CDL Properties Ltd *v* Chief Assessor and another
[2012] SGCA 1

Case Number	: Civil Appeal No 29 of 2011
Decision Date	: 09 January 2012
Tribunal/Court	: Court of Appeal
Coram	: Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Ang Cheng Hock SC, Sunit Chhabra, Tang Siau Yan and Kenneth Lim (Allen & Gledhill LLP) for the appellant; Julia Mohamed and Joyce Chee (Inland Revenue Authority of Singapore) for the respondents.
Parties	: CDL Properties Ltd — Chief Assessor and another

Revenue Law – Property tax – Annual value – Reassessment of annual value – When increased property tax payable – Interest on overpaid property tax

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2011] 2 SLR 1077.]

9 January 2012 Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

Introduction

1 This is an appeal by CDL Properties Ltd ("CDL") against the decision of the High Court judge ("the Judge") in *CDL Properties Ltd v Chief Assessor and another* [2011] 2 SLR 1077 ("the HC Judgment") affirming the decision of the Valuation Review Board ("the VRB") to amend the annual values prescribed by the Chief Assessor for 117 units in the development known as "Republic Plaza" located at 9 Raffles Place, Singapore 048619.

2 The first and second respondents (collectively, "the Respondents") are the Chief Assessor and the Comptroller of Property Tax ("the Comptroller") respectively. They are different and distinct entities under the Property Tax Act (Cap 254, 2005 Rev Ed) ("the PTA"). The Chief Assessor's principal functions and duties, in so far as this appeal is concerned, are as follows:

(a) under s 4(2) of the PTA, the Chief Assessor is responsible for assessing the annual values of all "properties" (defined in s 2(1) of the PTA as "includ[ing] houses, buildings, lands and tenements") for the purposes of the PTA;

(b) under s 10(1) of the PTA, the Chief Assessor is also charged with the duty of preparing a list (referred to in the PTA as the "Valuation List") containing, *inter alia*, the annual values of all properties;

(c) under s 11 of the PTA, the Chief Assessor may, at his discretion, either: (i) cause to be prepared a new Valuation List every year, or (ii) adopt the Valuation List then in force, with such alterations and amendments as may have been made from time to time in accordance with the provisions of the PTA; and

(d) under s 20(1) of the PTA, the Chief Assessor may amend the Valuation List where it

appears that: (i) it is or has become inaccurate in any material particular in any year, or (ii) it is likely to become inaccurate in any material particular in the ensuing year.

In respect of a property such as Republic Plaza (*ie*, a property which is not a wharf, pier, jetty or landing-stage), the term "annual value" is defined in s 2(1) of the PTA as "the gross amount at which the [property] can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax)".

3 As for the Comptroller, he is vested under s 4(1) of the PTA with the responsibility, generally, for carrying out the provisions of the PTA, as well as for collecting property tax and paying it into the Consolidated Fund.

The facts

4 CDL is the owner of Republic Plaza, which is a large commercial building situated at Raffles Place. Between 6 and 8 June 2007, the Chief Assessor, in exercise of his power under s 20(1) of the PTA, issued several notices to inform CDL of his intention to reassess the annual values of the 117 units mentioned at [1] above (referred to hereafter as "the 117 Units") as follows:

(a) the annual values of 115 of the units ("the 115 Units") would be amended from $4.20 per square foot per month ("psf/mth") to $11 psf/mth with effect from 1 January 2007; and

(b) the annual values of two of the units ("the 2 Units") would be amended from $4.20 psf/mth to $11 psf/mth with effect from 16 June 2007.

5 Section 20(1) of the PTA provides as follows:

Where it appears that any Valuation List —

(*a*) is or has become inaccurate in any material particular in any year; or

(*b*) is likely to become inaccurate in any material particular in the ensuing year,

the Chief Assessor may, in the year referred to in paragraph (*a*), if he considers it desirable that an amendment should be made to the Valuation List, give notice thereof to the owner of the property concerned stating the amendment that is considered desirable and the date from which it is proposed the amendment shall take effect, and the amendment shall be made in the Valuation List from that date.

6 Under s 20A(2) of the PTA, any "owner" (as defined in s 2(1) of the PTA) who desires to object to an amendment made to the Valuation List under s 20 shall make his objection in writing to the Chief Assessor within 21 days of the service of the notice referred to in s 20(1) (the "s 20(1) notice"). Under s 20A(7) of the PTA, any owner dissatisfied with the decision made by the Chief Assessor disallowing his objection (whether in whole or in part) may appeal to the VRB in the manner provided in s 29 of the PTA. Under s 20A(8) of the PTA, where the VRB varies any annual value in the Valuation List in an appeal before it, the Chief Assessor shall cause the Valuation List to be amended in accordance with the decision of the VRB.

