26. REVENUE AND TAX LAW

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I. Introduction

26.1 The Supreme Court delivered four decisions in 2021 that had some relevance to revenue law:

Tax Type	High Court	Court of Appeal
Income tax	1	0
Property tax	1	1
Miscellaneous	0	1

26.2 One case relates to the prosecution of income tax offences where the High Court laid down a framework comprising sentencing benchmarks. Two cases relate to property tax. The remaining miscellaneous case deals with judicial review.

II. Income tax

A. Sentencing benchmarks for offences under section 96(1) of Income Tax Act

26.3 The High Court had the opportunity to review this issue in *Tan Song Cheng v Public Prosecutor*.[1] Appeals against sentence from two unrelated Magistrate's Court decisions were heard together in this case.

1 [2021] 5 SLR 789.

26.4 In the first appeal, Tan Song Cheng had under-reported his share of trade income from a partnership and employment income from a company between 2009 and 2011. Tan was thus undercharged income tax of $34,992.26 in 2009 and $34,444.18 in 2011.[2]

26.5 Tan pleaded guilty to two charges under s 96(1)(*b*) of the Income Tax Act[3] ("ITA"). Six similar charges under s 96(1) (amounting to a total of $119,186.21 in tax evaded) were taken into consideration for sentencing.[4] The District Judge sentenced Tan to six weeks' imprisonment for each charge to run consecutively, that is, a total of 12 weeks' imprisonment.[5]

26.6 In the second appeal, Lin Shaohua had also under-reported her partnership income in 2016. Consequently, she was undercharged $79,142.13 in income tax. Lin pleaded guilty to one charge under s 96(1)(*b*) of the ITA. One other charge under s 96(1) of the ITA (for tax evasion of $7,654.46) was taken into consideration for sentencing.[6] The District Judge sentenced her to ten weeks' imprisonment for the ITA offence.[7]

26.7 In both cases, the relevant portions of s 96(1) of the ITA provided:

> Any person who wilfully with intent to evade or to assist any other person to evade tax, or to obtain or to assist any other person to obtain a PIC bonus or a higher amount of PIC bonus, or both —
>
> …
>
> (*b*) makes any false statement or entry in any return made under this Act or in any notice made under section 76(8)
>
> …
>
> shall be guilty of an offence for which, on conviction, he shall pay a penalty of treble —
>
> (*a*) the amount of tax;
>
> …
>
> as the case may be, that has been undercharged, obtained, or undercharged and obtained as a result of the offence, or that would have been undercharged, obtained, or undercharged and obtained if the offence had not been detected, and shall also be liable to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

2 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [5].
3 Cap 134, 2008 Rev Ed.
4 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [83].
5 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [6]–[7].
6 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [91].
7 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [11].

26.8 The High Court dismissed both appellants' appeals against their respective sentences. See Kee Oon J noted that earlier decisions on s 96(1) did not show any consistent sentencing trend.[8] He added that a sentencing framework capable of general application for such offences would be appropriate. This was reinforced by the fact that these offences did not appear to encompass a wide-ranging variety of circumstances.[9] In addition, there was the relative paucity of reasoned decisions, lack of consistency in sentencing decisions, and the full sentencing range set out by Parliament had not been utilised.[10] In this regard, See J accepted that the earlier case of *Chng Gim Huat v Public Prosecutor*[11] did not lay down a sentence benchmark for s 96(1) offences.[12]

26.9 The High Court then proceeded to set out a sentencing framework for s 96(1) offences. See J started by considering the "offence-specific" and "offender-specific" factors relevant to sentencing considerations.[13]

(1) Offence-specific factors

26.10 These relate to the manner and mode in which the offence was committed. They comprise factors going towards (a) the harm caused by the offence; and (b) the offender's culpability.[14] In the context of offences under s 96(1), he listed the following factors going towards the *harm caused by the offence*:[15]

(a) amount of income tax evaded;

(b) involvement of a syndicate; and

(c) involvement of a transnational element.

