includes an assessment of the demised premises.

We now turn to the question whether there has been an increase in property tax over and above the first assessment of property tax payable on the demised premises. This is a question of fact and a matter of computation which clearly must be based on relevant data of long Building. This issue, unfortunately, has not been canvassed before *Wahab Ghows* J. or before us; nor is there sufficient material for the learned Judge or for us to determine it. The computation as shown by the appellants in the letter dated 29 June 1983 written on their behalf is far from satisfactory and difficult to follow. In order to succeed on this issue, the appellants must show, *inter alia*, the following:

(i) whether the annual value of Tong Building amounting to $2,000,000 in 1979 with effect from 21 April 1979 was made by the Chief Assessor on the basis that Tong Building at that time was a partially or wholly completed building;

(ii) a breakdown of the annual value of the shop and office units respectively of Tong Building at that time;

(iii) a breakdown of the annual value of the shop and office units as from 1 January 1981;

(iv) whether the increase in annual value as from 1 January 1981 was due to the completion of the building or to increase in the number of shop or office units let out as from that year, or both; and

(v) the reasons for the huge increase in annual value of the building as from 12 August 1981.

It seems to us that the appellants must have available these data or they are obtainable by them from the Property Tax Division of the Inland Revenue Department. All these have to be adduced in order to enable the Court to decide whether or not there has been an increase in property tax over and above the first assessment of property tax payable on the demised premises.

In the result the appeal succeeds to the extend that the order of *Wahab Ghows* J. is set aside and the matter is remitted to the Court below to determine the issue. As for costs, having regard to all the circumstances of this case, we order each party to pay their own costs before us and before *Wahab Ghows* J. There will be the usual consequential order for the refund to the appellants or their solicitors of the amount deposited by the appellants as security for costs of the respondents in this appeal.

CH Pte Ltd v. Comptroller of Income Tax.
Supreme Court of Singapore. District Court Appeal No. 29 of 1985.
Judgment delivered on 7 May 1987.

Income tax — Source of income — Taxpayer company lent money to foreign company — Loan agreement executed outside Singapore — Cheque for loan drawn on bank in Singapore handed by taxpayer to borrower outside Singapore — Interest payable on loan — Whether source of interest deriving from Singapore — Whether loan providing funds used in Singapore — Income Tax Act (Cap. 134, 1985 Ed.), sec. 12(6)(b).

The taxpayer was a company incorporated in Singapore. One of the objects for which it was incorporated was to negotiate and procure capital for any company in any country and it derived its earnings from such transactions. The taxpayer opened an account with the Singapore branch of BNP bank and was provided with overdraft facilities.

The taxpayer entered into a loan agreement with DI, a company incorporated in Australia. DI was registered as a foreign company under the provisions of the Companies Act. The loan agreement was executed in Johore Bahru, Malaysia. Immediately after the signing of the loan agreement, a cheque for the loan amount was drawn by the taxpayer on BNP payable to DI and handed to DI's representative. DI in turn drew a cheque for a similar amount on BNP

payable to a third party. Both the cheques were payable at the Singapore branch of BNP. Pursuant to the loan agreement interest on the loan was capitalised from time to time and this was effected by DI crediting in its books of account in Australia the account of the taxpayer with the relevant amount of interest.

The Comptroller assessed the taxpayer on interest derived from the loan. The taxpayer objected to the assessment and upon the Comptroller refusing to amend the assessment, the taxpayer appealed to the Board of Review. The appeal was dismissed. The Board held that notwithstanding that the cheque for the loan was drawn and handed to DI in Johore Bahru, the fact remained that the origin of the loan was the funds in the account of the taxpayer in Singapore. There had been no nexus between Johore Bahru and the taxpayer or DI save that the agreement was executed there and the cheques were handed over there. It would have been untenable to hold that the loan was made in Johore Bahru. The fact that DI on receipt of the cheque immediately drew another cheque for an identical amount on the bank in favour of a third party did not alter the source of the funds for the loan; DI's cheque could never have been met until the taxpayer's cheque had first cleared. The Board further held that if the handing over of the cheque in Johore Bahru was material to determine the source of the loan, then, when the cheque was brought into Singapore by DI's representative and placed into DI's account with the bank, the funds provided by such loan had been brought into Singapore. The taxpayer appealed against the decision of the Board.

The only question for determination was whether the interest on the loan to DI had been derived from Singapore.

