Aspinden Holdings Ltd v Chief Assessor and Comptroller of Property Tax [2006] SGHC 72

Case Number : OM 7/2005

Decision Date : 28 April 2006

Tribunal/Court : High Court

Coram : Andrew Ang J

Counsel Name(s) : Gurbachan Singh, Leong Kwong Wing and Chee Fang Theng (KhattarWong) for the appellant; Julia Mohamed (Inland Revenue Authority of Singapore) for the respondent

Parties : Aspinden Holdings Ltd — Chief Assessor and Comptroller of Property Tax

Administrative Law – Judicial review – Chief Assessor amalgamating property tax accounts and reducing property tax rebates – Whether discretionary power of Chief Assessor to amalgamate accounts exercised arbitrarily or improperly

Revenue Law – Property tax – Annual value – Property comprising subsidiary strata lots – Several strata lots occupied by each tenant – Whether each lot constituting separate property for purposes of assessing annual value – Whether Chief Assessor having power to reconfigure and amalgamate several strata lots into one property tax account – Whether Chief Assessor having power to regard several lots together and assess annual value as a whole – Section 2(7) Property Tax Act (Cap 254, 2005 Rev Ed)

Revenue Law – Property tax – Valuation list – Chief Assessor amalgamating property tax accounts without authorisation from owner thereby reducing property tax rebates – Party walls between strata lots demolished – Changes in rental for lease of strata lots – Chief Assessor seeking to amend Valuation List to reflect amalgamation of property tax accounts – Whether Chief Assessor entitled and having valid grounds to amend Valuation List – Sections 20(1), 20(2) Property Tax Act (Cap 254, 2005 Rev Ed)

Words and Phrases – "Flat" – Whether flat can consist of more than one lot – Section 3 Land Titles (Strata) Act (Cap 158, 1999 Rev Ed)

Words and Phrases – "Lot" – Whether strata lot must be separately assessed – Section 2(7) Property Tax Act (Cap 254, 2005 Rev Ed)

1 These were appeals against the decision of the Valuation Review Board ("the Board") dismissing the appellant's appeals against the Chief Assessor's notices of assessment in respect of 155 subject properties, more particularly described below. As the facts are not in dispute, I have taken the liberty of adopting much of the Board's summary of the same with little amendment.

Factual background

2 The appellant is a company incorporated in Singapore. On 17 May 2002, the appellant purchased various strata lots in the building known as Wisma Atria, located at 435 Orchard Road, Singapore, from Wisma Development Pte Ltd. Wisma Atria was strata subdivided in 1989 and is governed by the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA"). The strata lots were leased out to various tenants to operate retail or restaurant outlets.

3 The 155 subject properties were each issued with separate subsidiary strata certificates of title ("SSCT"). The tenants of those 155 subject properties actually operated a total of only 45 business units, as each retail or restaurant outlet physically occupied two or more strata-titled lots.

4 Separate property tax accounts were maintained for the majority of the 155 subject

properties since 1989. As such, for the majority of the cases, each strata lot unit had its annual value individually assessed. Nevertheless, the appellant had requested the respondent to amalgamate the property tax accounts in certain instances prior to 2002. The respondent acceded to those requests and amalgamated the accounts for seven of the tenants. This resulted in a total of 138 property tax accounts being maintained for the 155 subject properties until November 2002.

5 On 21 November 2002, the respondent further amalgamated the 138 property tax accounts into 45 accounts, mostly with retrospective effect from 1 January 2002 ("the 2002 amalgamation"). The respondent then issued notices under s 20(2) of the Property Tax Act (Cap 254, 1997 Rev Ed) to amend the 2002 Valuation List.

6 In the majority of cases, the "amalgamated" annual values ascribed to the properties were largely similar to the aggregate of the annual values of the component strata lots. Thus, where prior to the 2002 amalgamation, the annual values for units #B1-03 and #B1-04 were assessed at $116,000 and $140,000 respectively, pursuant to the 2002 amalgamation, the "amalgamated" annual value for the two units was $256,000, this being the sum of the annual values of the two units.