26.11 As regards *the offender's culpability*, the judge cited the following factors as relevant:[16]

(a) degree of planning and premeditation;

(b) sophistication of the systems and methods used to evade income tax or to avoid detection;

8 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [28].
9 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [29].
10 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [33].
11 [2000] 2 SLR(R) 360.
12 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [32].
13 This approach has been adopted by more recent cases including the Court of Appeal decision in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449, which See Kee Oon J also cited.
14 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [37].
15 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [39].
16 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [39].

(c) evidence of a sustained period of offending;

(d) offender's role; and

(e) abuse of position and breach of trust.

(2) Offender-specific factors

26.12 These could comprise (a) aggravating and (b) mitigating factors. The judge listed the following as *aggravating* factors:[17]

(a) offences taken into consideration for the purpose of sentencing;

(b) relevant antecedents; and

(c) evident lack of remorse.

26.13 On the other hand, *mitigating* factors would be:[18]

(a) a guilty plea;

(b) voluntary restitution; and

(c) co-operation with the authorities.

(3) Sentencing framework

26.14 See J then adopted a five-step sentencing framework:

(a) **First step:** ***Identify the level of harm and level of culpability***. He agreed with the Prosecution that the primary indicium of harm should be the amount of tax evaded.[19] In this regard, he accepted three levels of severity of harm:[20]

(i) less than $75,000 of tax evaded ("Level 1" harm);

(ii) $75,000–$150,000 of tax evaded ("Level 2" harm); and

(iii) more than $150,000 of tax evaded ("Level 3" harm).

(b) **Second step:** ***Identify the applicable indicative sentencing range***. The judge adopted the following indicative sentencing ranges in the Prosecution's sentencing matrix:[21]

17 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [39].
18 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [39].
19 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [70].
20 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [64].
21 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [71].

Harm / Culpability	Level 1 Harm (below $75,000 tax evaded)	Level 2 Harm ($75,000–$150,000 tax evaded)	Level 3 Harm (above $150,000 tax evaded)
Low Culpability	Fine or up to 6 months' imprisonment	6 to 12 months' imprisonment	12 to 18 months' imprisonment
Moderate Culpability	6 to 12 months' imprisonment	12 to 18 months' imprisonment	18 to 24 months' imprisonment
High Culpability	12 to 18 months' imprisonment	18 to 24 months' imprisonment	24 to 36 months' imprisonment

But See J mentioned these ranges were not cast in stone.[22] He added that the possibility of a non-custodial sentence should be considered where appropriate.[23]

(c) **Third step:** ***Identify the appropriate starting point within the indicative sentencing range***. For this, the court will have to re-examine the *offence-specific* factors again. The court must be mindful to adjust the "severity" of the harm in relation to the other harm factors, as well as the culpability factors.[24]

(d) **Fourth step:** ***Make adjustments to the starting point to take into account offender-specific factors***. See J held that it is possible for the adjustment to bring the sentence outside the indicative sentencing range, provided clear and coherent reasons are given.[25] The court must consider the total amount of tax evaded at this step as well.[26]

(e) **Fifth step:** ***Make further adjustments to take into account the totality principle***. The court must examine if the aggregate sentence is substantially above the sentences normally meted out for the most serious of the individual sentences committed. It must then consider whether the effect of the sentence on the offender is crushing and not in keeping with his past record and his future prospects.[27]

22 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [70].
23 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [73].
24 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [74].
25 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [75].
26 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [76].
27 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [78].