The taxpayer argued that the source of the interest was the transaction entered into between the taxpayer and DI which gave rise to the obligation by DI to pay interest and the transaction was entered into outside Singapore. He also contended that sec. 12(6)(b) of the Income Tax Act stipulating when interest would be deemed to be derived from Singapore did not apply since the funds for the loan had at all times been in BNP's branch in Singapore.

The Comptroller argued that the source of interest was in Singapore. He also submitted that when the cheque representing the loan had been brought into Singapore by DI and placed to the credit of its account with BNP, the funds provided by such loan had been "brought into Singapore" and were, as such, deemed to have been derived in Singapore pursuant to the first limb of sec. 12(6)(b).

Held: appeal dismissed.

1. "Source" was not a legal concept but something which a practical man would regard as a real source of income. Ascertaining the actual source of interest was thus a practical matter of fact.

2. The taxpayer had arranged with BNP for overdraft facilities to be made available. The funds for the loan had thus been provided for in Singapore. It was the agreement between the taxpayer and DI that interest on the loan should be paid and the performance by the taxpayer of its obligation thereunder which created the right of the taxpayer to receive the interest and the corresponding obligation of DI to pay it. Although the agreement took place in Johore Bahru and the cheque was handed over there, the agreement provided for disbursement of a loan denominated in Singapore currency and the loan was disbursed in Singapore and credited to the account of the borrower in Singapore. The selection of Johore Bahru for executing the loan agreement and the handing over of the cheque there had no consequence in determining the source of the interest paid on the loan.

3. Given the facts, a practical man would regard the interest on the loan as being derived from Singapore.

4. The funds had not been brought into Singapore within the meaning of the first limb of sec. 12(6)(b) as they had at all times been in Singapore. The funds were, however, "used in Singapore" according to the second limb of sec. 12(6)(b). By paying the amount borrowed from the taxpayer to the third party, DI had employed in Singapore the funds provided by the loan in Singapore in discharging its contractual obligation to the third party and hence had used the funds in Singapore.

[*Headnote by CCH TAX EDITORS*]

Andrew Ang (of Lee & Lee) for the taxpayer.

Rosalind Tan for the Comptroller of Income Tax.

Before: Thean J.

Thean J.: The facts in this appeal are not in dispute and have been agreed upon. They are as follows. CH Pte Ltd ("CH"), the appellants, is a company incorporated in Singapore. At all material times, all its shares were beneficially owned by HM Ltd, a company incorporated in Hong Kong, and the directors of CH were NL, BSM, TJG and RSNB. NL was the director resident in Singapore and was only appointed to comply with sec. 122(1) of the *Companies Act (Cap. 185),* now sec. 145(1) of the *Companies Act (Cap. 50, 1985 Ed.),* and all the other directors were resident in Hong Kong. All meetings of directors were held there. The objects for which CH was incorporated are, *inter alia*, to negotiate loans and procure capital for any company in any country and it derived its earnings from such transactions. Since its incorporation, only one such transaction had been undertaken by CH and that transaction was made with a company called DI Pty Ltd ("DI").

DI is a company incorporated in the State of New South Wales, Australia. It was not resident in Singapore, but it established a branch in Singapore and was registered here as a foreign company under the provisions of the *Companies Act.*

On 22 May 1976, DI purchased an interest in certain mineral rights in Australia. It was not stated in the statement of agreed facts from whom DI purchased the interest, but from the recital to the deed of assignment dated 22 May 1976, made between DI and a company called TB Pty Ltd, it appears that DI purchased it from a company called NPJ Pte Ltd ("NP"). This is also evident from the cheque for S$9m drawn by DI in favour of NP in payment of part of the purchase price of such interest, to which I shall advert shortly.

On 25 May 1976, CH opened a bank account with the Singapore branch of Bank Nationale de Paris ("BNP"), the bank account number being X. Previous to that, the bank had agreed to provide overdraft facilities to CH up to the limit of S$9m. DI also had an account with the Singapore branch of BNP. It arranged to borrow from CH a sum of S$9m, and on 25 May 1976, the board of directors of CH, at a meeting held in Hong Kong, formally approved the borrowing from BNP and the loan to DI. Accordingly, a loan agreement expressed to be made between CH and DI was prepared.