7 In the present case, each of the s 20(1) notices issued to CDL (collectively, "the Disputed Notices") was issued in the name of one Ms Ang Sock Tiang ("Ms Ang"), who described herself as

"Chief Assessor and Asst Comptroller of Property Tax" [note: 1] [capital letters in original omitted]. Each of the Disputed Notices further contained the following statement: "*Please note that Property Tax has to be paid even if you have filed an objection/appeal/claim*" [note: 2] [emphasis added] ("the Notification"). Apropos the Notification, it may be noted that s 35A(1)(*d*) of the PTA provides that notwithstanding that an objection has been made under s 20A to the Chief Assessor, the owner of the property concerned shall pay "to account of tax in respect of [the] property a sum of money calculated at the prescribed rate of tax on the basis of the annual value in the Valuation List proposed or amended under the provisions of [the PTA]". CDL paid the property tax outstanding for 2007 that resulted from the Chief Assessor's proposed amendments to the annual values of the 117 Units, and, after unsuccessfully raising an objection with the Chief Assessor in accordance with the provisions of the PTA, lodged two separate sets of appeals to the VRB (one set in respect of the 115 Units ("the appeals relating to the 115 Units") and one set in respect of the 2 Units ("the appeals relating to the 2 Units")) under s 20A(7) of the PTA.

8 At the hearing before the VRB, CDL's appeals were based on the *quantum* of the proposed increase in the annual values of the 117 Units, and not on the *legality* of the Chief Assessor's proposed action to reassess these units' annual values and amend the Valuation List for 2007 with respect to these units. CDL argued that the Chief Assessor's amended annual values of $11 psf/mth for the 115 Units with effect from 1 January 2007 and $11 psf/mth for the 2 Units with effect from 16 June 2007 were excessive, and that the appropriate amended annual values would instead be $7 psf/mth for the 115 Units with effect from 1 January 2007 and $9.80 psf/mth for the 2 Units with effect from 16 June 2007. In support of its proposal, CDL relied on, *inter alia*, what was termed the "Market Comparison Method of Valuation" and the existing rent for units in Republic Plaza as reference points (see *CDL Properties Ltd v Chief Assessor* [2009] SGVRB 1 ("the VRB's GD") at [5]). [note: 3]

9 The VRB dismissed the appeals relating to the 2 Units (see the VRB's GD at [26]). [note: 4] In contrast, the VRB allowed the appeals relating to the 115 Units in part by ordering (at [25] of the VRB's GD) [note: 5] that the annual values of those units be set at $7 psf/mth with effect from 1 January 2007 and, thereafter, at $11 psf/mth with effect from the dates of the Disputed Notices ("the Notice Dates"), which, in respect of most of the notices, would be 8 June 2007. The VRB's reasons for varying the annual values of the 115 Units in this manner were explained in the VRB's GD as follows: [note: 6]

> 22. Restricting the survey to rental evidence around the period 1 January 2007 to June 2007, the [VRB] was of the view that there was sufficient evidence to indicate that rentals had risen to $11 psf/mth by the end of the second quarter of 2007 (i.e. around the date[s] of the [Disputed] Notices):
>
> 22.1 Leases in Republic Plaza contracted between May and July 2007 ranged between $10.50 psf/mth and $12.80 psf/mth. The lease at $12.80 psf/mth was a 2-year lease while the lease at $10.50 psf/mth was a 3-year lease. The rental evidence for 2007 shows that rents for 2-year leases were on average higher than rents for 3-year leases.
>
> 22.2 The table of Average Grade A Office (Gross) rentals for 2007 compiled by the [Chief Assessor] indicates that average rents for 2Q07 ranged between $11.00–$14.50 psf/mth and for 4Q06 (a proxy for 1 January 2007) ranged between $8.73 to $9.10 psf/mth.

10 Although the VRB allowed the appeals relating to the 115 Units in part, it did not award CDL costs against the Chief Assessor with respect to those appeals. Similarly, although CDL failed in the appeals relating to the 2 Units, the VRB did not order CDL to pay the Chief Assessor's costs for those

appeals. The VRB also did not award CDL interest on the amount of overpaid property tax refunded to it with respect to the 115 Units ("the overpaid property tax in respect of the 115 Units") as it did not make the relevant application to the VRB.

11 Dissatisfied with the VRB's decision, CDL appealed to the High Court under s 35(1) of the PTA via Originating Summons No 511 of 2009 naming the Chief Assessor and the Comptroller as the first and second respondents respectively. CDL's appeal against the VRB's decision was based predominantly on the argument that the VRB erred in both law and fact in: (a) making the orders set out at [9] above *vis-à-vis* the annual values of the 117 units; (b) not awarding CDL interest on the overpaid property tax in respect of the 115 Units; and (c) not awarding costs to CDL with respect to the appeals relating to the 115 Units.

