Case No. BR 12/71

Board of Review:

Y. H. Chan, *Chairman*, R. S. Sheldon, Li Fook-wo & G. S. Ford, *Members.*

28th January 1972.

Salaries tax—claim for dependent parents allowance—whether step-mother a parent for purposes of allowance—Inland Revenue Ordinance, s. 42B(1)(*g*).

The taxpayer is employed in the Education Department, Hong Kong Government. He submitted a claim for Dependent Parents' Allowance for the year of assessment 1970-71 in respect of the maintenance of Madam W whom the taxpayer claimed to be his step-mother. The claim was disallowed in the Salaries Tax Assessment for the year 1970-71. On appeal.

Decision: Appeal allowed and the assessment for the year 1970-71 reduced by the sum of $2,000 being the Dependent Parents Allowance.

Cases referred to:—

1. Cape Brandy Syndicate v. C.I.R., 12 T.C. 358.
2. Kliman v. Winckworth, 17 T.C. 569.
3. Morris v. Britannic Assurance Co. Ltd., (1931) 2 K.B. 125.
4. Jones v. Evans, (1945) 1 All E.R. 19.
5. Pigg v. Clarke, (1876) 3 Ch. D. 672.
6. Boock & ors. v. Wollams, (1944) 1 All E.R. 715.

Reasons :

This Appeal turns on the interpretation of section 42B(1) of the Inland Revenue Ordinance which deals with allowances which a taxpayer may claim to have deducted from his total income. We set out below such parts of the section as are relevant to this Appeal :—

> "42B. (1) In giving effect to an election under the provisions of this Part the assessor shall make a single assessment in the sum of the total income reduced by the following allowances . . .

(*c*) an allowance of $2,000.00 if the individual had living and was maintaining during the year of assessment an unmarried child . . .

(*g*) an allowance of $2,000.00 if the individual or his wife, not being a wife living apart from her husband, maintains or contributes to the maintenance of a parent of the individual or his wife in the year of assessment and that parent in that year—

(i) was a permanent resident in the Colony; and

(ii) was wholly or partially dependent on the individual or his wife and had an income, whether chargeable to tax under this Ordinance or not (and excluding the maintenance or contribution received from the individual or his wife) not exceeding $2,000.00,

and an allowance under this paragraph may be granted in respect of each parent of the individual, or his wife so maintained : (*Added, 65 of 1970, s. 7*) . . ."

"Parent" is not defined in the Ordinance, but "Child" is defined as follows :—

"43A. In this Part—

'Child' means—

(*a*) the child of an individual by his wife or former wife; or

(*b*) in the case of a woman her own child; or

(*c*) in the case of Asiatics a child of the individual by his concubine if such child is recognised by him and his family as a member of his; or

(*d*) an adopted child; or

(*e*) a step-child". (*Added, 36 of 1955, s. 51*)

More specifically we are called upon to decide in this appeal whether the word "parent" appearing in section 42B(1)(*g*) quoted above includes a step-father or mother.

At the hearing of the appeal before us the taxpayer gave evidence on oath. We are completely satisfied that the taxpayer is a truthful witness and we accept his evidence in its entirety.

The taxpayer, who is Chinese by race, resided in Cheng-tu during the Pacific war whilst his parents lived in Canton. His father originally had a "*kit-fat*" wife; when she died he married the taxpayer's natural mother who became the "*tin-fong*" wife of the taxpayer's father. The "*tin-fong*" wife i.e. the taxpayer's natural mother, died in Canton in 1943. Some time in 1943 or 1944 the father married Madam W who was a cousin of the taxpayer's natural mother. After the Pacific war, the taxpayer went to live in Nanking where he was

joined by his father and Madam W. In 1946 they all returned to Canton whence they came to Hong Kong in 1949. They took up residence in Cheung Chau Island and continued to live there until the father died in 1964 at the age of 86. In that year the taxpayer set up house in Kowloon whilst Madam W stayed behind in Cheung Chau Island. At all material times, the father and Madam W were dependent on and maintained by the taxpayer. There is no dispute as to the fact that Madam W has been a permanent resident of Hong Kong since 1949, and that she was maintained by the taxpayer and had no income of her own.

The taxpayer maintains that Madam W is his step-mother. He addresses her as "mother" and his children call her "grand-mother". He adds that his father was a member of the Catholic Faith. We have no hesitation in accepting as a fact that Madam W is the "*tin-fong*" widow of the taxpayer's father and, therefore, the taxpayer's step-mother.