7 The appellant initially filed notices of appeal in respect of 46 "amalgamated" notices of assessment. Before the Board, only 45 of the appeals proceeded for hearing, relating to the 155 subject properties. The main point of contention on appeal was that the 2002 amalgamation had caused a substantial reduction in property tax rebates which the appellant might otherwise have been entitled to pursuant to various property tax remission orders.

The property tax remission orders

8 In 2001, the Government had announced an off-budget relief package, which included a 25% property tax rebate for commercial and industrial properties for one year with effect from 1 July 2001. On 12 October 2001, the Finance Minister revised the off-budget package to provide for a fixed rebate of up to $8,000 per year to all commercial and industrial properties with a further rebate of 30% for any balance of the property tax payable. The Property Tax (Non-Residential Buildings) (Remission) (No 2) Order 2001 (S 553/2001) implemented this new rebate scheme, which was to take effect from 1 July 2001 to 31 December 2002 ("the 2001 remission order"). This rebate scheme was extended to 30 June 2003 by a further remission order in 2002. Subsequently, there was another (final) extension of the remission order to 31 December 2003.

9 The appellant contended that by the 2002 amalgamation, the respondent had acted unreasonably, arbitrarily and unfairly to deny the appellant the benefit of property tax rebates pursuant to the remission orders.

10 Using units #B1-03 and #B1-04 ("the Bossini outlet") once again as an illustration, the appellant noted that the consequence of the 2002 amalgamation was that the property tax rebate was reduced by $5,600. Prior to the 2002 amalgamation, the property tax remitted pursuant to the 2001 remission order was the aggregate of:

(a) $8,000, this being 100% of the property tax in relation to the first $80,000 of the annual value; and

(b) 30% of the property tax in relation to the annual value exceeding $80,000.

11 Thus, only 70% of the property tax in relation to the annual value exceeding $80,000 would be payable in respect of each of such property. The annual values for the component units of the

Bossini outlet were previously assessed at $116,000 and $140,000. Thus, the property tax payable (at the rate of 10%) was as follows:

(a) #B1-03: ($116,000 less $80,000) x 70% x 10% = $2,520

(b) #B1-04: ($140,000 less $80,000) x 70% x 10% = $4,200

Tota
=
$6,7

12 However, after the 2002 amalgamation, with both units merged into one property tax account, the aggregate annual value ascribed to the Bossini outlet was $256,000. Hence the property tax payable was: ($256,000 less $80,000) x 70% x 10% = $12,320. The 2002 amalgamation had therefore resulted in additional property tax in respect of the Bossini outlet to the tune of $5,600 (*ie*, $12,320 less $6,720).

Issues

13 The appellant framed the issue on appeal thus: What is the proper assessable entity, for the purposes of determining annual value, according to the Property Tax Act (Cap 254, 2005 Rev Ed) ("the Act")? In particular, does the Act require each subject property to be assessed separately, or does it confer upon the Chief Assessor the power to reconfigure and amalgamate a few subject properties into one property tax account?

14 The main plank on which the appellant based its contention for separate assessment for each strata lot was s 2(6) of the Property Tax Act (Cap 254, 1997 Rev Ed) (re-numbered s 2(7) in the Act). On behalf of the Chief Assessor, it was contended that following the *rebus sic stantibus* principle (*viz*, that the properties should be assessed as they stand and as used) the Chief Assessor was correct to have assessed the subject properties as amalgamated business units on the basis of their use as such.

15 Subsidiary issues that were raised included the following:

(a) Whether the Valuation List had become inaccurate in any material particular so as to warrant its amendment pursuant to s 20 of the Act.

(b) Whether the method of assessment adopted by the Chief Assessor was primarily to deny the appellant the full benefit of the remission orders and as such was unreasonable or improper.