On 26 May 1976, the persons representing the parties concerned made a short journey to Johore Bahru, Malaysia. There, the loan agreement between CH and DI was executed. It was executed on behalf of CH by NL, the director resident in Singapore, and on behalf of DI by JMP, under a power of attorney, in the presence of an advocate and solicitor, Mr CKM, practising in Johore Bahru. Immediately, after the signing of the loan agreement, a cheque for S$9m, representing the loan, was drawn on behalf of CH on BNP payable to DI and was handed to the representative of DI. Upon receipt of the cheque, the latter immediately drew a cheque for a similar amount on BNP payable to NP to pay for part of the purchase price of the Australian mineral rights which DI had purchased, and the cheque was handed over in Johore Bahru. Both the cheques were payable at the Singapore branch of BNP. After the completion of these transactions, the representatives of the parties then returned to Singapore and the cheques drawn respectively by CH and DI were credited to the respective bank accounts of the parties concerned with the Singapore branch of BNP on 26 May 1976.

4. The funds had not been brought into Singapore within the meaning of the first limb of sec. 12(6)(b) as they had at all times been in Singapore. The funds were, however, "used in Singapore" according to the second limb of sec. 12(6)(b). By paying the amount borrowed from the taxpayer to the third party, DI had employed in Singapore the funds provided by the loan in Singapore in discharging its contractual obligation to the third party and hence had used the funds in Singapore.

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On 26 May 1976, the persons representing the parties concerned made a short journey to Johore Bahru, Malaysia. There, the loan agreement between CH and DI was executed. It was executed on behalf of CH by NL, the director resident in Singapore, and on behalf of DI by JMP, under a power of attorney, in the presence of an advocate and solicitor, Mr CKM, practising in Johore Bahru. Immediately, after the signing of the loan agreement, a cheque for S$9m, representing the loan, was drawn on behalf of CH on BNP payable to DI and was handed to the representative of DI. Upon receipt of the cheque, the latter immediately drew a cheque for a similar amount on BNP payable to NP to pay for part of the purchase price of the Australian mineral rights which DI had purchased, and the cheque was handed over in Johore Bahru. Both the cheques were payable at the Singapore branch of BNP. After the completion of these transactions, the representatives of the parties then returned to Singapore and the cheques drawn respectively by CH and DI were credited to the respective bank accounts of the parties concerned with the Singapore branch of BNP on 26 May 1976.

Interest on the loan was determined by CH and notified to DI in accordance with the terms of the loan agreement. Pursuant to cl. 10 of the loan agreement, the interest payable by DI was capitalised from time to time and this was effected by DI crediting in its books of account in Australia the account of CH with the relevant amount of interest. Under the Australian income tax law, when CH was credited with interest, DI paid 10% withholding tax to the Australian Commissioner of Taxation. Apart from small amounts paid to the directors of CH in Hong Kong as directors' fees, at no time had any interest payable by DI to CH been paid. Also, at no time had any interest ever been remitted to CH in Singapore.

By a notice of assessment dated 4 September 1981, the Comptroller of Income Tax, the respondent, assessed CH for the year of assessment 1978 to tax on the interest derived from the loan in a sum of $513,646.80. CH objected to the assessment and upon the Comptroller refusing to amend the assessment, CH appealed to the Board of Review, but the appeal was dismissed. The Board held that notwithstanding that the cheque for the loan was drawn and handed to the borrower in Johore Bahru, the fact remained that the origin of the loan was the funds in the account of CH with BNP in Singapore. There was no nexus between Johore Bahru and CH or DI, save that the agreement was executed there and the cheques were handed over there and it would be untenable to hold that the loan was made in Johore Bahru. The fact that DI on receipt of the cheque immediately drew another cheque for an identical amount on the bank in favour of a third party did not, in the opinion of the commissioners, alter the source of the funds for the loan; DI's cheque could never have been met until CH's cheque was first cleared. They held further that if the handing over of the cheque in Johore Bahru was material to determine the source of the loan, then, when the cheque was brought into Singapore by the representative of DI and placed into DI's account with the bank, the funds provided by such loan had been brought into Singapore. Against the decision of the commissioners this appeal is now brought.

The charging provision is sec. 10(1) of the *Income Tax Act (Cap. 141*, now *Cap. 134, 1985 Ed.)*, which, so far as relevant, is as follows:

> "10.(1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereinafter for each year of assessment upon the income of any person accruing in or derived from Singapore or received in Singapore from outside Singapore in respect of —
>
> (a) ...
>
> (b) ...
>
> (c) ...
>
> (d) dividends, interest or discounts;
>
> (e) ...
>
> (f) ...
>
> (g) ..."