12 As mentioned earlier (at [1] above), the Judge dismissed CDL's appeal. It is not necessary for us to examine the Judge's reasons for dismissing CDL's appeal in so far as: (a) the quantum of the increase in the annual values of the 117 Units and (b) the costs of the appeals relating to the 115 Units are concerned, as CDL is not pursuing these two matters before this court. However, we will consider later the Judge's reasons for dismissing CDL's appeal where the issue of interest on the overpaid property tax in respect of the 115 Units is concerned.

The issues before this court

13 Given the position taken by CDL in this appeal (see the preceding paragraph), before us, counsel for CDL, Mr Ang Cheng Hock SC ("Mr Ang"), did not challenge that part of the Judge's decision which upheld the VRB's decision on the quantum of the revised annual values of the 117 Units and the costs of the appeals relating to the 115 Units. Instead, Mr Ang raised the following issues for determination by this court:

(a) whether the Comptroller may immediately recover the increased property tax payable on a property pursuant to a revision of its annual value by the Chief Assessor (as further varied by the VRB, if applicable) in the middle of a calendar year, or whether the increased property tax is recoverable only from 1 January of the following year ("the Tax Recoverability Issue"); and

(b) whether interest should be awarded to CDL on the overpaid property tax in respect of the 115 Units ("the Interest Issue").

We will now discuss these two issues *seriatim*, beginning with the Tax Recoverability Issue.

The Tax Recoverability Issue

CDL's arguments

14 CDL's argument on the Tax Recoverability Issue is that the scheme of the PTA envisages the payment of property tax on properties contained in the Valuation List in advance for the whole year in January of each year, except in certain instances specified in the PTA. According to CDL, this entails that in the case of the 117 Units, the increased property tax calculated using their revised annual values was payable only in January 2008. This argument is based on s 6 of the PTA, which provides as follows:

Charge of property tax

6.—(1) As from 1st January 1961, a property tax shall, subject to the provisions of this Act, be

payable at the rate or rates specified in this Act for each year upon the annual value of all houses, buildings, lands and tenements whatsoever included in the Valuation List and amended from time to time in accordance with the provisions of this Act.

(2) The tax shall be payable by the owner of such property —

(*a*) *in the case of tax payable under subsection (1)*, yearly in advance without demand, in the month of January; and

(*b*) without prejudice to paragraph (*a*), where the Comptroller has served a notice for payment of the tax under this Act, within one month of the service of that notice.

…

[emphasis added]

15 Section 6(2) of the PTA, as can be seen from its terms, merely prescribes the time of payment of property tax, and does not empower either the Chief Assessor to impose, or the Comptroller to collect property tax. Specifically, under s 6(2)(*a*) of the PTA, an owner has to pay property tax in January of each year "without demand" by the Comptroller. Under s 6(2)(*b*) of the PTA, in cases where the Comptroller serves a notice for payment of property tax on an owner, the owner has to pay within one month of the service of the notice on him. In respect of s 6(2)(*a*) of the PTA, Mr Ang emphasised that the italicised words in the quotation at [14] above referred to "tax payable under subsection (1)", *ie*, tax "payable at the rate or rates specified in [the PTA] for each year upon the annual value of all houses, buildings, lands and tenements whatsoever included in the Valuation List *and amended from time to time in accordance with the provisions of [the PTA]*" [emphasis added] (see s 6(1) of the PTA). Accordingly, on the premise that the Valuation List for 2007 had been amended to include the *revised annual values* of the 117 Units, Mr Ang argued before us that CDL should, *per* s 6(2)(*a*) of the PTA, be liable to pay the increased property tax on the 117 Units, as calculated based on their revised annual values, only in January 2008 since the PTA did not provide for payment of property tax to be made retrospectively.

16 With respect to the applicability of s 6(2)(*b*) of the PTA (which *ex facie* indicated that property tax on the 117 Units based on their revised annual values had to be paid within one month of the service of the Disputed Notices), Mr Ang pointed out that it applied only "where the Comptroller ha[d] served a notice for payment of the tax under [the PTA]" (*per* s 6(2)(*b*)), and that the sole provision in the PTA that expressly empowered the Comptroller to issue a notice for payment of property tax was s 22, which provides as follows:

Collection of taxes under section 21

22.—(1) Where it appears to the Comptroller that *any tax is payable in respect of any property under section 19(8) or 21*, the Comptroller shall give notice thereof to the owner of the property concerned stating the amount of the tax due and the period for which the tax is payable.

(2) Any owner who objects to any demand made by the Comptroller under subsection (1) may, within 21 days of the service of such notice, give to the Comptroller notice of objection in such form as the Comptroller may determine stating precisely the grounds of his objection.