(4) Application of sentencing framework to the first appellant (Tan)

26.15 Examining the first two steps, the amount of tax which Tan had evaded under each charge was between $34,000 and $35,000. Both offences thus fell within Level 1 harm. From the facts, See J also accepted that Tan's culpability was low. Based on the sentencing matrix, the applicable sentencing range was up to six months' imprisonment.[28]

26.16 As for the third step, there were no other harm factors. Accordingly, See J agreed that the District Judge's "starting point" sentence of ten weeks' imprisonment was appropriate.[29]

26.17 Turning to the fourth step, See J accepted the six other charges under s 96(1) of the ITA (a total tax of $119,186.21 evaded) being taken into consideration for the purposes of sentencing as an aggravating factor.[30]

26.18 Finally, for the fifth step, the judge found the District Judge had not breached the one-transaction rule by ordering consecutive sentences. This was because each charge occurred in separate years of assessment.[31]

(5) Application of sentencing framework to the second appellant (Lin)

26.19 For the first two steps, the amount of tax which Lin had evaded was $79,142.13. This brought it under Level 2 harm. See J likewise accepted Lin's culpability was low from the facts. Based on the sentencing matrix, the applicable sentencing range was between six and 12 months' imprisonment.[32]

26.20 At the third step, there was similarly an absence of other harm factors. The amount of tax evaded ($79,142.13) was just between the two levels of harm. According, See J found that the District Judge's decision to adjust the indicative starting sentence downwards to 16 weeks' imprisonment was not wrong.[33]

26.21 For the fourth step, See J agreed that the additional charge under s 96(1) of the ITA (for tax evasion of $7,654.46) being taken into consideration for the purposes of sentencing was an aggravating

28 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [80] and [82].
29 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [82].
30 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [83].
31 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [85].
32 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [87] and [90].
33 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [90].

factor. See J also found that the District Judge had fully considered Lin's mitigating factors.[34]

26.22 Finally, as there was only one charge, See J saw no need to adjust the sentence of ten weeks' imprisonment on the basis of the totality principle.[35]

(6) Comments

26.23 The High Court has laid down a very useful sentencing framework for offences under s 96(1) of the ITA. This should provide more clarity and certainty for everyone examining s 96(1) offences and is a welcome development to the law.

III. Property tax

A. Annual value of "iFly Singapore"

26.24 *Skyventure VWT Singapore Pte Ltd v Chief Assessor*[36] was a Court of Appeal decision relating to a property tax dispute involving certain machinery at a tourist attraction called the iFly Singapore ("iFly"). The High Court's decision was reviewed in the Annual Review last year.[37] The Court of Appeal dismissed the appeal by the owner of the iFly.

26.25 Briefly, the iFly provided a simulated skydiving experience through the operation of a vertical wind tunnel, which caused an increase in the pressure and velocity of the airflow to be of a level at which it was suitable for simulated skydiving within the flight chamber. The wind tunnel consisted of wind turbines, a primary diffuser, turning vents, an inlet contractor and the flight chamber.[38]

26.26 For the periods in question, the dispute was whether the wind tunnel ought to be included in assessing the annual value of the property and, more particularly, whether the wind tunnel ought *not* to be included by virtue of s 2(2) of the Property Tax Act[39] ("PTA") which provides:[40]

34 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [91].
35 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [93].
36 [2021] 2 SLR 116.
37 See (2020) 21 SAL Ann Rev 786 at 796–798, paras 26.35–26.41.
38 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [4]–[6].
39 Cap 254, 2005 Rev Ed.
40 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [20].

> In assessing the annual value of any premises in or upon which there is any *machinery* used for any of the following purposes:
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> (*a*) the *making* of any article or part thereof;
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> (*b*) the *altering*, repairing, ornamenting or finishing of any article; or
>
> (*c*) the *adapting* for sale of any article,
>
> the enhanced value given to the premises by the presence of such machinery shall not be taken into consideration, and for this purpose 'machinery' includes the steam engines, boilers and other motive power belonging to that machinery.
>
> [emphasis added]

26.27 Before addressing the three issues that arose in this appeal, the Court of Appeal noted at the outset the tension that can arise between (a) giving effect to the statutory language; and (b) the general policy underlying the statute or its particular statutory provision in question. A balance must be struck between these two considerations, bearing in mind that tax law is wholly a creature of statute.[41]

