

A TAX-FREE ADVENTURE — AN ISOLATED BUSINESS TRANSACTION
D.E.F. v. The Comptroller of Income Tax

Both in India and England, by virtue of statutory provisions isolated transactions which amount to adventures in the nature of trade are subject to tax.¹ In Singapore, however, the position is different. In *D.E.F. v. The Comptroller of Income Tax*², the Court of Appeal (Rose C.J., Buttrose and Ambrose JJ.) in reversing the decision of Chua J.,³ decided that an isolated business transaction (and an adventure in the nature of trade) did not constitute a trade or a business within the scope of section 10(1)(a), which is the charging section of the Income Tax Ordinance.⁴

The facts of the case were simple and were not in dispute. The appellant purchased a rubber estate for \$240,000 which he borrowed from his brother. After a few weeks he sold this estate for \$485,000, making a profit of \$245,000. He repaid the loan and invested the rest. He was assessed tax on this profit. "It was not in dispute that this was an isolated transaction or dealing in land by the tax-payer, that he was not the nominee of any person or company and that he was in no way concerned in and had nothing to do with property or dealings in land whatsoever."⁵

10. [1946] 1 All E.R. 348, 349.

1. Section 2 of the Indian Income Tax Act, 1922 and section 526(1) of the English Income Tax Act. 1962.
2. (1961) 27 M.L.J. 55.
3. (1960) 26 M.L.J. 267.
4. Chapter 166, Laws of Singapore. Section 10(1)(a) provides: "Income tax shall be payable upon the income of any person in respect of gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised."
5. *Per* Rose C.J., (1961) 27 M.L.J. 55 at 56.

In the Court below, Chua J. held that the purchase and re-sale of the rubber estate by the tax-payer amounted to an isolated business transaction and constituted the carrying on of a business within the meaning of section 10(1)(a.) of the Income Tax Ordinance. He relied on the decision and reasoning of Windham J. in construing section 7(1)(a) of the Kenya Income Tax Ordinance in the Kenyan case of *H. Co. Ltd. v. The Commissioner of Income Tax*.⁶ The provision of the Kenya Ordinance is identical with section 10(1)(a) of the Singapore Ordinance. In neither Ordinance is there a definition of the words “trade” and “business”.

The Court of Appeal in rejecting the proposition that section 10 of the Ordinance was wide enough to include an isolated business transaction held that “the fundamental idea underlying the three words ‘trade . . . profession or vocation’ in section 10(1)(a) of the Singapore Tax Ordinance is the continuous exercise of an activity . . . the same fundamental idea underlines the word ‘business’ which appears between the word ‘trade’ and the words ‘profession or vocation’ . . . the word ‘business’ must, therefore, be given its ordinary meaning, namely, an occupation habitually engaged in, especially for livelihood or gain. Reading section 10(1)(a.) with sections 35(3) and 35(5) . . . the business from which the profit is derived has to be a business which has been carried on. The phrase ‘carried on’ implies a repetition or series of acts and confirms the fundamental idea of the continuous exercise of an activity.”⁷ Buttrose J. held that *H. Co. Ltd. v. The Commissioner of Income Tax*⁸ was “wrongly decided by Windham J., for he failed to appreciate that the business must be carried on.” ‘Business’ does not mean ‘business transaction’ unless the Legislature says so. Ambrose J. also disagreed with Windham J.’s interpretation of the word ‘business’ but thought the decision was right on the facts: “. . . in my opinion, if it is proved that a person intended to carry on a business and that he carried out one business transaction with that intention, then he has carried on a business.”

The emphasis in arriving at this decision was on the words “carried on”. In *H. Co. Ltd. v. The Commissioner of Income Tax*, Windham J. was of the view that the purpose of these added words was “to extend rather than to restrict the scope of the preceding words.” But in the present case the judges held a contrary view, *i.e.* these words restricted the scope of the word “business” so as to exclude one transaction.

It is regretted that the judges in this case failed to discuss the words “or exercised” which follow the words “carried on”. In fact according to their reasoning these words appear to be redundant. It is submitted that the business can either be carried on or exercised. The effect of “or exercised” when read with the preceding words “for whatever period of time” is that there need not be any repetition or series of acts. It follows that an isolated business transaction would fall within the scope of the section and would be taxable.

Moreover, under the local law, the word ‘business’ — which is not used in the English definition — which may be regarded as having a wider connotation than the term trade is also used and the question that arises is whether such adventures falls under that head. It is again submitted that if such adventures amount to business transactions they are taxable.

Rose C.J. and Buttrose J. were also of the view that this transaction would not amount to an adventure in the nature of trade under the English Income Tax

6. 1 East African Tax Cases 65.

7. Ambrose J., (1961) 27 M.L.J. 55 at 61.

8. 1 East African Tax Cases 65.

Act. For this proposition they relied on the *Leeming v. Jones* test.⁹ Ambrose J. was of the opinion, that “there was in the appellant’s case as much organisation as the transaction required; there was the existence of opportunities in connection with the asset dealt with, and the nature of the asset lent itself to commercial transactions. In my judgment, therefore, the transaction was an adventure in the nature of trade.” Whatever view is taken regarding the nature of the transaction, the fact remains that this point is not relevant to the problem as it arises under Singapore legislation. Apart from statutory extension of the definition of the term “trade” the latter cannot include an isolated transaction. In England there is such statutory extension in section 526(2) by which the term trade includes an adventure in the nature of trade. There is no such extension in Singapore.

It is also doubtful whether profits from such adventures and isolated business transactions can be treated as capital appreciations.¹⁰ Section 10 does not purport to tax all sources of income in the absence of any residuary clause. A simple way to include such transactions would mean an amendment to the interpretation section of the Income Tax Ordinance to include extended definitions of the words ‘business’ and ‘trade’. Until such a time such adventures and business transactions remain tax free.

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9. 15 T.C. 33. In this case the Court held that for a transaction to amount to an adventure in the nature of trade one of the following four conditions must be present: — (a) the existence of an organisation, or (b) activities which lead to the maturing of the asset to be sold, or (c) the existence of special skill, opportunities in connection with the article dealt with, or (d) the fact that the nature of the asset itself should lend itself to commercial transactions.

10. See G.S.A. Wheatcroft: “What is Taxable Income?” (1957) *British Tax Review* 310 at 314.