

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D33/84

Board of Review:

Charles A Ching, *Chairman*, David B. K. Lam and A. C. Hill, *Members*.

15 March 1985.

Salaries tax—Section 9(1) and (2) of the Inland Revenue Ordinance—whether a Government Servant should be assessed on financial assistance received under Government's home purchase scheme as well as on the value of the departmental quarters provided rent free for operational reasons.

The appellant, a government employee joined the Government's home purchase scheme under which he received financial assistance by way of an allowance. The flat was where he, his wife and their two children lived. As a member of the disciplined force and for operational reasons he was provided with departmental quarters nearer to the place of work and this was provided free of rent and he occupied the quarters for a number of days. His wife and children continued to stay in the flat. The appellant was assessed on both home purchase scheme allowance and the rental value of quarters provided. He objected to the inclusion of both claiming there was double taxation.

Held:

The home purchase scheme allowance was certainly a perquisite or an allowance or both and properly taxable under Section 9(1). Notwithstanding that he was purchasing his own home the rental value of quarters properly fell to be taxable under Section 9(1) as calculated under Section 9(2).

Appeal dismissed.

(Note: Reference is made to this case as decision BR90/84 on page 259 vide Case No. D25/86 in the fifth supplement of Board of Review Decisions, Volume 2.)

Mr. SO Chau-chuen for the Commissioner of Inland Revenue.

Appellant in person.

Reasons:

There was no real dispute on the facts of this case. The taxpayer is an Officer of the Hong Kong Government. On 18th March 1982, he joined the Government's home purchase scheme. It is a scheme by which eligible Government officers are given financial assistance in purchasing their own homes by way of an allowance. One of the conditions of the scheme is that

“An officer who has been granted an allowance under the scheme to purchase a property shall be required to live in the property so acquired unless his Head of Department directs him to live in a departmental quarter for operational reasons”.

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The flat which the taxpayer is purchasing is where he, his wife and their two children live. During the year of assessment 1982/1983 he received under the scheme a total sum of \$63,412. In July of 1982, for operational reasons, he was provided with departmental quarters. He paid no rental for these quarters although he had to pay for the utilities. His wife and children were permitted to live there with him but did not. His wife works. His children are aged 7 and 9. They attend school in Kowloon Tong and traveling to and from the departmental quarters would have been inconvenient. As a member of a disciplined force the taxpayer could not refuse to live there. Mr. SO Chau-chuen, who appeared for the Commissioner with Mr. CHAN Wing-tat, conceded all these facts.

The taxpayer, who appeared in person, told us that he only stayed in the departmental quarters when it was his "turn". He also told us that during the period 16 July 1982 to 31 March 1983, he spent only 30 nights in the quarters and that he did not use them at all during his vacation from 7 February 1983 to 20 March 1983. Mr. So did not agree this but stated frankly that he had nothing with which to challenge it. The taxpayer appeared to us to be a forthright and truthful person and we have no reason to doubt what he said.

On 16th August 1983, the taxpayer was assessed to salaries tax. Included in the assessment was the \$63,412 and the value of the quarters for 259 days, \$13,914. He raised an objection which was determined against him on 22nd June 1984. He appealed to us on the ground that the spirit of section 9(2) of the Inland Revenue Ordinance, Cap. 112, was that an employee would spend no more than 10% of his salary on accommodation. He had been taxed on both the allowance and on the rental value of the quarters, the latter of which he was entitled to occupy free of rent under Civil Service Regulation 871(2)(d). He claimed that there had been double taxation.

Mr. So drew our attention to the words of Rowlatt, J., in *Cape Brandy Syndicate vs. I.R.C.* 12 T.C. 358:—

"...It is urged by Sir William Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be an discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used...."

Mr. So submitted that section 9(2) is basically an arithmetical provision, its purpose being to specify how rental value is to be computed for tax purposes. He submitted that there was no room for reading in the presumption asserted by the taxpayer. We agree with Mr. So that on the clear wording of section 9(2) we cannot consider its spirit. We find that section 9(2) merely specifies the rental value to be included in a taxpayer's income.

Section 9(1), with exceptions that are not relevant, provides that

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“Income from any office or employment includes—

- (a) any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite, or allowance....”

The \$63,412 was certainly either a perquisite or an allowance or both. It was therefore properly taxable.

Included in income as defined in section 9(1) is

“(b) the rental value of any place of residence provided rent-free by the employer ...”

It is to be noted that there is no requirement that the taxpayer should actually have occupied the place of residence. It is sufficient if it is provided. Section 9(6) defines “place of residence” as including

“...a residence provided by an employer...notwithstanding that the employee is required to occupy that place of residence by or under his terms of employment and whether or not by doing so he can better perform his duties.”

The taxpayer was required to live in the quarters. Notwithstanding that he was purchasing his own home, the rental value of the quarters properly fell to be taxable under section 9(1) as calculated under section 9(2).

For these reasons we dismiss this appeal.