The term, "derived from Singapore", has been extended by sec. 12(6), which so far as relevant, is this:

> "12.(6) There shall be deemed to be derived from Singapore —
>
> (a) ...
>
> (b) any income derived from loans where the funds provided by such loans are brought into or used in Singapore."

The only question in this appeal is whether the interest on the loan to DI was derived from Singapore and this question turns on a finding of the source of the interest, as the word "derived" connotes a source.

It was argued by Mr Ang on behalf of CH that the source of the interest was outside Singapore, and the source was the transaction entered into between CH and DI which gave rise to the obligation by DI to pay interest, and the transaction was entered into in Johore Bahru. He relied on what in his submission was the majority view of the Court of Appeal of New Zealand in the case of *Commissioner of Inland Revenue (N.Z.) v. N.V. Philips Gloeilampenfabrieken* (1955) 10 A.T.D. 376, namely, the judgment of *North* J., with whom *Hay* J. concurred, and the judgment of *Turner* J. Miss Rosalind Tan on behalf of the Comptroller of Income Tax also cited that case in support of her argument that the source of the interest was in Singapore, but she relied on the judgment of *Barrowclough* C.J. in the Supreme Court, who first heard the case, and the judgment of *Gresson* J. in the Court of Appeal. As the various judgments in this case

had been quoted *in extenso* by both counsel in their arguments it would be helpful to examine them in some detail.

In that case, a Dutch company incorporated and resident in Holland sold and exported its products to a New Zealand company operating in New Zealand. Arising from the trading transactions, the New Zealand company owed the Dutch company an amount of £80,000 (English sterling) for goods supplied and unpaid, and was unable to discharge this liability. It negotiated with the Dutch company for an extension of time for payment, and arising from the negotiation, it was agreeed that the liability would be converted into a loan from the Dutch company repayable with interest by instalments. A loan agreement was prepared and executed. Pursuant to the loan agreement, the Dutch company sent to the New Zealand company a cheque for £80,000 (English sterling) drawn by the Dutch company on Midland Bank in London and made payable at that bank to the New Zealand company. Upon receipt of the cheque, the New Zealand company endorsed it and sent it back to the Dutch company in payment of the amount owing for goods sold and unpaid. The New Zealand company also sent to the Dutch company a receipt for the loan of £80,000, and made appropriate entries in its books. Thereafter, the New Zealand company paid interest on the loan, and deducted in each year the amount of such interest in making returns of its assessable income. The Commissioner of Inland Revenue, New Zealand, assessed the New Zealand company as agent for the Dutch company for income tax and social security charges in respect of the interest received by the Dutch company in terms of the loan agreement. The question was whether the interest was derived from New Zealand and a case was stated for decision by the Supreme Court. *Barrowclough* C.J. who heard the case held that the interest was not derived from New Zealand. In examining the facts the learned Chief Justice observed that the proceeds of the loan were in England and never reached New Zealand. He said at p. 383:

> "... The New Zealand company owed £80,000 in English stering currency to the Dutch company and the debt was clearly payable in Holland. It paid that debt by borrowing abroad an equivalent sum. The proceeds of the loan never came to New Zealand. It is true that a cheque was sent to the New Zealand company, but that cheque was drawn on a bank in London and no steps were taken by the New Zealand company to present the cheque in London and have the proceeds of it remitted to New Zealand... The proceeds of the loan never reached this country — the cheque being merely endorsed to the order of the Dutch company and returned to that company."

He proceeded further in his analysis as follows, at pp. 383 to 384:

> "... If I am to enquire what 'a practical man would regard as the real source' of so much of the Dutch company's income as is represented by interest on this loan, I must have regard to the fact that the loan moneys were supplied from a company abroad, that they were used to pay off a debt which was payable abroad, that that debt arose from business carried on abroad (at least as far as the Dutch company were concerned), that both principal and interest of the loan were payable abroad and that the Dutch company would be bound to accept both principal and interest from whatever funds the debtor might command, whether or not they were obtained from New Zealand."

And he came to the conclusion that the interest received by the Dutch company was not income derived from New Zealand and was not derived directly or indirectly from any source in New Zealand.

On appeal the decision of *Barrowclough* C.J. was affirmed. Like the learned Chief Justice, *Gresson* J., who delivered the first judgment, also held that the money for the loan was all the time in London. He said, at p. 437:

> "... What was to be lent was money. Money was provided or must be deemed to have been provided — at the Midland Bank in London. Philips — N.Z. was sent (after it had executed the formal document evidencing the loan) an order enabling it to collect those moneys. It could have brought them to New Zealand but it did not. It endorsed the cheque and returned it to the lender, thereby extinguishing its debt for the goods. The moneys which were the subject of the loan never left London."