26.28 The first issue concerned the scope of s 2(2) of the PTA. A primary interpretational issue is the meaning of "article", a term not defined in the PTA. Following the well-established purposive approach set out in *Tan Cheng Bock v Attorney-General*,[42] including relying on extrinsic material to determine the legislative object or purpose of s 2(2), the Court of Appeal considered the possible meanings of "article".[43] In light of its earlier decision in *Chief Assessor v First DCS Pte Ltd*[44] ("*First DCS*"), the word at its broadest can include water (in particular, chilled water in *First DCS*), air and other things occurring in nature.[45]

26.29 However, whether the word is capable of bearing any or some of the possible meanings depends on the particular statutory context in which it is used. The language in s 2(2) has its historical origin in the definition of the word "factory" in the UK Factories Act 1937.[46] English case law had observed that the UK statute determined directly the classes of employees which could benefit from the protection afforded by the statute from unsatisfactory working conditions, and held that a generous

41 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [2].
42 [2017] 2 SLR 850.
43 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [20]–[43].
44 [2008] 2 SLR(R) 724. For a review of this case, see (2008) 9 SAL Ann Rev 455 at 460–464, paras 21.21–21.40.
45 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [27].
46 c 67.

interpretation was warranted in that statutory context.[47] In contrast, "a broad or generous definition of those same terms may not *necessarily* be warranted in the context of property tax legislation (specifically, s 2(2) of the Act)" [emphasis in original].[48]

26.30 What is the statutory context of s 2(2)? The Court of Appeal noted that the history of s 2(2), traced in *First DCS*, pointed to the terms in s 2(2) being used to define a manufacturing process. Hence, Parliament intended s 2(2) to incentivise the use of machinery for manufacturing processes. In this statutory context, the court must determine the meaning of "article" that best comports with Parliament's intent to incentivise the use of machinery for manufacturing processes.[49] In the event, the Court of Appeal held that it was clear that "article" referred to "a thing that is intended to be sold", not only in s 2(2)(*c*) where sale is expressly envisaged but also in ss 2(2)(*a*) and 2(2)(*b*). In the court's opinion, it was difficult to discern any reason Parliament would grant an exemption from property tax in relation to the making or processing of matter which would *not* be sold.[50] The court reasoned that even if there was an intermediate process not resulting in a sale, the eventual sale of the manufactured article was always in view. Even where repairing was involved, there would be a sale of services to repair the article.[51]

26.31 The second issue was whether the wind tunnel was machinery. The Valuation Review Board and the High Court were agreed on this point, that is, that the wind tunnel was machinery. The Court of Appeal likewise agreed and held that the wind tunnel, including the flight chamber, as a whole constituted a system that created, modified and controlled airflow that allowed for simulated skydiving.[52]

26.32 However, turning to the third and last issue (whether s 2(2) applied to the wind tunnel so that its value ought to be excluded from the annual value of the property), the Court of Appeal distinguished the instant case from the facts in *First DCS*[53] where chilled water in a district cooling system was held to be an article so that the system was qualifying machinery within the ambit of s 2(2). The cooling effect of the water was considered to be inextricably connected with the chilled water itself, and the cooling effect was what was sold. In contrast, the adapted airflow (the article) in the wind tunnel did not change hands as there

47 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [28]–[30].
48 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [31].
49 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [33]–[37].
50 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [41].
51 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [43].
52 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [51].
53 See para 26.28 above.

was no transfer of property (that is, the skydiving-friendly aerodynamic properties of the adapted air). Specifically, the skydivers themselves were not the "terminus for the aerodynamic effect of the airflow, unlike the customers of the taxpayer in *First DCS*".[54] There was no indication that the aerodynamic effect of the airflow was intended to be sold.[55]

26.33 In short, while there was *adaptation* of the air as an article within the meaning of s 2(2)(*c*), the wind tunnel failed to be qualifying machinery because there was *no sale* of the aerodynamic effect of the airflow.[56] Further, for the same reasons, it did not qualify under s 2(2)(*b*), for while the airflow was *altered*, the fee charged to skydivers was "for the *enjoyment* of the altered airflow to the skydivers" [emphasis in original] and not a sale of the altered airflow.[57] The appeal was therefore dismissed.