Interpretation of s 2(7) of the Act

16 With the introduction of strata subdivision under the LTSA, an amendment was made to the Property Tax Ordinance 1960 (No 72 of 1960) with effect from 1 January 1969 to provide for the assessment of annual value in respect of a strata-subdivided building. The new proviso (*e*) to s 2 (subsequently, s 2(6) of the Property Tax Act (Cap 254, 1997 Rev Ed) and now, s 2(7) of the Act) of the Act provides as follows:

> In assessing the annual value of any property which comprises a lot the title of which is issued under the Land Titles (Strata) Act (Cap. 158) —
>
> (*a*) the subsidiary proprietor of the lot shall be deemed to be the owner thereof;

(*b*) the annual value of the lot shall be determined as if that lot comprised a freehold estate in land; and

(*c*) no separate annual value shall be attributed to the land upon which the subdivided building stands.

17 The appellant contended that s 2(7) requires that such property comprising a subsidiary strata lot be assessed separately for the purpose of determining annual value. It pointed out that s 2(7) refers throughout to "the lot" and that therefore each lot constituted a separate property for the purpose of assessing annual value.

18 The Board, however, pointed to the predominant use of the word "flat" rather than "lot" in the Explanatory Statement to the Property Tax (Amendment) Act 1968 (Bill 31 of 1968), as well as in Parliamentary debates as supporting its view that the word "lot" in s 2(7) of the Act should be read as if it referred to "flat", a term defined in the LTSA but not in the Act. In its view, since a "flat" as defined in the LTSA could consist of more than one lot, the Board's interpretation would allow the subject properties in the instant case to be assessed on an amalgamated basis given that they were used as integrated business units.

19 Whilst the Board did concede that what they were propounding was a "purposive and strained" interpretation, they felt it was justified because s 2(7) contained "a palpable error in the text which plainly falsifies Parliament's intention" (see [2005] SGVBR 2 at [83]). With due respect to the Board, I am unable to agree with this interpretation. The word "flat" was used interchangeably with "lot" in the Explanatory Statement and in the Parliamentary debates because they did refer to the same thing. The support which the Board found in the definition of "flat" in the LTSA for its view that a flat could consist of more than one lot is questionable. Section 3 of the LTSA defines a "flat" as follows:

> "flat" means a horizontal stratum of any building or part thereof, whether such stratum is on one or more levels or is partially or wholly below the surface of the ground, which is used or intended to be used as a complete and separate unit for the purpose of habitation or business or for any other purpose, *and may be comprised in a lot, or in part of any subdivided building not shown in a registered strata title plan*. [emphasis added]

The Board took the words "and may be comprised in a lot" as suggesting that the flat could consist of more than one lot. With due respect, I do not believe that was what the definition was intended to convey. In practice, even when two lots are amalgamated to form one flat, the flat would be assigned a new lot number. It seems clear to me that the permissive case "may" was used to introduce the alternative, *ie*, that a flat may also comprise part of any subdivided building which has not been strata subdivided under the LTSA. (Exemption from strata subdivision is expressly provided for under s 6(1) of the LTSA. It could also be granted by the Minister pursuant to s 6(3) thereof.)

20 In my view, there was no need to resort to a "purposive and strained" interpretation. Perhaps the Board felt driven to this interpretation because of the appellant's insistence that s 2(7) requires that the annual value of each strata lot has to be separately assessed. I do not read it that way at all.

21 Interestingly, in another property tax appeal, *Cho Chih Yee v Chief Assessor* [1969] 2 MLJ iii, the taxpayer argued quite the opposite, *viz*, that proviso (e) (as s 2(7) then was in the Property Tax Ordinance 1960) suggested that all strata lots belonging to one owner should be assessed as one

building.