He repeated himself, at p. 438, as follows:

> "The subject of the lending in this case was a sum of money actually lying in a London

bank, or at any rate available at a London bank. The cheque which passed between the parties may perhaps be fictionally treated as money, but when it becomes necessary as in this case, to fix the locality of the loan regard has to be had to the fact that though the cheque may notionally be regarded as money because it was a document of title to money, yet the money itself was in London. Even if the cheque was to be regarded as equivalent to money it represented English currency, i.e. money in England. The loan was acknowledged as 'a loan of £ stering 80,000'."

He then proceeded in his analysis of the source of interest and said, at pp. 439 to 440:

"... The answer which I should expect the 'practical man' to make to a question what was the source of the money which was received by Philips — Holland would be the loan it made which means in effect the lending of the money — the transaction. The money was paid because Philips — N.Z. had contracted to pay it; so that in some sense it can be said the obligation which had been entered into was the source of the payment made. But one must look behind that. It is seldom that a person makes a payment except under an obligation to do so and it is I think unreal and incompatible with a practical approach to regard the obligation as the source. It is what produced the obligation that is important. A lessee pays rents because he has entered into an obligation to do so but he has only done this on terms that land is made available to him. An obligation is seldom if ever accepted in vacuo; it requires some transaction to give it birth. The obligation arises from something which has been or will be done to warrant it, e.g. rendering services, making land or other property available. The practical man in regarding the loan as the source of the payment would mean I think the conduct or the action which was the reason for the obligation being accepted. The document executed stated that the loan had been made and that was the originating cause of the payment of interest ... It appears to me that in interpreting s. 87, proper regard must be paid to the word 'derived'; it should not be read as 'received'. The word "derived" means more than received; it connotes the source or origin rather than the fund or place from which the income was taken. It means flowing, springing, emanating from or as was said in *Commissioner of Taxation v. Kirk* [1900] A.C. 588, 592 arising from or accruing. To be a 'source' of the income within the meaning of the subsection, it is necessary I think to look to the originating cause. It is not sufficient to ascertain the fund out of which the income was in fact paid, which is no more than the reservoir from which it was drawn. It is not whence it was paid but why it was paid that is the determining factor. The emphasis is not upon the receipt but upon the derivation of the income."

And he came to the conclusion as follows, at p. 440:

"In my view, therefore, the originating cause being that Philips — Holland had lent moneys or provided a credit in London, from which sprang the obligation to pay interest, the 'source' of Philips — Holland's income was not in New Zealand even though the borrower resorted to its New Zealand funds to pay the interest ... Looking at the real substance of the facts with the eyes of a practical man it was from the provision of the loan moneys that the income was derived: the title to the money paid as income sprang from the loan."

North J., with whom *Hay* J. concurred, took a slightly different view. He was of the opinion that the money for the loan had been transmitted to New Zealand. He said, at p. 443:

"It is true that a cheque on a London bank was used for this purpose and not coin of the realm; but a cheque is a Bill of Exchange drawn on a banker and payable on demand, and I think it must be regarded as being the equivalent of money when it is shown that it was accepted by the borrower in satisfaction of the promised accommodation and was in turn used by the borrower as the means of discharging the trade debt."

Notwithstanding that, he held that the source of interest was not in New Zealand. His reasoning was that the loan transaction was entered into in the Netherlands and that was the source of the interest. He said, at p. 445:

"... In my opinion applying the 'practical hard matter of the fact test' no one can really doubt that the actual source of this

income was credit made available by way of loan under the agreement made in the Netherlands in the course of the respondent's business in that country. I do not think it can be said that the respondent owned 'property' in New Zealand. What is owned was a debt due under a contract made in the Netherlands, and to be performed in that country."

Turner J. who delivered the last judgment expressed the view that upon the execution of the loan agreement the loan was granted by the Dutch company to the New Zealand company by way of settlement of accounts: the loan setting off against the liability for the unpaid goods and nothing further was required to be done to perfect the loan. On this view of the fact, *Turner* J. was of the opinion that the money was not lent in New Zealand. He said that there were four meanings which could be attributed to the term "source", and on his analysis the source of the income in that case was the transaction from which the interest took its origin. He said, at p. 453:

"In my view the transaction by virtue of which interest is payable is the source of these payments, and in my opinion this transaction, for the reasons set out in the first part of this judgment, did not take place in New Zealand."

