

IN THE COURT OF APPEAL IN PUTRAJAYA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO: W-01-711-12/2011

DR. ZANARIAH BINTI RAMLI

... APPELLANT

AND

KETUA PENGARAH HASIL DALAM NEGERI

... RESPONDENT

Revenue Law – Trading bond - Gains made in the bond market – Badges of trade – Intention - Section 4(a) of the Income Tax Act 1967 - Imposition of penalty - Section 113(2) of Income Tax Act 1967

Issues : (i) Whether the gains made by the Appellant in the bond market during the period under scrutiny were income that had been generated by her trading in the bond market and therefore those gains were liable to be levied with taxes under section 4(a) of the Income Tax Act 1967; and

(ii) Whether the penalty imposed under section 113(2) of Income Tax Act 1967 is correct in law.

Decision : The Appellant's appeal was dismissed.

The Court of Appeal held that the court would be concerned with looking at the evidence to see whether there had existed the badges of trade in the whole scenario as presented before the Special Commissioners of Income Tax. In summary, there are 6 criteria that need to be considered in that process (***NYF Realty Sdn Bhd v Comptroller of Inland Revenue (1974) 1 MLJ 183***).

The 6 criteria may be listed down as follows:-

1. The subject matter of the transaction;
2. The period of ownership;
3. The frequency of the transaction;
4. The alteration of the property to make it more saleable;

5. The methods in disposing of the property; and
6. The circumstances responsible for the resale of the property.

From the evidences adduced before the learned SCIT, it would become apparent that such evidence has shown that the Appellant had hardly held on, for long period of time, to all the bonds that she purchased throughout the period under review.

In the absence of an express admission, a person's intention can only, at most, be deduced or inferred from his conduct, either overtly by his commission or otherwise, by his omission.

From the evidence adduced surrounding the market activities of the taxpayer, it would justify a strong inference to be made that the taxpayer had in fact been actively trading in bonds during that the period under scrutiny. One single act could amount to doing trade. So numerous or repetitive acts done by a person would ipso facto, suggest the doing of a trade in the said activity.

Section 113(2) of Income Tax Act 1967 does not provide for good faith as a defence in a situation where no prosecution has been mounted against the taxpayer.

Status : The High Court's decision upheld by Court of Appeal and Court of Appeal's Grounds of Judgment is unavailable. No right of further appeal.

Date of Judgment : 21.03.2013