26.34 Some observations may be made at this point. First, a good outcome for taxpayers is the Court of Appeal's holding that as long as the machinery in question satisfies the criteria laid down in s 2(2), the type of machinery and the premises in or upon which it is situated are irrelevant considerations.[58] In other words, the nature of manufacturing processes is allowed to evolve to encompass new processes, such as machinery used for social purposes as in the iFly, provided all the criteria are met (but, as has been observed, this was not the case for the iFly). However, this good outcome must be read subject to the next observation.

26.35 The second observation is that the Court of Appeal has extended the requirement of a sale to all limbs in s 2(2) even though the term "sale" is expressly stated only in s 2(2)(*c*). It is this very requirement that was not met for the iFly, even though the Court of Appeal accepted that the airflow would have been altered (for the purpose of considering s 2(2)(*b*)). A comparison of a number of similarities between the iFly and the district cooling system in *First DCS*[59] has been made in a commentary by Leung Yew Kwong and See Wei Hwa.[60] The authors there argued that the aerodynamic effect of the adapted air was in fact "sold" and passed to the customers when they enjoyed their skydiving experience, and "sale" should not be construed in an overly narrow and conventional

54 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [58].
55 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [53]–[59].
56 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [59].
57 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [62]. Section 2(2)(*a*) of the Property Tax Act (Cap 254, 2005 Rev Ed) was not relevant as there was no *making* of an article in this case.
58 *Skyventure VWT Singapore Pte Ltd v Chief Assessor* [2021] 2 SLR 116 at [21].
59 See para 26.28 above.
60 Leung Yew Kwong & See Wei Hwa, "Is Property Tax Ready for the Future Economy?" in KPMG Tax Alert Issue 20 (September 2021).

sense.[61] If necessary, they suggested that reform should be made by amending s 2(2) of the PTA to cater to machinery emerging from more modern technologies.

B. Annual value of vegetable farm and buildings

26.36 In *Bollywood Veggies Pte Ltd v Chief Assessor*,[62] the High Court dismissed the taxpayer's appeal involving the determination of the annual value of a vegetable farm and various buildings (including a bistro, event space, office and workers' quarters) (together comprising "the Property") which was leased for a term of 20 years from the Singapore Land Authority. The annual value was determined by the Chief Assessor pursuant to s 2(3)(*a*) of the PTA, which provides that the Chief Assessor has the option of assessing 5% of the estimated value of a property as its annual value. In so doing, the Chief Assessor derived an annual value for the Property that was a summation of two values computed as follows, and rounded up to $107,100:

> (a) for the land: the contractual annual rent was taken as representative of the annual value for the land, and for the year in question (2018) the figure was $77,400 (whereas previously it was $57,300 before rent was increased); and
>
> (b) for the buildings: 5% of the total building costs was adopted as representative of the annual value for the buildings, and the figure was $29,650, being 5% of the building costs of $593,000 (this latter figure being stated in an e-mail from the taxpayer's architect to the Inland Revenue Authority of Singapore).[63]

26.37 The High Court (Aedit Abdullah J) considered the appeal from three aspects: the standard of review, the burden of proof and the statutory basis for taxation.[64]

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61 First-named author's comment: There is considerable force in Leung and See's argument that the requirement for sale was actually met in the case of the iFly, and on balance, it is respectfully submitted (in agreement with Leung and See) that the Court of Appeal was wrong in its finding on this aspect. The appeal ought to have been allowed.

62 [2021] SGHC 233.

63 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [2]–[4] and [9].

64 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [20].