It is clear on an analysis of the judgments delivered in the *Philips case* the judges were not all at one on the finding of the source of the interest paid to the Dutch company, though they were all unanimous in concluding, without any doubt, that the source of the interest was not in New Zealand. All the three judges, *Gresson*, *North* and *Turner* JJ., quoted, with approval, certain passages of the judgment of *Watermeyer* C.J. in the South African case, *Commissioner for Inland Revenue v. Lever Brothers & Unilever Ltd* (1946) 14 S.A.T.C. 1. In that case, a Dutch company acquired certain assets from an English company, which was a holding company carrying on business in England, and became indebted to the latter in the sum of £11,000,000 on which it agreed to pay interest. As security for the indebtedness, the Dutch company lodged with a trustee company in England, as trustee, various shares, a major part of which was shares in an American company carrying on business in the United States. Subsequently, a company was formed in the Union of South Africa, and a series of agreements were made between the companies concerned, the result of which was to vest in the South African company all the interests of the Dutch company in the shares held by the trustee company as security for the Dutch company's indebtedness and to place the South African company in the position of the Dutch company as regards its rights and liabilities under the original trust agreement. Under these agreements, made with the English company and the trustee company, the place of payment was shifted from Rotterdam to London, and all future payments were required to be made by the South African company by sterling cheque drawn on a bank in London. None of the agreements were made in the Union of South Africa. The interest due under the agreements for the subsequent years were paid out of moneys received by the South African company in the United States, as dividends on the American shares held by the trustee company. The Commissioner for Inland Revenue assessed the interest to tax, claiming that the interest was received from a source within South Africa, because it was interest on a loan of money made to a company incorporated in South Africa. It was held by the appellate division of the Supreme Court of South Africa that on the facts, the source of interest received by the recipient company was not in South Africa. *Watermeyer* C.J. said, at p. 8:

"The word 'source' has several possible meanings. In this section it is used figuratively, and when so used in relation to the receipt of money one possible meaning is the originating cause of the receipt of the money, another possible meaning is the quarter from which it is received. A series of decisions of this Court and of the Judicial Committee of the Privy Council upon our Income Tax Acts and upon similar Acts elsewhere have dealt with the meaning of the word 'source' and the inference, which, I think, should be drawn from those decisions is that the source of receipts, received as income, is not the quarter whence they come, but the originating cause of their being received as income and that this originating cause is the work which the taxpayer does to earn them, the *quid pro quo* which he gives in return for which he receives them."

Later, he said, at pp. 9 to 10:

> "In the case of a loan of money the lender gives the money to the borrower, who in return incurs an obligation to repay the same amount of money at some future time and if the loan is one which bears interest, he also incurs an obligation to pay that interest. Though I use the words 'gives the money' this must not be taken literally as the usual way of making a loan. As a rule the lender either gives credit to the borrower or transfers to him certain rights of obtaining credit which had previously belonged to the lender, and this supply of credit is the service which the lender performs for the borrower, in return for which the borrower pays him interest. Consequently this provision of credit is the originating cause or source of the interest received by the lender."

It was a fact in that case that no business or activity of any sort was carried out by the English company in South Africa, and no obligation resting on it or the South African company was performed or was to be performed in South Africa. In such a case the Court had no difficulty in coming to the conclusion that the source of the income was not located in South Africa. In so doing the Court rejected the test of the debt as a source of income. *Watermeyer* C.J. said, at pp. 14 to 15:

> "... As I have pointed out above, to call the debt of £11,000,000 the source of the income is to make use of metaphor. The same may possibly be said of calling the taxpayer's activities the source; but there is a vital distinction which makes the word 'source' more appropriate as a metaphorical expression to denote the taxpayer's activities than to denote the debt resulting from them. This distinction lies in the fact that the mere existence of the debt did not entitle the taxpayer to receive the money from Overseas Holdings; it was the agreement between the parties that interest should be paid, and the performance by Levers of their obligations under it, which created the right of Levers to receive the money and the corresponding obligation of Overseas Holdings to pay it. So it could more properly be said that it was the making and carrying out of the agreement relating to the £11,000,000 by the taxpayer, which earned the income for him, rather than the existence of the debt resulting from that agreement."