(3) The Comptroller shall consider the objection and may —

(*a*) disallow the objection;

(*b*) allow the objection in whole;

(*c*) allow the objection in part; or

(*d*) allow the objection in a manner agreed between the Chief Assessor and the owner,

and shall serve the owner by post or otherwise with a written notice of his decision.

(4) The Comptroller may, in his discretion, cancel any notice given under subsection (1) or (3) and replace it with another notice not later than 5 years after the serving of such notice on the owner of the property.

(5) Any owner dissatisfied with the decision made by the Comptroller under subsection (3)(*a*) or (*c*) may, within 21 days after such service, appeal to the [VRB] in the manner provided in section 29.

[emphasis added]

17 Mr Ang further observed that s 22 of the PTA applied only where "tax [was] payable in respect of any property under section 19(8) or 21" (*per* s 22(1)).

18 Section 19(8) of the PTA states:

Where any building or part of a building is demolished or removed and no action has been taken to amend the Valuation List in respect thereof for any reason, the owner shall, at the option of the Comptroller —

(*a*) continue to be liable to pay the tax in respect of the building or part of the building, as if the building had not been demolished or removed; or

(*b*) notwithstanding that the Valuation List has not been amended, be liable to pay the tax in respect of that property from the date of demolition or removal of the building, as the case may be, on the basis of any revised annual value which may be ascribed to that property in a subsequent amended Valuation List.

19 As for s 21 of the PTA, the material parts of it for the purposes of Mr Ang's argument ("the material parts of s 21") read as follows:

21.—(1) Subject to subsection (3), where any new building or tenement is erected and no action is taken in respect thereof for any reason whatsoever to amend the Valuation List for the year in which the work of erecting the building or tenement was completed, the tax in respect of the building or tenement shall, notwithstanding that the Valuation List has not been duly amended under section 20, be payable from the date of completion of the work of erecting the building or tenement.

(2) The tax payable under subsection (1) shall be calculated on the basis of any revised annual value which may be ascribed to the building or tenement in a subsequent Valuation List.

(3) Where any part of the building or tenement which is under construction (whether divided

laterally or horizontally) is used for the purpose of human habitation or otherwise before the work of erecting the building or tenement is completed and no action is taken in respect thereof for any reason whatsoever to amend the Valuation List for the year in which that part of the building or tenement was used, the tax in respect of that part of the building or tenement shall, notwithstanding that the Valuation List has not been duly amended under section 20, be payable from the date of use of that part of the building or tenement.

(4) The tax payable under subsection (3) shall be calculated on the basis of any revised annual value which may be ascribed to that part of the building or tenement in a subsequent Valuation List.

(5) Where any building or tenement is rebuilt, enlarged, altered or improved and no action is taken in respect thereof for any reason whatsoever to amend the Valuation List for the year in which the work of rebuilding, enlarging, altering or improving the building or tenement was completed, the tax in respect of the building or tenement shall, notwithstanding that the Valuation List has not been duly amended under section 20, be payable from the date of completion of the work of rebuilding, enlarging, altering or improving the building or tenement.

(6) The tax payable under subsection (5) shall be calculated on the basis of any revised annual value which may be ascribed to the building or tenement in a subsequent Valuation List.

…

(8) Where any building or tenement ceases to be vacant or to be occupied by the owner thereof and is let to a tenant or where the rent of any building or tenement is increased, directly or indirectly, and no action is taken in respect thereof for any reason whatsoever to amend the Valuation List for the year in which the letting or increase of rent occurs, the tax in respect of the building or tenement shall, notwithstanding that the Valuation List has not been duly amended under section 20, be payable from the date of the letting or increase of rent, as the case may be, on the basis of any revised annual value which may be ascribed to the building or tenement in a subsequent Valuation List.

(8A) Notwithstanding section 19(8), where any property is to be or is being re-developed and no action has been taken to amend the Valuation List in respect thereof for any reason whatsoever, the tax in respect of the property shall be payable from such date as the Comptroller may determine, and such tax shall be calculated on the basis of the revised annual value which may be ascribed to the property in a subsequent Valuation List.

…

20 Section 19(8) and the material parts of s 21 of the PTA pertain to specific situations where the Valuation List needs to be amended, but no action has been taken yet to effect the amendment. These provisions stipulate the applicable annual value based on which property tax is to be calculated in these circumstances, as well as the date from which property tax as thus calculated is payable. In essence, except in a case falling under s 19(8)(*a*), property tax in these circumstances: (a) is to be paid based on the *revised* annual value which may be ascribed to the property concerned in a *subsequent* amended Valuation List; and (b) is payable from the date of the event which necessitates an amendment of that property's annual value in the Valuation List (*eg*, the demolition or removal of the whole or part of a building in the case of s 19(8), the construction of a new building in the case of s 21(1), *etc*).

