INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D42/94

Salaries tax – value of quarters for salaries tax purposes.

Panel: Robert Wei Wen Nam QC (chairman), Frank Pong Fai and Edwin Wong.

Date of hearing: 15 September 1994.
Date of decision: 17 October 1994

The taxpayer was provided with quarter by his employer. A high value was placed on the quarters when calculated in accordance with the provisions of the Inland Revenue Ordinance. The taxpayer appealed against this notional value on the ground that it was excessive. The taxpayer submitted that the rent paid by him should be used as the basis for the value of the quarters.

Held:

The Inland Revenue Ordinance requires quarters to be valued at either a percentage of emoluments or rateable value. In the present case the Commissioner accepted that the rateable value was lower than the percentage of emoluments and could be used. The Board rejected the submission of the taxpayer but directed that the assessment should be reduced to take into account the rateable value.

Appeal partly allowed.

Mabel Mei Yin for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

1. This is an appeal by an individual (the Taxpayer) against the salaries tax assessment raised on him for the year of assessment 1992/93. He claimed that the rental value of the quarters provided for him by his employer should not be taken into account in computing his assessable income.

2. During the accounting year, the Taxpayer was employed by Organisation A. He paid a rent of $21,600 per year ($1,800 × 12) for his quarters which consisted of a single room with no private toilet. According to information provided by Organisation A to the Inland Revenue Department (the Revenue), the rent was fixed by referring to the open

market. That was corroborated by a document entitled 'Policy on Staff Residential Accommodation' issued by Committee B, which recommended to rent the rooms to staff at equivalent market rentals up to the end of 1993 and recommended a rent of $1,800 per month for each room.

3. The excess of the rental value of the quarters (as a place of residence) over the rent (the taxable excess) was assessed as part of the Taxpayer's income under section 9(1)(c) of the Inland Revenue Ordinance (the IRO). The rental value of a place of residence is deemed to be 10% of the principal income (such as salary) (see section 9(2) of the IRO). In the present case the rental value was $55,984, that is, 10% of his principal income of $559,846. The taxable excess was therefore $34,384 ($55,984 – $21,600).

4. Under section 9(2)(b)(ii) of the IRO, a taxpayer may elect to have the rateable value of the place of residence substituted for the rental value. On 7 January 1994, the Commissioner of Rating and Valuation informed the Commissioner of Inland Revenue that the rateable value of the quarters in question for the year of assessment 1992/93 was $24,000. If that was substituted for the rental value, the taxable excess would be reduced to $2,400 ($24,000 - $21,600). In his determination dated 16 May 1994 the Commissioner revised the assessment in question accordingly.

5. In his notice of appeal dated 13 June 1994, the Taxpayer contended that the 'rental value of $24,000' was excessive. The expression 'rental value' was obviously a misnomer for 'rateable value'. He raised various matters to show that the rateable value was too high: (1) he had no toilet or bathroom in his room; (2) he had to share the common room and the kitchen (which consisted of a microwave oven) with other lodgers as well as non-lodgers; (3) he was not protected under the Landlord and Tenant Ordinance; (4) he was subject to strict discipline in that the matron had the right to search his room at any time without notice, that no hanging out of clothing was allowed, that cooking and water boiling in his room was prohibited and that he was not permitted to put up a guest for the night.

6. Before the hearing of this appeal, an officer of the Rating and Valuation Department visited the Taxpayer's quarters and had a discussion with him. After reviewing the case, he revised the rateable value for the year of assessment 1992/93 to $22,800 ($1,900 per month). On 3 September 1994, the Taxpayer wrote to the officer, stating, inter alia:

> '... After the site visit, your proposal to revise the rateable value of my rented room to $1,900, though still in excess of the rent set down by Organisation A, was quite reasonable and acceptable. I am prepared to accept this proposed figure ...'

7. The representative of the Commissioner submitted that the assessment in question should be revised as follows:

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Principal income	559,846
Quarters value $(22,800 – 21,600)	1,200
	561,046
Less: Charitable Donations	5,000
Net chargeable income	$556,046
Tax payable thereon	$83,406

8. Having accepted the revised rateable value of $22,800, the Taxpayer nevertheless refused to agree that it should be used as a basis for settling this case. He was unable to put forward his argument in coherent terms. Doing the best we can, we think he probably meant to say that as he was paying the market rent, he should not be taxed for the quarters. That argument is misconceived. The taxable excess is computed by using two alternative factors: the rental value or the rateable value. The market rent is irrelevant to the equation (let alone the fact that in this case there is in any event insufficient evidence to support a finding of market rent). We are not concerned with the question of whether the market rent should replace the rental value or rateable value. In applying the law, one is concerned with what the law is, not what it should be.

9. If follows that the assessment in question shall be revised as shown in paragraph 7 above, and that subject thereto, this appeal is dismissed.