22 In truth, as the Chief Assessor submitted in the proceedings below, s 2(7) was introduced to address the uncertainties that arose with the introduction of strata subdivision. For the first time in Singapore, "properties in the air" (*ie,* strata lots in a building) were capable of being separately owned instead of being part of the land on which the building stood as was the case under the common law encapsulated in the maxim "*quiquid plantatur solo, solo cedit*". By virtue of s 13 of the LTSA, the owner of a strata lot also owned as tenant-in-common together with all other subsidiary proprietors an undivided fractional interest in the "common property"; by definition "common property" included land on which the building stood. Consistently with the LTSA, s 2(7) of the Act recognised the subsidiary proprietor of a strata lot as the owner thereof for property tax purposes and stated in effect that the annual value of a strata lot was to be assessed no differently than if it were a freehold estate in land. And since, under s 13 of the LTSA, the land was owned in common by the subsidiary proprietors of the strata lots, no separate valuation of the land was required for imposition of property tax.

23 Clearly, the building which a strata lot formed part of could be erected on leasehold as well as on freehold property. Similarly, it is clear from the definition of "annual value" in s 2 of the Act that its determination would not ordinarily depend on whether the subject property was leasehold or freehold but rather on the rental which it could fetch. Why then the provision in s 2(7)(*b*) that the annual value of a strata lot is to be determined as if that lot comprised a freehold estate in land? In my view, the provision was to make clear that this "property in the air" newly created by statute was to be valued no differently than if it were a freehold estate in land.

24 It is not any more a prescription that a strata lot must always be separately assessed than is s 2(8) a prescription that any building erected on land comprised in a statutory land grant or strata lease must invariably be assessed as a whole. (Note the similarity between s 2(7)(*b*) and s 2(8)(*b*), the latter of which provides that "the annual value of the property shall be determined as if that property comprised a freehold estate in land".)

25 Support for this may be found in *Singapore Parliamentary Debates, Official Reports* (31 July 1968), vol 27 at cols 727–728, on the Second Reading of the Property Tax (Amendment) Bill where the Parliamentary Secretary to the Minister for Finance (for the Minister for Finance) said:

> The Bill now before this House envisages a number of amendments to the existing Property Tax Ordinance.
>
> Since the Land Titles (Strata) Act was enacted in 1967, it is advisable to provide specifically for owners of flats to be subject to assessment annually under the Property Tax Ordinance. That Act introduced a new concept of ownership, and flat owners registered under that Act may have doubts as to what their property tax position is, since they are owners of property situated "in the air" and thus somewhat different from the usual type of ownership attached to the ground.
>
> To this end, a new paragraph (e) is added to the proviso to section 2 of the Property Tax Ordinance. The new paragraph seeks to ascertain, firstly, who the owner of each such lot or flat "in the air" is. Secondly, it stated that *the annual value of the flat is to be assessed in the same manner as any other freehold estate in land*. And, thirdly, it excludes the land on which the flats are built from assessment when the flats are already individually assessed.
>
> [emphasis added]

Section 2(7) must also be read harmoniously with ss 6 and 10 of the Act.

26 Section 6 of the Act is the charging section which provides that property tax shall be payable at the rate or rates specified in the Act upon the annual value of *all houses, buildings, lands and tenements whatsoever in the Valuation List* and amended from time to time in accordance with the provisions of the Act. If a property is to be charged with property tax, it must first be included in the Valuation List.

27 Reference to the Valuation List brings us to s 10, the relevant parts of which provide as follows:

> 10. — (1) The Chief Assessor shall cause to be prepared a list, which shall be known as the Valuation List, of *all houses, buildings, lands and tenements*.
>
> …
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> (3) The Valuation List shall contain in respect of all houses, buildings, lands and tenements —
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> (*a*) a description or designation sufficient for identification;
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> (*b*) the name of the owner;
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> (*c*) the annual value ascribed thereto; and
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> (*d*) such other particulars as the Chief Assessor may from time to time consider necessary.
>
> (4) Each part of a building divided laterally or horizontally into parts in such a manner that the owner, either solely or jointly with other owners, of one part is not also the owner either solely or jointly with the other owners respectively of any other part, shall for the purpose of this Part be deemed to be a building.
>
> (5) Each part of a partially completed building divided laterally or horizontally into parts shall for the purposes of this Part be deemed to be a building if it is used for human habitation or otherwise.
>
> [emphasis added]