21 Mr Ang contended that neither s 19(8) nor the material parts of s 21 of the PTA applied in the present case since the Chief Assessor had already taken steps to amend the Valuation List for 2007; *ie*, this was not a case where no action had been taken yet to amend the Valuation List even though an amendment was necessary. Accordingly, Mr Ang submitted, the Comptroller could not invoke s 22 of the PTA to issue the Disputed Notices as "notice[s] for payment of [property] tax" for the purposes of s 6(2)(*b*) of the PTA. Since there was no other provision in the PTA that empowered the Comptroller to issue a notice for the payment of property tax, the Disputed Notices were issued *ultra vires* and, thus, s 6(2)(*b*) of the PTA did not apply to require CDL to pay, within one month of the service of those notices, the additional property tax due on the 117 Units as a result of the revision of their annual values.

22 We agree with Mr Ang's submission that:

(a) section 6(2)(*b*) of the PTA applies only where the Comptroller has served a notice for payment of property tax (*ie*, where property tax has become payable to the Comptroller);

(b) the Comptroller can invoke s 22 of the PTA to issue such a notice only where property tax is payable under either s 19(8) or s 21; and

(c) neither s 19(8) nor the material parts of s 21 apply on the facts of this case as action has been taken by the Chief Assessor to amend the Valuation List *vis-à-vis* the 117 Units.

However, our acceptance of the above submission is of no assistance to Mr Ang because the Disputed Notices were not issued pursuant to s 22 of the PTA; *ie*, they were not notices demanding payment of the additional property tax due on the 117 Units as a result of the revision of their annual values (see [31]–[32] below). The Disputed Notices were, instead, merely notifications issued pursuant to s 20(1) (which was expressly referred to in the heading of each of these notices) [note: 7] that the annual values of the 117 Units had been increased.

The Respondents' arguments

23 In her reply to Mr Ang's arguments, Ms Julia Mohamed ("Ms Julia"), counsel for the Respondents, did not dispute that s 6, s 19(8), the material parts of s 21 and s 22 did not apply to the 117 Units. She merely argued that the strict interpretation of these provisions, as advanced by CDL, would not give effect to Parliament's purpose in enacting the PTA, which was to allow: (a) the Chief Assessor to assess and/or amend annual values as he saw fit, and (b) the Comptroller to collect property tax based on those annual values. Furthermore, Ms Julia contended, if the Comptroller was not able to collect the additional property tax due on a property as a result of a revision of its annual value immediately upon such revision being made by the Chief Assessor, the Chief Assessor's power under s 20(1) of the PTA to amend the Valuation List (apropos, *inter alia*, the annual value of a property) and decide the date from which the amendment should take effect would be rendered otiose, and it would be pointless to give him this statutory power.

24 Aside from advancing the above commonsensical arguments, Ms Julia was unable to refer us to any provision in the PTA or any case law or judicial statement which could support her arguments. Instead, she invited this court to read s 22 of the PTA in conjunction with s 29(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("the IA"), and imply in favour of the Comptroller the power to issue a notice for the payment of additional property tax resulting from a revision of a property's annual value so as to enable him to collect the additional property tax. Section 29 of the IA provides as follows:

Construction of enabling words

29.—(1) Where a written law confers powers on any person to do or enforce the doing of any act or thing, such powers shall be understood to be also conferred as are reasonably necessary to enable the person to do or enforce the doing of the act or thing.

…

25 In support of the above submission, Ms Julia relied on the case of *Rahimah bte Hussan v Zaine bin Yusoff* [1995] 1 SLR(R) 239, where the High Court held that the then equivalent of s 29 of the IA was applicable to imply in favour of the President of the Syariah Court the ancillary power to execute documents, as well as to give effect to and enforce any order made by him under s 52(3) of the Administration of Muslim Law Act (Cap 3, 1985 Rev Ed) for the disposition and division of matrimonial property.

26 In our view, Ms Julia's argument based on s 22 of the PTA and s 29 of the IA has two flaws. First, as observed by Mr Ang (see [17] above), s 22 of the PTA empowers the Comptroller to issue notices for the payment of property tax only in cases where property tax is payable under s 19(8) or s 21 of the PTA. As mentioned earlier (at [22] above), CDL's case does not fall within either of these sections. Second, even if the Comptroller correctly issues a notice for the payment of property tax under s 22, it appears to us that the Comptroller's power to *collect property tax* is quite separate from his power to *issue the aforesaid notice*. The former is premised on property tax being or becoming payable to the Comptroller on any property in the Valuation List (as amended from time to time). Section 4(1) of the PTA merely confers on the Comptroller *responsibility* for the collection of property tax. Responsibility is not the same as *power*. As Ms Julia was not able to point to any further provision in the PTA implying a power to collect property tax, s 29 of the IA does not assist her case.

