on the piece of land. *Black's Law Dictionary* (West Publishing, 9th Ed, 2009) defines the verb "deem" as "[t]o treat (something) as if (1) it were really something else, or (2) it had qualities that it does not have." *Bindra* (cited at [17(a)] above) reiterates (at p 46) that "full effect must be given to the statutory fiction and it should be carried to its logical conclusion". These explanations of the effect of a deeming provision may not be unsatisfactory as general principles, but the application of general principles to particular fact situations when disputes arise may prove to be difficult. All fictions naturally have consequences which arise intrinsically from them, but to what extent should these implications be *subsumed* under the fiction so "deemed", and conversely, to what extent should they be considered as *separate* from the legal fiction created? As such, the question that remains for this court to determine is *how far should the legal fiction in s 2(3)(b) of the Act be extended?*

32 Although both parties agree that s 2(3)(*b*) of the Act was a deeming provision, they disagree on the proper scope of the fiction created by the provision. I agree with the Respondent that a statutory fiction must be given full effect. In *Union of India v Jalyan Udyog* AIR 1994 SCC 318 at [19], which is a decision of the Indian Supreme Court, Reddy J stated as follows:

> ... It is well settled that where a fiction is created by a provision of law, the court must give full effect to the fiction, and as is often said, it should not allow its imagination to be boggled by any other considerations. Fiction must be given its due play; there is to be no half-way stop.

33 In *East End Dwellings* (see [17(a)] above), 55 houses in London, which were then subject to rent control, were completely destroyed in June 1944 during the Second World War. After the war ended, the local authority compulsorily purchased the land. The issue concerned the quantum of the appropriate compensation payable to the owners of the land. Section 53(1)(*a*) of the Town and Country Planning Act 1947 read as follows: "The value of the interest for the purposes of the compensation payable in respect of the compulsory purchase shall, subject to the provisions of this section, be *taken to be the value which it would have if the whole of the damage had been made good before the date of the notice to treat* [emphasis added]." The owners of the houses argued that the effect of s 53(1)(*a*) was that the notional houses would be free from rent control, and would therefore be more valuable, and the House of Lords agreed. Lord Porter stated (at 122):

> The real strength of the respondents' argument depends upon their ability to establish the contention that "make good" means restore to the former physical state with all its incidents and limitation of value. *But it is the damage which has to be made good, and damage is in its ordinary meaning a physical thing. It is the building and not the position of the owner which has to be restored. What may result from the "making good" of the building depends not upon any deduction which can be drawn from the use of that expression, but from the law applicable in the case where a house originally rent-controlled is destroyed and another of a similar type is erected in its place*.

It is from this aspect that the decision in *Ellis & Sons Amalgamated Properties Ld.* v *Sisman* [[1948] 1 KB 653] takes its importance. In that case a house had been destroyed by enemy action and later on another house, identical in form to the house which formerly stood there, was erected on the same it, *yet it was held that the new house was not the subject of rent control*.

[emphasis added]

34 Lord Asquith of Bishopstone opined (at 132–133):

*If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it*. *One of these in this case is emancipation from the 1939 level of rents*. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the *inevitable corollaries* of that state of affairs.

[emphasis added]

35 It is therefore crucial that the statutory fiction be carefully and critically analysed in order to determine its purpose, which will in turn define its ambit. In *Ex parte Walton, In re Levy* (1881) 17 Ch D 746, James LJ stated as follows (at 756–757):

*When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done*, ***the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to*** . Now, the bankruptcy law is a special law, having for its object the distribution of an insolvent's assets equitably amongst his creditors and persons to whom he is under liability, and, upon this *cessio bonorum*, to release him under certain conditions from future liability in respect of his debts and obligations. That being the sole object of the statute, it appears to me to be legitimate to say, that, when the statute says that a lease, which was never surrendered in fact (a true surrender requiring the consent of both parties, the one giving up and the other taking), is to be deemed to have been surrendered, it *must be understood as saying so with following qualification, which is absolutely necessary to prevent the most grievous injustice, and the most revolting absurdity*, "shall, as between the lessor on the one hand, and the bankrupt, his trustee and estate, on the other hand, be deemed to have been surrendered."