28 It will be noted that s 10(1) does not refer specifically to a strata lot. For a strata lot to be within the scope of charge, it is necessary for it to fall within any of the named categories, *viz*, "houses, buildings, lands and tenements". It is clear that "houses, buildings, lands and tenements" are not mutually exclusive. For example, as defined in s 2:

> "building" means any structure erected on land and *includes any house*, hut, shed or similar roofed enclosure, whether used for the purposes of human habitation or otherwise, any slip, dock, wharf, pier, jetty, landing-stage, underground or overground tank for the storage of solids, liquids or gases, and any oil refinery. [emphasis added]

The word "tenement" is not defined in the Act but appears to have a wide meaning. In *Cho Chih Yee v Chief Assessor* ([21] *supra*), the Board held that a flat was a tenement on the basis that each flat

was a separate, self-contained dwelling. The Board found support for its decision in the following definitions of "tenement" ([21] *supra* at vi):

> *Stroud's* Judicial Dictionary: 3rd Edition: Vol. 4 at p. 2993:–
>
> > (19) "House or tenement" (s.13(2), Customs and Inland Revenue Act, 1876 (41 & 42 Vict., c.15): there, "tenement" means "part of a house so structurally divided and separated as to be capable of being a distinct property or a distinct subject of a lease" (*per* Inglis L.P. *Russell v. Coutts,* 19 Sc.L.R. 197, cited with approval by Halsbury, C., and Lord Davey, in *Grant v. Langston*, 37 Sc.L.R. 691, cited HOUSE, and applied in *Union Bank of Scotland v. Inland Revenue Commissioners*, 38 Sc.L.R. 464, and in *Nichols v. Malim*, [1906] 1 K.B. 272, cited THEREWITH).
>
> *Burrows*: Words and Phrases: 1966 Supplement Vol. 5, p. 58:–
>
> > Although in popular language the term "tenement" means a house or part of a house capable of separate occupation, and although in a statute where such an expression as "houses and tenements" is used, the popular meaning may be assigned to the word … its strict meaning is everything in which a man can have an estate of freehold and which is connected with land." *Beauchamp v. Winn* (1873), L.R. 6 H.L. 223, at p. 241, where Lord Chelmsford thus quotes from 2 *Blackstone's* Commentaries, p. 16. *Re Lehrer and the Real Property Act, 1900*, [1960] N.S.W.R. 570, *per* Jacobs J., at p. 575.

29 Similarly, in *Intercontinental Properties (Pte) Ltd v Chief Assessor, Singapore* [1980–1981] SLR 561, F A Chua J came to the conclusion that various flats (each of which was a self-contained unit) in the apartment block, Highpoint, were tenements and were properly included in the Valuation List from the date each such flat was completed even though the whole apartment block had not yet been completed. The same point was decided in *International Associated Co (Pte) Ltd v Chief Assessor,* Singapore [1980–1981] SLR 257 in relation to an office unit in International Plaza.

30 Looking at s 10(5), it can readily be seen that a flat or any part of a partially completed building would also be deemed to be a building if it is used for human habitation or otherwise. It is therefore both a "tenement" (according to the decided cases) and a "building", according to s 10(5).

31 Similarly, under s 10(4), each part of a building which has been divided horizontally or laterally in such a way that the owner of one part (either solely or together with others) is not also the owner (either solely or together with the same others) of another part, is deemed to be a building. As seen earlier, each such part is also a tenement.

32 It is clear therefore that the words "tenements" and "buildings" are not mutually exclusive just as "houses" and "buildings" are not. It is therefore open to the Chief Assessor to include a property in the Valuation List as a house, a building or a tenement so long as the subject property answers the relevant description. As noted earlier, a strata lot is not specifically mentioned; however, it could be a building or a tenement. Whereas in the case of a single strata lot, it would not matter whether it was regarded as a building or a tenement; where more lots are occupied as one, it would, on the view I have taken, be open to the Chief Assessor to regard the lots together as a tenement and to assess the annual value accordingly.