Our decision on the Tax Recoverability Issue

Preliminary observation

27 It is surprising that such a basic issue as the Tax Recoverability Issue has not been the subject of any discussion or decision by the VRB or any court of law in the 50-odd years that our property tax legislation has been in force. Since 1960 (when the very first predecessor of the PTA (*viz*, the Property Tax Ordinance 1960 (Ord 72 of 1960)) was enacted), the Chief Assessor must have, on countless occasions, revised the annual values of countless properties at different times of the year. Yet, until this appeal, the Chief Assessor has not met with any objection that the additional property tax resulting from such revision would only be payable in January of the ensuing year. That CDL is the only owner to have put forward this argument in the last 50-odd years, during which period (as just mentioned) countless properties must have had their annual values revised, strongly suggests that the argument is unlikely to be correct.

28 We make this preliminary observation even though Ms Julia was unable to marshal a coherent rebuttal to Mr Ang's submissions on the Tax Recoverability Issue. Despite the lack of assistance from Ms Julia's submissions in this regard, we are satisfied that what we will hereafter term Mr Ang's "no immediate liability to pay" argument – *viz*, that except in cases where s 19(8) or any of the material parts of s 21 applies, the additional property tax due on a property as a result of a revision of its annual value is payable only in January of the ensuing year – is wrong. Aside from its inherent implausibility in the context of revenue legislation, we are of the view that the argument is entirely misconceived and has no merit for the reasons set out at [33]–[37] below.

A threshold issue: Appeal incompetent against the Comptroller

A threshold issue: Appeal incompetent against the Comptroller

29 First, however, it is necessary for us to consider the threshold issue (which was not raised by either CDL or the Respondents) of whether the Comptroller was a proper party to the present appeal. In the appeals before the VRB and, subsequently, the appeal before the High Court (which involved the High Court rehearing the appeals before the VRB (see *Halsbury's Laws of Singapore* vol 16 (LexisNexis, 2008 Reissue) at para 200.659)), CDL took issue with the quantum of the increase in the annual values of the 117 Units (see [8] and [11] above). That issue was concerned solely with whether the *Chief Assessor*'s assessment of the 117 Units' revised annual values was correct. It had nothing to do with the power of the *Comptroller* to collect any additional property tax that might arise from the reassessment of these units' annual values. The terms of the VRB's order and the VRB's GD confirm this position. Be that as it may, when CDL appealed to the High Court against the VRB's decision, it added the Comptroller as a second respondent even though it sought no relief against him. In the HC Judgment, the Judge dealt with only the dispute between CDL and the Chief Assessor. The Judge made no order in relation to the Comptroller's power to collect from CDL the additional property tax payable on the 117 Units as a result of their revised annual values. In view of this, there could not have been any appealable issue before us as to the Comptroller's power to collect such tax.

30 Although the issue of the Comptroller's standing in the appeal before the High Court and the present appeal was not taken up by the Comptroller, we are unable to see how this omission can confer on this court jurisdiction to hear an appeal involving the Comptroller when: (a) the proceedings do not concern him, and (b) the High Court has not made any order pertaining to him. This is a basic procedural flaw which cannot be corrected by this court. In our view, this appeal, in so far as it involves the Comptroller as a respondent, is not competent and should be dismissed on that ground alone where the Comptroller is concerned.

31 There is yet another flaw in CDL's case on the Tax Recoverability Issue. This issue has been raised because it has an impact on the power (or the lack thereof) of the Comptroller to collect the additional property tax due on the 117 Units as a result of the Chief Assessor's reassessment of their annual values. However, the Comptroller's power in this regard does not even arise because the evidence on record shows that the Comptroller neither exercised nor purported to exercise any power to collect the additional property tax from CDL. Mr Ang's argument, in so far as it was premised on the Disputed Notices having been issued by *the Comptroller*, is based on a misapprehension of the terms of those notices. Although the Disputed Notices were issued in the name of Ms Ang and although she described herself therein as "Chief Assessor and Asst Comptroller of Property Tax" [note: 8] [capital letters in original omitted], they were not issued by her either on behalf of the Comptroller or in her capacity as an Assistant Comptroller. Instead, she issued those notices on behalf of *the Chief Assessor*. This is evident from s 20(1) of the PTA (the provision pursuant to which the Disputed Notices were issued), which makes it clear that the issuing of s 20(1) notices falls under the purview of *the Chief Assessor*, and *not* the Comptroller. The reference to Ms Ang as "Chief Assessor and Asst Comptroller of Property Tax" [note: 9] [capital letters in original omitted] in each of the Disputed Notices was merely intended to describe her departmental title.