[emphasis added in italics and bold italics]

The same point was also reiterated in *Bindra* (at p 50) as follows:

It must be remembered that legal fictions are created for a particular and definite purpose, and they are to be limited to the very purpose for which they are created. They should not be extended beyond that legitimate field. *The fiction should, of course, be carried to its logical conclusion, but must be within the framework of the purpose for which it is created*.

[emphasis added]

36 In *Federal Commissioner of Taxation v Comber* (1986) 64 ALR 451 at 458, a decision of the Federal Court of Australia, Fisher J stated:

> In my opinion deeming provisions are required by their nature to be construed strictly and only for the purpose for which they are resorted to (*Ex parte Walton* (1881) 17 Ch D 746 per James LJ at 756). It is improper in my view to extend by implication the express application of such a statutory fiction. It is even more improper so to do if such an extension is unnecessary, the express provision being capable by itself of sensible and rational application.

37 The reason for this is clear. The *legal meaning* of a deeming provision is to be ascertained by the courts through a process of interpretation, which, in Singapore, is to be done purposively: see [20]–[21] above. Once this is done, the courts must then give full effect to the legal meaning of the deeming provision.

38 The critical issue, therefore, concerns the proper scope of s 2(3)(*b*) of the Act. For convenience, I set out again the text of s 2(3)(*b*) of the Act:

> 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% —
>
> ...
>
> (*b*) on the estimated value of the land as if it were vacant land with no buildings erected, or being erected, thereon....

In particular, the question is whether s 2(3)(*b*) *requires* the Respondent to disregard committed sales in assessing the annual value of land on which buildings are being erected.

39 In *East End Dwellings*, Lord Asquith suggested that where a consequence *inevitably* followed from the plain words of the fiction, the courts should not shirk from upholding that consequence. In the Singapore context where the courts are required to uphold the *purpose* of statutes, this idea of inevitability is best characterised as a guide to Parliamentary intention. If a consequence does in fact *necessarily* follow from the fiction created by statute, it can then be inferred that Parliament had intended that consequence (although this will, of course, be subject to evidence to the contrary).

40 In my view, it is not an inevitable consequence of the fiction created by s 2(3)(*b*) of the Act – that the land is vacant with no buildings (completed or uncompleted) thereon – that committed sales must be disregarded in the assessment of annual value. While it is true that the committed sales were undisputedly a corollary of the fact that The Sail would come into existence at some future time, that is not the question in issue. What is in issue is whether the (notional) vacant state of the land *necessarily* means that *no committed sales could have taken place*. That is not the case. There is no legal basis for the argument that there cannot be committed sales, or any legal encumbrances for that matter, on a piece of land that is vacant. A piece of vacant land may be encumbered by easements, restrictive covenants, or, as in this case, committed sales. The existence and validity of such encumbrances do not depend on the *physical* existence of any fixtures or buildings on the land.

41 While it is true that no rational person would commit himself to the purchase of any of the units in The Sail if not for the fact that The Sail will be physically constructed at some future point in time, this does not logically lead to the conclusion that the operation of s 2(3)(*b*) of the Act in deeming the building (or the process of building it) not to be existing (or ongoing) would impede on the Appellant's ability to encumber the land through committed sales. The sale of a unit is a separate event from its eventual *physical* construction. What the buyer has committed to purchase is a *physical* unit, but in the meantime, his rights and liabilities exist only *legally*.

42 In this sense, the Appellant's submission that s 2(3)(*b*) only operates in relation to the *physical* state of the land is persuasive insofar as the express words chosen by Parliament do not go beyond that. The words of s 2(3)(*b*) refer to the land being "vacant", which is a term which describes the physical state of land. It has nothing to do with ownership and possession of or rights over the land. If Parliament had intended that the fiction was to apply beyond the physical state of the land, and disregard all legal encumbrances, such an intention should have been reflected in the express wording of the legislation. As the Appellant pointed out, such express intention was made manifestly clear in the Finance (1909-1910) Act 1910 (UK) at s 25(1) which states as follows:

> For the purposes of this Part of this Act, the gross value of land means the amount which the fee simple of the land, if sold at the time in the open market by a willing seller in its then condition, *free from encumbrances*, and from any burden, charge, or restriction (other than rates or taxes) might be expected to realise.
>
> [emphasis added]

43 In essence, the plain wording of s 2(3)(*b*) of the Act does not necessarily require that committed sales be excluded from consideration in the assessment of annual value, given that committed sales may occur even in relation to vacant land. Furthermore, there is no indication in any of the Parliamentary debates (see [26] above) that s 2(3)(*b*) of the Act was intended to play this role. The 1965 amendment was made to ensure that the Respondent had the option of assessing annual value of land on which buildings were being constructed by reference to its capital value, given some doubt as to whether this option was available to the Respondent. At their highest, the Parliamentary debates and the historical context of the definition of "annual value" in our property tax legislation are *silent* as to the *method of calculating the capital value of such land*.

44 Accordingly, it is incorrect to argue, as the Respondent did, that in order to give full effect to s 2(3)(*b*) of the Act (which creates a fiction that the land is vacant land with no buildings erected or being erected thereon), it is necessary to assume that there are also no committed sales. Committed sales are not a *consequence* of the building physically being erected. In fact, committed sales may often occur without any construction being started at all. As affirmed by Ms Chua (see [4] above), there was no requirement for any construction to have commenced on the site before sales of the units to be constructed can take place. The only requirement for such sales is that the Approval Documents must have been issued, and those Approval Documents are not dependent on the commencement of construction work. As such, the Appellant's reading of s 2(3)(*b*) of the Act will neither render the provision otiose, nor create an unintended "absurdity", as contended by the Respondent. As stated above at [29], the purpose of amendments made to s 2(3)(*b*) of the Act is to allow the Respondent to assess the annual value of land even when buildings are under construction by reference to the capital value of the land. This objective has clearly been met given that the parties' dispute is only over the *process of valuing such land*.

*The principle of reality*

45 For the reasons stated above, I do not think that Parliament intends that s 2(3)(*b*) of the Act should have the effect that committed sales should be completely disregarded in the process of assessing the annual value of land on which buildings are being constructed.

46 In my view, committed sales are relevant to the assessment of annual value because committed sales may be taken into consideration in the process of valuation.

47 Given that the statutory fiction in s 2(3)(*b*) is not relevant to the question, the ordinary

principles of valuation should apply. In particular, the "principle of reality" which was cited by the Appellant dictates that the committed sales *may be taken into consideration* in the assessment of annual value.

48 In *Hoare* (at [15] above), the issue concerned the rating of two non-profitable properties owned by the National Trust for the purpose of taxation, and specifically how to ascribe a rateable value to them where arguably no tenant could be found in the real world. Eventually, the Court of Appeal held that the National Trust should not be deemed to have to make an "overbid" for these properties which were already under its ownership. Gibson LJ explained the decision as follows (at 386–389):

> Legislation in a number of areas of the law provides that in specified circumstances transactions are deemed to have occurred which in reality never did occur.
>
> ...
>
> But as was said by Lawton L.J. in a case under the Land Compensation Act 1961, *Trocette Property Co Ltd v GLC* (1972) 28 P&C R 408 at p 420:
>
> > It is important that this statutory world of make-believe should be kept as near as possible to reality. No assumption of any kind should be made unless provided for by statute or decided cases.
>
> Hoffmann LJ, in a capital transfer tax case, *IRC v Gray* [1994] STC 360 at p 372, said:
>
> > It cannot be too strongly emphasised that although the sale is hypothetical, there is nothing hypothetical about the open market in which it is supposed to have taken place. The concept of the open market involves assuming that the whole world was free to bid, and then forming a view about what in those circumstances would in real life have been the best price reasonably obtainable. ... The valuation is thus a retrospective exercise in probabilities, wholly derived from the real world but rarely committed to the proposition that a sale to a particular purchaser would definitely have happened.
>
> For rating purposes there is a similar requirement of a hypothetical transaction, but of a letting rather than a sale ...
>
> However, subject to the specific statutory provisions, the general principles which have been held to apply to statutory and other hypothetical transactions seem to me consistent with the rating authorities ... and are pertinent to the rating hypothesis *mutatis mutandis*. In particular *I would emphasise the necessity to adhere to reality subject only to giving full effect to the statutory hypothesis*, so that the hypothetical lessor and lessee act as a prudent lessor and lessee. I would call this *the principle of reality, which is, to my mind, of fundamental importance in this case*. The absence of demand for a property, if reflected in the fact that there is no competition between would-be lessees but only a single would-be lessee in the market, may well have a depreciatory effect on the rent, as the statutory assumption of a letting necessarily entails that the hypothetical lessor cannot refuse to let at the best rent available on the market, and a prudent would-be lessee, who was not in the real world under an obligation or duty to take the letting, cannot be assumed to have been prepared to pay over the odds for the letting. When there is only one bidder, the hypothetical lessor is in a weaker bargaining position, and in the real world would have achieved an advantage for himself by obtaining the letting of a property so much a drain on his resources on terms that the lessee would be bearing the costs of repair and