Rebus sic stantibus

33 In *Great Western and Metropolitan Railway Companies v Kensington Assessment Committee*

[1916] 1 AC 23 at 54, Lord Parmoor described the principle of *rebus sic stantibus* (*ie*, "things as they stand") as:

> [A] principle in rating assessment that the hereditament should be valued as it stands and as used and occupied when the assessment is made. There is difficulty in the doctrine of a hypothetical tenant, but if to this is added the doctrine of a hypothetical hereditament, the confusion would become hopeless.

This principle has been accepted by our Court of Appeal in *Chief Assessor v Howe Yoon Chong* [1984–1985] SLR 218 where L P Thean J (as he then was) delivering the judgment of the Court of Appeal said at 223, [14]:

> [I]t is a fundamental principle in valuation that a property must be valued as it in fact stands, ie *rebus sic stantibus*: see judgment of Scott LJ in *Robinson Brothers (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee* [1937] 2 KB 445, 468.

34 The respondent cited *Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd* [2001] RA 41 for the proposition that the *rebus sic stantibus* principle would also apply in relation to valuation of units in a shopping centre. Applying the principle to the facts in the appeals before me, the respondent pointed, by way of example, to the case of McDonald's (Appeal No 408 of 2003) which occupied two strata lots as an integral unit. There were no walls separating the two lots. The respondent contended that the two lots had to be valued as they stood, *ie*, as an integral unit, in accordance with the *rebus sic stantibus* principle.

35 The respondent also pointed out that when a site inspection was conducted on 7 October 2002, it was noted that distinct strata lots bearing different unit numbers were used and occupied as integral units. Alterations had been made to the properties resulting in functional amalgamation of strata lots bearing different unit numbers. The strata lots were occupied as integral units rather than as separate units. As the respondent had to take into account the actual physical state and condition of the property in assessing its annual value, the respondent assessed the subject properties according to their physical state as integral units, rather than assigning an annual value for each strata lot.

36 The respondent reiterated that each of the integral units among the subject properties was occupied as one and let out as a single tenement at the time of assessment. They were inseparable. It was immaterial whether they were held under separate strata titles or given separate unit numbers.

37 On his part, counsel for the appellant pointed to a difference between the Singapore property tax regime and the UK rating system in that whereas under the former the owner is liable for the payment of the property tax, under the latter, the liability for payment of the rates falls on the occupier. He then went on to suggest (but stopped short of contending) that the *rebus sic stantibus* principle was inapplicable as it had been "developed a long time ago under different economic and social conditions in a different country, and under a completely different regime where the occupier (and not the owner) has the primary liability for the tax, and where there was no strata titles system at the relevant time".

38 Counsel for the appellant also pointed to Lord Parmoor's use of the word "occupied" in his statement of the *rebus sic stantibus* principle in *Great Western and Metropolitan Railway Companies v Kensington Assessment Committee* ([33] *supra*) in an endeavour to suggest that the principle should be restricted to a regime where the liability for rates fell on the occupier. It goes without saying that a property could as well be occupied by a tenant as by the owner. It is difficult to see why the

valuation of a property should depend upon who pays the property tax. More importantly, the appellant's suggestions fly in the face of our Court of Appeal's decision in *Chief Assessor v Howe Yoon Chong* ([33] *supra*) which unequivocally accepted the *rebus sic stantibus* principle.

39 The appellant next suggested that the respondent had put the cart before the horse in purportedly identifying the properties on the basis of *rebus sic stantibus*. It was contended that the properties should be identified first (*ie*, separately according to the respective strata lots) before *rebus sic stantibus* applied in assessing the respective annual values.

40 This contention was dismissed by the Board on the basis that the Act, and in particular s 2(7) itself, does not contain any such stipulation. I would dismiss the appellant's contention as being wholly unmeritorious for an additional reason. Lord Parmoor's explanation of *rebus sic stantibus* as being the principle of valuing the hereditament "*as it stands* and *as used and occupied* when the assessment is made" [emphasis added] has two aspects to it: one relating to the physical state and the other as to the use of the property (see *Halsbury's Laws of Singapore* vol 16 (LexisNexis, 2004) at para 200.617).