32 Furthermore, Mr Ang appears to have read – wrongly – the Notification in each of the Disputed Notices (reproduced at [7] above) as if it were a notice of demand for payment of property tax. The Notification did not have such a legal effect. It was, instead, merely a notification or reminder to CDL that property tax based on the revised annual values of the 117 Units was payable even if CDL intended to object to the revision (in this regard, see also [22] above). The position stated in the Notification is in line with s 35A of the PTA (discussed later at [35]–[36] below). In short, Mr Ang's reading of the Notification has no factual basis and is purely academic.

Mr Ang's "no immediate liability to pay" argument

33 We turn now to the merits of Mr Ang's "no immediate liability to pay" argument, which lies at the heart of CDL's case on the Tax Recoverability Issue. Although, consequent upon our ruling at [29]–[32] above, it is not necessary for us to deal with this argument, we nevertheless think it is desirable that we clarify the duties and functions of the Comptroller in relation to the recoverability of additional property tax arising from a revision of a property's annual value.

34 We preface our discussion of this issue by observing that it is simply not conceivable that there could have been a lacuna in the law for such a long period of time on the immediate recoverability of additional property tax due on a property pursuant to a reassessment of its annual value (as Mr Ang's "no immediate liability to pay" argument suggests) without Parliament rectifying the position by enacting the appropriate legislation. If this lacuna (assuming it does exist) has indeed hitherto been left unaddressed, it would mean that the Property Tax Department of the Inland Revenue Authority of Singapore ("the Property Tax Department") has had to defer the collection of millions of dollars in property tax. Furthermore, if Mr Ang's "no immediate liability to pay" argument is correct (*viz*, if the additional property tax arising from a reassessment of a property's annual value is indeed payable only in January of the ensuing year), Parliament would have acted in vain in setting up a legislative framework that includes the conferment of the following rights and powers:

(a) the power of the Chief Assessor to reassess the annual value of a property (as stated in the Valuation List) at any time when the Valuation List becomes or is likely to become inaccurate in this regard (see s 20(1) of the PTA);

(b) the right of an owner affected by a reassessment of his property's annual value to lodge an objection with the Chief Assessor on the reassessment (see s 20A(1) of the PTA);

(c) the right of an affected owner to appeal to the VRB against the Chief Assessor's decision disallowing his objection (see s 20A(7) of the PTA); and

(d)the power of the VRB, after hearing an appeal before it, to "direct that such amendments as it thinks proper shall be made to the Valuation List for the year in respect of which the appeal was made and for the ensuing years" (see s 33(1)(*a*) of the PTA).

From the viewpoint of financial efficiency, and the Property Tax Department cannot be short of it, Ms Julia is certainly spot on in arguing that the aforementioned elaborate legislative structure would be pointless if Mr Ang's "no immediate liability to pay" argument is correct. In the present case, the VRB: (a) upheld the Chief Assessor's decision to increase the annual values of the 2 Units to $11 psf/mth with effect from 16 June 2007; and (b) varied the Chief Assessor's decision with respect to the 115 Units to the extent that the annual value of $11 psf/mth for each of these units would take effect only from the Notice Dates, all of which fell in the month of June 2007. The VRB's decision would be completely meaningless if the resultant outstanding property tax due in respect of the 117 Units for 2007 were payable by CDL *not* in 2007 itself, but only in January of the ensuing year (*viz*, 2008).

35 In our view, Mr Ang's "no immediate liability to pay" argument is based on a misapprehension of the provisions of the PTA. Under the PTA, when the annual value of a property is reassessed by the Chief Assessor, any additional property tax resulting from the reassessment is payable by the owner to the Comptroller *without demand or notice*. This is made clear by s 35A of the PTA, which provides as follows:

Tax to be paid notwithstanding objection, etc.

35A.—(1) There shall be payable to account of tax in respect of a property a sum of money calculated at the prescribed rate of tax on the basis of the annual value in the Valuation List proposed or amended under the provisions of this Act notwithstanding that —

...

(*d*) an objection or appeal has been made under section 20A …

(2) The sum under subsection (1) shall be payable and recoverable in the same manner in which taxes are payable and recoverable under this Act.

36 It is clear from the terms of s 35A of the PTA that this section is intended to be and operates as a tax imposition and recoverability provision. Where the Valuation List is amended during a calendar year apropos a property's annual value (as was done in the present case), the owner is under an obligation, upon receiving a s 20(1) notice, to pay to the Comptroller any outstanding amount of property tax "calculated at the prescribed rate of tax on the basis of the annual value in the Valuation List … *amended* under the provisions of [the PTA]" [emphasis added] (see s 35A(1)), regardless of whether he makes an objection (to the Chief Assessor) or appeals (to the VRB) under s 20A. The owner's liability is not conditional upon a demand by or a notice to pay from the Comptroller. In the present case, if CDL had failed to pay the additional property tax due in respect of the 117 Units, the Comptroller would have been able to recover such tax under s 35A(2) using the means provided in s 38A.