insurance.

...

... the chief objection, to my mind, to the adoption of that basis [that the National Trust should "overbid"] lies in its *irrationality* when it is applied to properties such as Petworth and Castle Drogo, where there is no demonstrated correlation whatever between gross receipts and rents, particularly given the huge costs of repairs and insurance. *I recognise how convenient it would be for the Revenue if such a basis could be used to solve the difficult problem which it faces in relation to such properties, but it can obtain no support for such a basis from the legislation*.

[emphasis added]

49 Pertinently, Gibson LJ's comment that considerations of the Revenue's convenience in having recourse to a particular basis for valuation should not be reason for ignoring facts of reality pursuant to the valuation process would be relevant to our case. After all, the Respondent had also submitted that it was Parliament's intention to provide the Chief Assessor with a straightforward formula to assess the annual value of a property as if it were vacant land in all cases. Yet while this would make good policy sense, in the absence of legislative support, it is patently not law.

50 However, more crucially, Gibson LJ's above statements invoke a fundamental principle of valuation, in that the process must be rooted in reality. The principle of *rebus sic stantibus* states that property must be valued as it exists at the time when the valuation is made, with all the then existing circumstances – in other words, all cases of valuation must, *prima facie*, be rooted in reality. In *Chief Assessor v Howe Yoon Chon*g [1983–1984] SLR(R) 657 at [15], the Court of Appeal opined that "it is a fundamental principle in valuation that a property must be valued as it in fact stands, *ie rebus sic stantibus*".

51 In response to the "principle of reality" relied upon by the Appellant, the Respondent had submitted that this principle is subordinate to the objective of giving full effect to the statutory fiction in s 2(3)(*b*) of the Act. There is no doubt that this proposition is correct, but as explained above (at [44]), the statutory fiction in s 2(3)(*b*) does not stretch so far as to impede the consideration of committed sales as part of the reality surrounding the Property at the time of valuation.

52 Before I turn to consider the Respondent's other arguments, it would be appropriate at this juncture to consider three hypothetical scenarios which the Respondent relied upon for its argument that the Appellant's interpretation of s 2(3)(*b*) of the Act was absurd:

(a) Scenario A is where two sites are identical and situated next to one another. Both sites are classified as uncompleted development properties in the respective owners' financial statements. The units in Site 1 have been fully sold, while none of the units in Site 2 have been sold. If the Appellant is correct, the valuation of Site 1 would not move in tandem with a rising property market while that of Site 2 would.

(b) Scenario B is where again there are two identical adjoining sites. The units in respect of Site 1 have been fully sold but Site 1 is classified as an uncompleted development project in its owner's financial statements. The units in respect of Site 2 have not been put up for sale because Site 2 is classified as an investment property. The owners' intentions should not affect the annual value of the subject property.

(c) Scenario C is where Site 1 is classified as an uncompleted development project in its owner's financial statement, but all the units have been sold. The property market takes a sudden downturn. In applying the Appellant's interpretation, Site 1 would have to be assessed by taking into account the actual sales proceeds (which will lead to a higher annual value despite the downturn in the market). Or, the Respondent posed the question, is it supposed to take into consideration the poor market conditions?

53 The Respondent submits that these scenarios show that the Appellant's interpretation of s 2(3)(*b*) of the Act is untenable because it produces outcomes that diverge from the principle that the annual values of similar properties should be similar.