41 In relation to the physical aspect, it was pointed out by Scott LJ in *Robinson Brothers (Brewers), Limited v Assessment Committee for The No 7 or Houghton and Chester-le-Street Area of the County of Durham* [1937] 2 KB 445 at 468 that, "The hereditament to be valued … is always the actual house or other property … and that hereditament is to be valued as it in fact is – rebus sic stantibus." The Chief Assessor, in the cases before me, could not be required to ignore the obvious fact that party walls between strata lots had been taken down and that in each instance several strata lots were functionally amalgamated as one integral unit.

Amendment of the Valuation List

42 Section 20(1) of the Act allows the Chief Assessor to amend the Valuation List where it appears that the Valuation List has become inaccurate in any material particular. The relevant provisions of s 20(2) state:

> For the purposes of this section, the Valuation List shall be deemed to be inaccurate in a material particular where —
>
> (*a*) the Chief Assessor is of the opinion that the annual value of a property included in the Valuation List does not correctly represent the annual value evidenced by —
>
> (i) …
>
> (ii) the increased or decreased rental obtained in respect of the letting out of that or similar property; or
>
> (iii) the consideration paid or value passing on the sale or transfer, directly or indirectly, or any estate or interest in that or similar property, including the sale or transfer of 75% or more of the issued ordinary shares of a land-owning company, whether or not the Chief Assessor exercises the option given in section 2(3);
>
> (*b*) …
>
> (*c*) any new building is erected or any building is rebuilt, enlarged, altered, improved or

demolished;

43 The respondent submitted that from a site inspection on 7 October 2002, it was noted that the subject properties bearing different unit numbers were being used and occupied as integral units. Alterations had been made to the properties resulting in the amalgamation of different units and occupation as integral units rather than as separate units. Dividing walls must have been pulled down so that the units could be occupied as one property. As such, the respondent submitted that the Valuation List had become inaccurate in a material particular, having regard to the deeming provision in s 20(2)(*c*), in that alterations had been made to the units.

44 The respondent also noted that there was no dispute that there were rental changes in 18 of the integral business units that were involved in the present appeal. Thus, having regard to the deeming provision in s 20(2)(*a*)(ii), the Valuation List was inaccurate in another material particular, in that the annual values of those properties reflected in the Valuation List did not correctly represent the annual values evidenced by the increased rental obtained in respect of the letting out of those or similar properties.

45 The appellant contended that an alteration in the "internal partitioning" of a building was not an alteration within the ambit of s 20(2)(*c*). For this assertion it relied on the definition of "building" in s 2 of the Act, *viz*, "any structure erected on land [including] any house, hut, shed or similar roofed enclosure …". It followed that "building" referred to Wisma Atria as a whole; on that view the dividing walls between strata lots were therefore only "internal partitioning". The appellant overlooked two key points. Firstly, under s 10(4) of the Act "building" includes a subdivided part of a building. Secondly, the dividing walls are not mere internal partitions but party walls between strata lots. Moreover, as the Board pointed out, nothing in the Act requires that "alteration" must be limited to "structural" alterations. I therefore agree with the Board that the Chief Assessor was entitled to amend the Valuation List.

Administrative law

46 Lastly, the appellant contended that the Chief Assessor had acted to amalgamate the appellant's property tax accounts in order to deny property tax rebates which the appellant was properly entitled to and thereby to increase revenue collection.

47 It was submitted that the Chief Assessor had acted arbitrarily and taken irrelevant considerations into account. As such, on *Wednesbury* principles (*Associated Provincial Picture Houses, Limited v Wednesbury Corporation* [1948] 1 KB 223), he had acted "unreasonably". Moreover, the appellant submitted that there was no material inaccuracy in the Valuation List to warrant an amendment pursuant to s 20(2) of the Act. Therefore, the Chief Assessor had no basis to exercise his power to amend the Valuation List.