Relying on that case, and in particular the last two passages of the judgment of *Watermeyer* C.J. which I have quoted, Mr Ang submitted that the interest on the loan to DI was not derived from Singapore. The loan, he said, was made in Johore Bahru when the cheque drawn by CH was handed over to DI, and when CH drew a cheque it transferred its right to obtain credit to DI — this point was presumably based on the words used by *Watermeyer* C.J. by which he described what, as a general rule, a loan would involve. I am unable to accept this argument. Such a finding of the source of the interest is much too superficial and also artificial; it looks only at the formal or symbolic side of the transaction and ignores other salient facts surrounding it. In finding the source of interest in this case I echo the oft-quoted dictum of *Isaac* J. in *Nathan v. Federal Commissioner of Taxation* (1918) 25 C.L.R. 183 that source is not a legal concept but something which a practical man would regard as a real source of income, and the ascertaining of the actual source is a practical hard matter of fact. Adopting this line of approach, the material facts indicating the source of interest paid on the loan to DI are these. First, CH had arranged with BNP for overdraft facilities to be made available and provided by the latter's branch in Singapore. In other words, the funds for the loan were provided for in Singapore. That undoubtedly was a preparatory step towards the granting of the loan by CH. Next, the parties executed the loan agreement, and in performing the agreement, CH made use of the overdraft facilities. It drew a cheque for S$9m made out payable to DI and that cheque was payable at the Singapore branch of BNP. The parties might have treated the cheque as equivalent to money but as a matter of hard fact that cheque had to be cleared in order that DI could use the money to pay for part of the purchase price of the mineral rights it had purchased. Even in law the delivering of that cheque to DI was a conditional disbursement of the loan: it was conditional on the cheque being cleared. That cheque was presented to the Singapore branch of BNP and was cleared and the proceeds therefrom were credited to the account of DI which was also with the Singapore branch of BNP. Now, adopting the words of *Watermeyer* C.J., it was the agreement between CH and DI

that interest on the loan should be paid and the performance by CH of its obligation thereunder which created the right of CH to receive the interest and the corresponding obligation of DI to pay it. It is true that the physical execution of the loan agreement took place in Johore Bahru and the cheque for the loan was handed over there. But the agreement provided for disbursement of a loan denominated in Singapore currency and that loan was disbursed in Singapore and credited to the account of the borrower in Singapore. Without such actual disbursement of the loan CH would have no right to payment of interest and DI no corresponding obligation to pay it. Again, using the words of *Watermeyer* C.J., it was that disbursement of the loan that was the *quid pro quo* which CH gave in return for which it received payment of interest by DI. Given all these facts, it just cannot possibly be argued that a practical man would regard the source of income in respect of the interest as not being in Singapore. Such a practical man would also regard as highly artificial the selection of Johore Bahru as a place for execution of the loan agreement and handing over of the cheque, and would find it difficult to accept that the source can be affected by the ceremonial acts performed there the execution of the loan agreement and handing over of the cheque. In respect of such acts which to use the words of *Turner* J., were "all really merely embroideries", but which of course the parties were entitled to carry out, I can do no better than quote the following passage from the judgment of *Rich* J. in *Tariff Reinsurances Ltd v. Commissioner of Taxes* (1938) 59 C.L.R. 194 at p. 208:

> "... We are frequently told, on the authority of judgment of this court, that such a question is 'a hard, practical matter of fact.' This means, I suppose, that every case must be decided on its own circumstances, and that screens, pretexts, devices and other unrealities, however fair may be the legal appearance which on first sight they bear, are not to stand in the way of the court charged with the duty of deciding these questions. But it does not mean that the question is one for a jury or that it is one for economists set free to disregard every legal relation and penetrate into the recess of the causation of financial results, nor does it mean that the court is to treat contracts, agreements and other acts, matters and things existing in the law as having no significance."

I am not disregarding the fact that the parties had executed the loan agreement and certainly the loan agreement must be given its full effect, but the selection of Johore Bahru for executing the loan agreement and the handing over of the cheque there could have no consequence in determining the source of the interest paid on the loan; it could not have any pretension to Johore Bahru as a place where the source of the interest was. On these facts I have no hesitation in coming to the conclusion that the interest on the loan was derived from Singapore.