26.38 On the standard of review, after setting out a broad overview of previous cases[65] including *Comptroller of Income Tax v AQQ*[66] ("*AQQ*"), the court held that in property tax appeals where the concern is with the merits (rather than the legality)[67] of the Chief Assessor's decision, the approach in *AQQ* may be transposed for application to the PTA, that is, whether the Chief Assessor had exercised his powers in a fair and reasonable manner.[68] The court also held that the burden of proof is clearly on the taxpayer to show that the Chief Assessor was wrong.[69]

26.39 Abdullah J held that the Chief Assessor's decision to rely on the taxpayer's architect's e-mail providing information on the building costs was reasonable and should not be disturbed.[70] In the absence of other measures, the building costs were a reasonable proxy for determining the value of a property, and the fact that the property could not be let in practice or reality was immaterial as the statutory language was concerned with hypothetical or notional leases.[71] Following the rule in *Browne v Dunn*,[72] the taxpayer was not permitted to rely on a valuation report which was not put to the Chief Assessor's representative in evidence before the Valuation Review Board; as no other evidence was produced or forthcoming from the taxpayer despite the Chief Assessor's request, the Chief Assessor could rely on the information on building costs provided by the architect.[73]

26.40 As regards the statutory basis for taxation under s 6 of the PTA, Abdullah J rejected the taxpayer's contention that a prohibition against subleasing (which was the case for the Property) would prevent the Chief Assessor from ascribing value to the Property under s 2(1) or 2(3)(*a*) of the PTA. The inquiry into the annual value is a primarily economic one;

65 They included *HSBC Institutional Trust Services (Singapore) Ltd v Chief Assessor* [2020] 3 SLR 510; *Chief Assessor v Glengary Pte Ltd* [2013] 3 SLR 339; *City Developments Ltd v Chief Assessor* [2008] 4 SLR(R) 150; and some cases before the Valuation Review Board: see *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [25]–[28].

66 [2014] 2 SLR 847 ("*AQQ*"). The above-mentioned Supreme Court cases and *AQQ* have been reviewed in the relevant years of previous editions of the SAL Ann Rev.

67 Where the question of legality is involved, the oft-cited test is that of *Wednesbury* unreasonableness, as noted by the court: *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [29].

68 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [29]–[31].

69 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [32].

70 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [19].

71 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [48]–[49].

72 (1893) 6 R 67.

73 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [54]–[62] and [16].

s 2(3) of the PTA provides an alternative determination to s 2(1) and there is no requirement for it to be read subject to s 2(1).[74]

26.41 This case is particularly timely as a reminder of the standard of review and the burden of proof placed on the taxpayer as appellant. An appeal is a challenge of the Chief Assessor's decision on its merits, and to mount a case successfully against that decision, the taxpayer must produce credible evidence and not merely refute the evidence relied upon by the Chief Assessor.

IV. Miscellaneous

A. Judicial review and mandatory order

26.42 In the non-tax case of *CBB v Law Society of Singapore*,[75] in emphasising the sacrosanct principle that in judicial review proceedings the court reviews an administrator's decision-making process rather than the merits of the decision, the Court of Appeal cited (*inter alia*) *City Developments Ltd v Chief Assessor*.[76] The courts will therefore generally *not* grant a mandatory order to mandate the performance of the administrator's duty.[77] However, this rule is not inflexible; for example, an order mandating a tax refund was made in *C v Comptroller of Income Tax*.[78]

74 *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233 at [33]–[43].

75 [2021] 1 SLR 977.

76 [2008] 4 SLR(R) 150 at [9]; see review of the case at (2008) 9 SAL Ann Rev 455 at 471–474, paras 21.59–21.69. This case and the point itself made by the court were interestingly also discussed in *Bollywood Veggies Pte Ltd v Chief Assessor* [2021] SGHC 233, as noted at para 26.38 above.

77 *CBB v Law Society of Singapore* [2021] 1 SLR 977 at [7].

78 [1965–1967] SLR(R) 626: see *CBB v Law Society of Singapore* [2021] 1 SLR 977 at [11] and [26].