54 I agree with the Appellant that the hypothetical examples do not assist the Respondent. In respect of Scenario A, the Appellant rightly pointed out that the circumstances of the two Sites are very different in the sense that a hypothetical purchasing developer would pay a significantly different price for the two Sites.

55 The same flaw is found in respect of Scenario B. I would add that (according to the way this scenario had been constructed) it is in truth not the owners' subjective intentions *per se* which affect the annual value of the properties, but rather the fact that all the units on Site 1 have been sold but none of those on Site 2.

56 I accept the Respondent's argument that s 2(3)(*b*) of the Act must be applied in a consistent manner regardless of the state of the property market. However, based on my earlier view in [54], Scenario C does not assist the Respondent. Section 2(3)(*b*) of the Act was not intended to allow the valuer to ignore the fact of committed sales (as distinct from the existence of completed or uncompleted buildings on the land). It was only intended to allow the Respondent the opportunity to assess the annual value of land upon which buildings were being constructed by reference to capital value (rather than the reasonable gross annual rent). Given that there is no evidence of Parliamentary intention that the effect of s 2(3)(*b*) should extend beyond that, ordinary principles of valuation should apply. As one of those principles is the *rebus sic stantibus* principle, the committed sales in respect of the Property is a relevant consideration.

57 Precisely how committed sales are to be taken into account, and their ultimate effect on the annual value of the Property, is a different consideration altogether. In this appeal, the court's task was simplified because parties had agreed on the annual value of the Property on Basis A and Basis B. If, in a future case, the property market takes a downturn and this issue (*ie*, of committed sales) is raised again, the *fact* that there had been committed sales (and their value) would of course be relevant to the assessment of annual value. However, that is not the same as saying that the value of the committed sales would *necessarily* be *conclusive*. That is a question of valuation which is not presently before this court.

***The Respondent's other arguments***

58 For the reasons stated, I reject the Respondent's second argument (see [17] above) based on Parliamentary intention.

59 The Respondent's first argument (see [16] above) was that Basis B (*ie*, where the committed sales were taken into consideration in the assessment of annual value) would mean that the annual value of the Property is "locked in" and could not fluctuate according to "market value". However, even if it is "locked in" and could not fluctuate according to "market value", the Respondent concedes that its practice is to reassess the annual value upon the issuance of the TOP. Thus, the "lock in"

period would only last for a few years. Further and in any event, the Respondent's notion of "market value" assumes that the market would value the Property at a particular value *ignoring the committed sales*. Without statutory authorisation, this would not be in line with the *rebus sic stantibus* principle.

60 The Respondent's third argument (see [18] above) is based on its administrative practice. The simple answer to this argument as the Appellant submitted, is that practice is not law: see *Comptroller of Income Tax v GE Pacific Pte Ltd* [1994] 2 SLR(R) 948 at [35]; and *ACC v Comptroller of Income Tax* [2011] 1 SLR 1217 at [41].

61 The Respondent's fourth argument (see [19] above) is that because property tax is a tax on a property, the Respondent should not have regard to the arrangements made by the owner of a property in respect of its sale of units. With respect, I am unable to follow this argument; as a matter of logic the incidence of a liability and the method of calculating the quantum of that liability (which is dependent on the annual value) are conceptually distinct.

**Conclusion**

62 For the foregoing reasons, I allow this appeal. The annual value of the Property is determined according to Basis B as agreed between the parties in [8(b)]. The difference between the sum of $51,409,000 as annual value (Basis A) and that under Basis B viz. $27,000,000 is $24,409,000. The Appellant is awarded interest under s 33(4) of the Act, (read with the Property Tax (Prescribed Interest Rates) Regulations 2010 (S 605/2010)) on the excess property tax paid due to the difference of $24,409,000 in annual value, from 28 November 2011 (date of decision of the VRB) until date of payment.

**Costs**

62 Costs of this appeal are to be paid by the Respondent to the Appellant on a standard basis, to be taxed unless otherwise agreed. Costs of $3,000 awarded to the Respondent at the hearing before the VRB should also be reversed in the Appellant's favour.