48 The appellant pointed out that the remission orders were introduced as part of a package of off-budget reliefs "to help the economy to tide over the downturn", in the words of the Minister of Finance in his statement in Parliament on 12 October 2001 (see *Singapore Parliamentary Debates, Official Report* (12 October 2001) vol 73 at col 2267). The purpose of the measure pertaining to tax rebates and remissions was twofold: "to encourage enterprise … and to reduce business costs, so that business [could] stay afloat and minimise job losses" (*id* at col 2268). However, the Chief Assessor's amalgamation of the subject properties resulted in a clear reduction of the property tax rebates which were actually intended to be given by the Government. In doing so, he had acted in a manner contrary to the policy and objectives of the remission orders.

49 The appellant submitted that the Chief Assessor had acted as he did to reduce the amount of property tax rebates, so as to cushion the fall in property tax collections caused by the remission orders. This, according to the appellant, appeared to be an improper and irrelevant consideration. Such conduct did not promote the objects of the remission orders but appeared to be driven by a desire to deny the appellant of the property tax rebates. As such, the sudden change of position and practice could be said to be unreasonable, arbitrary and irrational.

50 The respondent maintained that the primary consideration in reconfiguring the property tax accounts in question was the physical state and condition of the property upon site inspection and not the rebates. Indeed, upon a subsequent site inspection in 2003, it was noted that some properties were no longer used as integral units but as separate units. Therefore, the respondent reassessed these property as separate units, *ie*, based on their actual physical state and condition.

51 The respondent submitted that the basis of assessment had been consistently applied, in accordance with the *rebus sic stantibus* principle. Thus, when the actual physical state underwent changes, whether due to amalgamation or separation of units, this constituted a material change to the property, which warranted an amendment to the Valuation List.

52 The respondent also relied on the general presumption that the Chief Assessor has acted in good faith, citing the maxim presuming the regularity of official acts, "*omnia praesumuntur rite et solemniter esse acta*". This maxim is embodied in illus (*e*) of s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) which provides:

> The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> *Illustrations*
>
> The court may presume –
>
> …
>
> (*e*) that judicial and official acts have been regularly performed;
>
> …

53 In support of this submission, the respondent pointed out the fact that where previously amalgamated units subsequently came to be used as separate units, those units were separately assessed. If the respondent had intended to deny the appellant the rebates as contended, the respondent would not have assessed those units as separate units.

54 The respondent submitted that in any event, the remission orders did not displace any principle of valuation. The relevant remission orders defined "commercial property" (under para 2 of the Property Tax (Commercial Property) (Remission) Order 2003 (S 250/2003)) as meaning any premises used as:

(i) a shop;

(ii) an office;

(iii) a commercial school;

(iv) a restaurant;

(v) a nightclub, bar or pub;

…

55 The remission orders thus envisaged that the premises were to be used as a "shop" or "restaurant" and not part of a shop or part of a restaurant. This fortified the respondent's position that when applying the principle, *rebus sic stantibus*, the relevant unit to be considered was the integral unit.

56 I do not propose to devote much time to this issue. Suffice it to say that I agree with the view taken by the Board ([45] *supra*), that there were valid grounds upon which the Chief Assessor was entitled to amend the Valuation List. This took away much of the force of the appellant's contention that the Chief Assessor had acted arbitrarily and taken irrelevant considerations into account. That left the appellant with only the bald allegation that the Chief Assessor was attempting to mitigate the drop in property tax collection. That was rejected by the Board.

57 I agree with the Board that the appellant had not rebutted the presumption that the amendment of the Valuation List was an official act of the Chief Assessor regularly performed. I see no reason to disagree with the Board's finding that there was no basis for the appellant's contention that the respondent had acted in an unreasonable, arbitrary or irrational fashion. I also agree that there was no basis to hold that the remission orders took precedence over established principles of assessment and valuation.

58 For the foregoing reasons, I dismissed the appeals with costs to the respondent.