I now turn to sec. 12(6)(b) of the *Income Tax Act* and two points arise. First, it was the view of the commissioners that if the handing over of the cheque representing the loan was material to determining the source of the loan, then when it was brought into Singapore by DI and placed to the credit of its account with BNP, the funds provided by such loan "had thus been brought into Singapore". Mr Ang submitted that the funds were all the time in the Singapore branch of BNP and that section did not apply. I agree with him that the funds were in Singapore and that this is not a case where funds provided by the loan had been brought into Singapore. To that extent sec. 12(6)(b) has no application. That, however, is not the end of the matter, as there arises the second point which is this. Paragraph (b) of sec. 12(6) has two limbs: it applies if the funds provided by the loan (i) are brought into Singapore or (ii) are used in Singapore. The first limb being not applicable, the question is whether the second limb applies, i.e. whether the funds provided by the loan were used in Singapore. This is a question of fact. Unfortunately, the statement of agreed facts curiously did not say very much of the use of the loan borrowed by DI. Paragraphs 9 and 10 of the statement of agreed facts read as follows:

> "9. Previous to this, on 22nd May 1976, DI Pty Limited had purchased an interest in certain mineral rights in Australia. Immediately upon receipt of the S$9 million cheque from CH Pte Limited, DI Pty Limited drew a cheque for a similar amount on Banque Nationale De Paris, Singapore to pay part of the purchase price of the Australian mineral rights to the vendor. The same was handed over in Johore Bahru.

10. Subsequent to the transaction being completed in Johore Bahru, the representatives of the parties returned to Singapore and the cheques referred to previously were banked into the bank accounts of the parties with Banque National De Paris, Singapore on 26th May 1976. A copy of the bank statement for CH Pte Limited showing the transaction is produced."

Clearly the following points are discernible from these statements. First, DI used the whole of the loan for payment of part of the purchase price of the Australian mineral rights. It drew a cheque for S$9m payable to NP which "was handed over in Johore Bahru"; that cheque was payable at the Singapore branch of BNP. It was not explicitly stated in the statement who actually received the cheque; and I can only infer that it was received by someone duly authorised to receive it on behalf of the party from whom DI purchased the mineral rights. Presumably that party was NP. Secondly, the cheque drawn by DI having been received on behalf of NP was credited to the latter's account with the Singapore branch of BNP, as, according to the statement, the cheque drawn by CH and the cheque drawn by DI, were "banked into the bank accounts of the parties with Banque Nationale De Paris Singapore on 26th May 1976". It was again not explicitly stated who "the parties" were, but as a matter of inference, the bank accounts of the parties must be the account of NP. Hence, there was a transfer of the funds, firstly, from the account of CH to the account of DI, and secondly, from the account of DI to the account of NP; all these took place in Singapore. In effect, NP received in Singapore from DI the S$9m in payment of part of the purchase price of the mineral rights in Australia. If this was the factual position, as it seems to me it was, then the legal consequence is this: DI by so paying the amount S$9m to NP had employed in Singapore the funds provided by the loan in Singapore in discharging *pro tanto* its contractual obligation to NP. On this basis the funds provided by the loan of S$9m to DI were used in Singapore within the meaning of sec. 12(6)(b) of the *Income Tax Act*, and by virtue of that provision the interest on the loan was deemed to be derived from Singapore. There is no definition of the word "use" in the *Income Tax Act*. In its natural meaning it is a word of wide import and one of the meanings of the word is "to employ to any purpose" (see the judgment of *Evershed* M.R. in *Shell-Mex and B.P. Ltd v. Clayton* (1955) 3 All E.R. 102). This then is another reason why this appeal must fail.

In the result, I dismiss this appeal with costs. There will be the usual consequential order for payment to the Comptroller of Income Tax of the amounted deposited in Court by CH as security for costs in this appeal.

The Chief Assessor and The Comptroller of Property Tax Singapore v. Howe Yoon Chong. Court of Appeal of Singapore. Civil Appeal No. 76 of 1984. Judgment delivered on 18 November 1987.

Property tax — Assessment of property — Annual value of property — Substantial alterations to property — Floor area increased — Valuation List amended — Annual value of property revised — Whether increase in annual value made in contravention of equal protection clause in Constitution — Constitution of the Republic of Singapore, Art. 12(1) — Property Tax Act (Cap. 254, 1985 Ed.), sec. 2, 18, 20, 21(3).

The taxpayer was the owner of a house and he occupied the property. In 1970, alterations were made to the house. In 1975, further substantial alterations and additions were made. These alterations and additions resulted in an increase of the net floor area of the house, and the taxpayer's architects notified the Chief Assessor.

The Chief Assessor notified the taxpayer that he proposed to amend the Valuation List by increasing the annual value of the property. The Comptroller of Property Tax also issued a notice to the taxpayer that a certain sum was payable as property tax, upon authentication of the annual value as proposed by the Chief Assessor.