

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D27/88

Personal assessment – personal allowances – whether taxpayer was the child of his father's 'kit fat' (wife) and 'tsip' (concubine) – whether father's 'tsip' (concubine) was taxpayer's step-parent – Chinese law and custom – s 42B(2)(b) of the Inland Revenue Ordinance.

Panel: Henry Litton QC (chairman), Robert Kwok Chin Kung and Anthony F Neoh.

Date of hearing: 9 June 1988.

Date of decision: 22 July 1988.

The taxpayer claimed dependent parent allowances with respect to two women, one of whom was his father's 'kit fat' (wife) and the other of whom was his father's 'tsip' (concubine) under Chinese law and custom. Neither woman was his natural mother.

Held:

- (a) The taxpayer was not the child of the two women.
- (b) It was open for the taxpayer to prove that his father's concubine was his step-parent.

Appeal dismissed.

G J Laird for the Commissioner of Inland Revenue.

C S Tong of C S Tong & Co for the taxpayer.

Decision:

1. The Taxpayer has objected to the salaries tax assessment for the year of assessment 1985/86. He claimed Dependent Parent Allowances in respect of two ladies, both of whom the Taxpayer regarded as his mother.
2. The facts of the case are briefly as follows:
 - (a) The Taxpayer's father married Madam A as his 'kit fat' wife in 1922.

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- (b) In 1931, the Taxpayer's father married the Taxpayer's natural mother in Nanking.
- (c) The Taxpayer's natural mother died in August 1934 when the Taxpayer was a very small child.
- (d) In December 1951, Madam B was taken into the Taxpayer's father's household as 'tsip'.
- (e) At all material times the two ladies, Madam A and Madam B, have been dependent upon the Taxpayer for their livelihood.

3. The assessor, in assessing the Taxpayer's liability to salaries tax, rejected the Taxpayer's claim for Dependent Parent Allowances in respect of the two ladies in question.

4. The matter is governed by the provisions of section 42B(2)(b) which provides definitions of what is meant by the expression 'parent of the individual or his wife' for which allowance might be claimed. The Taxpayer, in his own notice of objection, claimed that he came within sub-section (i) which reads as follows:

- ' (i) A parent of whose marriage, being a marriage recognized by the law of Hong Kong, the individual or his wife is the child'.

5. The Commissioner did not accept the argument, concluding as a matter of proper interpretation of the Ordinance that the Taxpayer is not the child of either Madam A or Madam B.

6. When the appeal came before us on 9 June 1988, the Taxpayer's representative sought an adjournment of the hearing as he felt that legal advice should be obtained, particularly on the question of Chinese law and custom applicable to the case. We acceded to the application and have since been informed by solicitors acting for the Taxpayer that the appeal is no longer pursued.

7. It seems to us that, on the material before the Commissioner, he came to the correct decision. What troubled us, at the hearing of the appeal on 9 June 1988, was whether the Taxpayer could argue that Madam B was a 'step-parent' within the meaning of that expression in sub-section (iii). This would have involved the exploration of the family background and the facts surrounding the Taxpayer's father's household. Matters of Chinese law and custom would also have been involved, on which expert evidence would have been necessary. As the burden of satisfying us that the assessment was incorrect falls upon the Taxpayer and the appeal is now no longer pursued, we must in the circumstances dismiss the appeal and confirm the assessment.