A certified English translation of the Chinese inscription on the tomb stone of the taxpayer's father has been furnished to us by Mr. Henry Hu, Counsel for the taxpayer which shows Madam W as the *shu shih* of the deceased. No expert witness was called by either party to the appeal to explain the exact meaning of the term *shu shih* (which is sometimes spelt *shut*.) In his written determination, the Commissioner states that the term "*shu shih*" has the meaning of "concubine". The taxpayer was cross-examined on this point and his explanation, which we accept, is that when he used the term "*shu shih*" in the inscription he thought that that was the appropriate term for describing any spouse of his father other than the "*kit fat*". He says that he would describe his own natural mother by the same term although she was the "*tin fong*" of his father. He admits that he has heard of the term "*kai shut*" which is also used to describe a second wife and he regards both his natural mother ad Madam W as "*kai shut*" or successive wives of his father, but he did not think that it was wrong to describe Madam W as "*shu shih*". As the inscription was composed by the taxpayer, we consider that the material issue before us is not so much what the term "*shu shih*" actually means but rather what he understood it to mean. As we have already indicated, we accept the fact that he intended the term to describe the status of Madam W as the wife of his father. To him the term "*shu shih*" means any wife other than the "*kit fat*" and we are satisfied that he did not use the term to signify that Madam W was a concubine of his father. In our opinion, the inscription on the tomb stone should not be taken against the taxpayer.

In view of our findings of fact as stated above, the only issue to be determined is whether the word "parent" in section 42B(1)(*g*) includes a step-father or mother. For the Revenue, Mr. Kelly relies on **Cape Brandy Syndicate v. C.I.R.**[1] where Rowlatt J. says :—

> ". . . in taxation you have to look simply at what is clearly said. There is no room for any intendment, there is no equity about a tax; you read nothing in; you imply nothing but you look fairly at what is said as that is the tax.".

He also relies on a further rule of construction which requires that words should be given their technical legal meaning where they have one, otherwise their ordinary meaning. He

[1] 12 T.C. 358, 366.

concedes that the word "parent" has no technical legal meaning. That being the case he contends that the ordinary meaning as given in the *Oxford English Dictionary* prevails. This defines "parent" as "a person who has begotten or borne a child, a father or mother".

Lastly he refers to the case of **Kliman v. Winckworth**[2] which deals with a claim for a House-keeper Allowance in the United Kingdom. He calls particular attention to the following passages of Finlay J's judgment at p. 572 :—

> ". . . it is, of course elementary that in these cases what one has got to do is to look at the exact words of the section which gives an exemption and ascertain whether the person brings himself within it. There is no room of course, in a Taxing Act for equitable consideration if by 'equity' the Commissioners meant there, as I suppose they did, considerations of what they conceived would effect a just result in all the circumstances. It is, of course for the legislature and not for the Courts to consider matters of that sort.".

For the taxpayer Mr. Henry Hu argues that one of the meanings of the word "parent" according to the *Oxford English Dictionary* is "someone who holds the position of a parent". He contends that the word "parent" in section 42B(1)(*g*) should be construed in this wider sense so as to include a step-parent.

In our view, if a word is clear and admits of no other meaning, obviously it should be given its natural import. If, however, it is susceptible of another meaning, then interpretation becomes necessary, and we should, instead of construing a word literally, be guided by another cardinal rule of construction which is stated by the learned authors of the well known work *Maxwell on Interpretation of Statutes* (11th Edition, p. 266) in the following terms :—

> "The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rules that the sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent, and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are, indeed, frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or to use Sir Edward Coke's words, to supress the mischief and advance the remedy.".

Very often statutes use words which carry two meanings, one narrower and the other wider. When we have a situation like that, our duty is to determine which one of the two meanings would be more consonant with the object and intention of the legislature and interpret it accordingly. Take for instance the word "children". That word prima facie means legetimate children, but it has been judicially interpreted to include also illegitimate children in a case under the Industrial Assurance Act 1923, section 3, concerning insurance

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[2] 17 T.C. 569.

for funeral expenses of parent, child, grand-parent, grand-child etc. etc. (see **Morris v. Britannic Assurance Co. Ltd.**[3])

As another example, let us take the term "single woman" which ordinarily means an unmarried woman. It has been held by the Courts in construing the Bastardy Laws Amendments Act 1872, section 3, to include a married woman who was reduced to the condition of a single woman by living apart from her husband or when the husband had been absent under sentence of transportation abroad or on military service overseas (see **Jones v. Evans**[4]).