37 In the event that the owner succeeds in his appeal to the VRB and the VRB revises the property's annual value in the Valuation List in his favour, s 33(4) of the PTA provides:

Where under subsection (1) the [VRB] directs such amendments as it thinks proper to be made to the Valuation List and the tax in respect of the property concerned is less than the amount paid by the [owner] to account of tax in respect of that property, the [VRB] may order the Comptroller to pay interest, from the date the decision of the [VRB] is first pronounced, at such rate as may be prescribed on the difference between the amount paid to account of tax and the tax payable in respect of that property.

This provision makes it clear that if an owner succeeds in his appeal to the VRB, he is entitled to a refund of the excess property tax that he paid to the Comptroller prior to the appeal. Hence, what is "payable to account of tax" pursuant to s 35A(1) of the PTA is payable *qua* property tax, and not *qua* security for the amount of property tax that will finally be determined by the VRB on appeal. As the Comptroller does not have to take any steps to collect the additional property tax due on a property as a result of a revision of its annual value, the issue of whether he may collect the additional property tax immediately or whether he has to wait until January of the ensuing year to do so – *viz*, the Tax Recoverability Issue – is wholly irrelevant.

The Interest Issue

38 We turn now to the Interest Issue. Before us, CDL argued that the Judge was wrong in refusing to award interest on the overpaid property tax in respect of the 115 Units, which overpayment resulted from the VRB's decision to reduce the annual values of the 115 Units from $11 psf/mth (as decided by the Chief Assessor) to $7 psf/mth for the period from 1 January 2007 to the Notice Dates (see [9] above). Whether or not interest should be awarded on overpaid property tax is a matter of

discretion for the VRB (see s 33(4) of the PTA), which discretion must be exercised judiciously. In the present case, the VRB did not award any interest on the overpaid property tax in respect of the 115 Units on the grounds that it was unable to make any decision on the matter as CDL did not ask for such interest (see [27] of the VRB's GD). [note: 10]

39 On appeal by CDL to the High Court, the Judge dismissed CDL's appeal where interest on the overpaid property tax in respect of the 115 Units was concerned on the grounds that the VRB had exercised its discretion reasonably in not awarding interest (see [26] of the HC Judgment). With respect, we disagree with the Judge's reasoning. The question of the VRB exercising its discretion as to whether or not to award CDL interest on the overpaid property tax in respect of the 115 Units did not arise. As stated in the VRB's GD, the VRB did not consider whether or not to award such interest to CDL because CDL did not ask for it. Whether or not the VRB's approach was correct is not relevant in the present appeal. The fact was that the VRB *did not* exercise its discretion. In the circumstances, the Judge was entitled to deal with the issue of interest on the merits since s 33(4) of the PTA does not make it a requirement for an owner to apply to the VRB for interest on overpaid property tax before such interest can be awarded (see, *eg*, *Chief Assessor and another v Keppel Corp Ltd* [1994] 1 SLR(R) 457, where the High Court awarded the owner interest on overpaid property tax even though the VRB did not deal with that issue and even though the owner did not, in its appeal to the High Court, challenge the VRB's decision on this point). The issue of interest on the overpaid property tax in respect of the 115 Units was thus within the discretion of the Judge to decide.

40 In our view, the Respondents have not given any reason why it would not be fair for CDL to be awarded interest on the overpaid property tax in respect of the 115 Units. Accordingly, we order interest to be paid at the rate of 6% per annum from the date of CDL's payment of the aforesaid property tax to the Comptroller up to the date of the Comptroller's repayment of the same to CDL.

Conclusion

41 For the above reasons, we make the following orders:

(a) This appeal is dismissed in so far as the Tax Recoverability Issue is concerned. We agree with the Judge's decision affirming the VRB's ruling on the amendments to the Valuation List with respect to the 117 Units.

(b) This appeal is allowed in so far as the Interest Issue is concerned. We set aside the Judge's decision not to award CDL interest on the overpaid property tax in respect of the 115 Units, and award CDL interest at the rate and for the period stipulated at [40] above.

(c) CDL will be entitled to its costs here and below on the Interest Issue. However, there will be no costs on the Tax Recoverability Issue as we received no assistance from counsel for the respective parties in this regard.

(d) The usual consequential orders will apply.

[note: 1] See vol 2, p 33 of CDL's Core Bundle dated 16 May 2011 ("ACB").

[note: 2] *Ibid*.

[note: 3] See ACB vol 2, p 58.

[note: 4] See ACB vol 2, p 63.

[note: 5] See ACB vol 2, pp 62–63.

[note: 6] See ACB vol 2, pp 61–62.

[note: 7] See ACB vol 2, p 33.

[note: 8] See ACB vol 2, p 33.

[note: 9] *Ibid*.

[note: 10] See ACB vol 2, p 63.