We also note that the word "family" according to the *Oxford English Dictionary* has 3 principal meanings :—(1) those descended from a common ancestor; (2) a body of persons who live in one house under one head including parents, children, servants, etc. and (3) a person's children regarded collectively. Now it has been said by Lord Jessel that every word which has more then one meaning has a primary meaning and that the primary meaning of the word "family" is "children" so that when one refers to a man and his family one should be taken to mean the man and his children (see **Pigg v. Clarke**[5]). But that does not prevent the courts from rejecting the primary meaning and interpreting the word "family" in its wider sense as including brothers, sisters, and an adopted child (see **Boock & others v. Wollams**[6]). In the latter case, the appeal court in England had to construe the word "family" in section 12(1)(*g*) of the Rent Restriction Act 1920 which extends protection against eviction to "such member of the tenant's family" residing with the tenant at the time of his death. Lord Justice Bucknill says at p. 717 :—

> "In the course of argument I asked what was to be the position of an illegitimate child of the wife or of the husband who had lived all his life with his father or mother. Surely the Act was intended to cover a case of that kind, and if so, I cannot see why, giving the word 'family' its ordinary, popular meaning, an adopted child should not be included.".

As indicated above, Mr. Kelly has, in the course of his submissions, referred to **Kliman v. Winckworth**[2], a case which deals with a claim for a Housekeeper Allowance under section 19(1) of the Finance Act 1920 which may be granted to a "widower" in certain circumstances. The taxpayer was not a "widower" but he claimed relief and the General Commissioners upheld his claim on the ground that the word "widower" was wide enough to be interpreted as including a man such as the taxpayer whose marital status had been determined by a divorce. Such an interpretation was rejected by Finlay J., who in the course of his judgment says that it is clear beyond any controversy that the word "widower" means a person who has lost his wife by death, and not some one whose wife is not dead but who has had the misfortune to divorce her. According to the *Oxford English Dictionary,* the

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[2] 17 T.C. 569.
[3] (1931) 2. K.B. 125.
[4] (1945) 1 All E.R. 19.
[5] (1876) 3 Ch. D. 672.
[6] (1944) 1 All E.R. 715.

word “widower” has only one meaning and one can quite understand why Finlay J. says that “it is elementary that in these cases, what one has got to do is to look at the exact words of the section” as quoted above. The reason for this is clear because the word admits of no other meaning. In the case before us, however, we are dealing with a word which has two accepted meanings and the case cited by Mr. Kelly confirms the conviction in our mind that the rule of literal interpretation should not be applied and that we should interpret the word “parent” in a sense most consonant with the intention of the legislature.

What then is the legislative intent? Looking at section 42B as a whole, we think it is plain that the object is to grant exemption from tax to persons having to maintain members of their family who are dependent on them for support. The section was added to the Ordinance in 1970. At that time section 43A which defines the word “child” was already on the statute book. This last-mentioned section extends the meaning of the word “child” to include an “adopted child” and a “step-child”. Mr. Henry Hu has urged it upon us to apply the interpretation of the word “child” in reverse and to construe the word “parent” in section 42B(1)(*g*) as including a step-parent. We think there is merit in this argument if Mr. Hu means, as we think he means, that we should construe the word “parent” in the context of the word “child” as defined in the Ordinance. We observe that by section 42B(1)(*g*), maintenance of the parent of one’s wife is exempt from tax and it would be highly improbable that the Legislature, in enacting a law granting relief for the maintenance of dependents of, *inter alia,* Asiatics should intend that whilst maintenance of a taxpayer’s parents-in-law should be exempt from tax that of one’s step-parent should not be so. We are inclined to the view, and we so hold, that the word “parent” should be construed in its wider sense so as to include any person in the position of a parent such as a step-parent.

The Revenue has also drawn attention to the fact that the taxpayer was not much younger than Madam W at the time of her marriage to his late father and the added fact that at the time of such marriage, the taxpayer himself was a married man. In our opinion, these facts have no relevance at all in the interpretation of section 42B(1)(*g*).

For the foregoing reasons the appeal is allowed and the assessment for the year of assessment 1970/71 is hereby reduced by the sum of $2,000.00 being the Dependent Parents’ Allowance claimed by the taxpayer.