

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D51/99

**Salaries Tax** – deductions claimed for necessary expenses and depreciation allowance – whether allowable deductions to assessable income – section 12(1) of the Inland Revenue Ordinance.

Panel: Anna Chow Suk Han (chairman), Edward Chow Kam Wah and Gidget Lun Kit Chi.

Date of hearing: 14 June 1999.

Date of decision: 20 August 1999.

The taxpayer appealed the determination of the Commissioner of Inland Revenue who disallowed certain items which had been deducted in the taxpayer's return. The taxpayer, being a university part-time lecturer, had claimed:

- (1) Expenses of stationery, utilities, rates to the extent of \$2,027 attributable to the production of his part-time income; and
- (2) Depreciation allowance of \$1,228 on books, a calculator and a computer.

#### Expenses

- (1) The taxpayer submitted that since he was not given a desk or room in which to work, part of his residence (study room) had to be used solely for the purpose of his part-time job. He, therefore, deducted part of his payments as being attributable to his employment.
- (2) The taxpayer further submitted that the words 'wholly' and 'exclusively', under section 12 of the Inland Revenue Ordinance, were not to be construed too narrowly (per Departmental Interpretation and Practice Notes, (DIPN) No 9 and IRC v Richards Executors [1971] 1 WLR 571).

#### Depreciation allowance

The taxpayer submitted that the items claimed were essential items in performing his duties as a lecturer.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

**Held** by the Board:

### Expenses

- (1) There was a distinction between preparation of a lecture, which was in performance of the taxpayer's duties, and preparation for lecturing. The taxpayer engaged in both activities in his study room. Therefore, the study room was used partly for the performance of his duties. The expenses incurred, therefore, were not 'wholly' and 'exclusively' in performance of his duties as a lecturer (Fitzpatrick v IRC (No 2) [1994] STC 237, Humbles v Brooks 40 TC 500 considered).
- (2) It was inconceivable that the taxpayer only used his study room wholly and exclusively for his part-time employment throughout the entire year of assessment 1995/96.

### Depreciation allowance

- (3) The textbooks claimed would have been essential (under section 12(1)(b) of the Inland Revenue Ordinance) if they could not be borrowed from the library. There was, however, no evidence from the taxpayer that he had tried to borrow them, or of heavy demand by other users.
- (4) It was not essential for the taxpayer to have purchased his own copies of reference books.
- (5) Although a calculator would be useful and convenient for the taxpayer to discharge his duties, it was not essential in light of the nature of his job.
- (6) A computer was not essential. There was no need to provide type-written notes to the taxpayer's students as opposed to hand-written ones.

### Per curiam:

By bringing an appeal before the Board, the taxpayer must be prepared that an order of costs may be made against him in case of an unsuccessful appeal.

**Appeal dismissed and a cost of \$2,000 charged.**

Cases referred to:

IRC v Richards Executors [1971] 1 WLR 571  
Munby v Funlongm 50 TC 491  
CIR v Humphrey HKTC 451

## INLAND REVENUE BOARD OF REVIEW DECISIONS

D36/90, IRBRD, vol 5, 295  
Humbles v Brooks 40 TC 500  
Fitzpatrick v IRC (No. 2) [1994] STC 237  
D89/89, IRBRD, vol 6, 328

Leung Wing Chi for the Commissioner of Inland Revenue.  
Taxpayer in person.

### **Decision:**

### **The appeal**

1. This is an appeal by the Taxpayer against a determination by the Commissioner of Inland Revenue dated 29 January 1999. In that determination, the Commissioner confirmed the revised salaries tax assessment for the year of assessment 1995/96 dated 28 October 1996, showing net chargeable income of \$713,506 with tax payable thereon \$134,901.
2. By a letter dated 26 February 1999, the Taxpayer gave to the Board of Review his notice of appeal against the determination, pursuant to section 66(1) of the Inland Revenue Ordinance ('IRO'). He claimed that expenses of stationery, utilities, rates and etc. to the extent of \$2,027 attributable to the production of his part-time income and depreciation allowance of \$1,228 on books, calculator and computer should be deductible.
3. The Taxpayer's grounds of appeal as contained in his notice of appeal are summarized as follows:
  - (a) The Taxpayer's claim of deduction of \$2,027 for expenses of stationery, utilities, rates etc., represents 5% of the Taxpayer's total part-time income. The Taxpayer claimed that he should be entitled to treatment as provided under paragraph 5 of the Departmental Interpretation and Practice Notes (DIPN) No 9 which states that the words 'wholly' and 'exclusively' are not to be construed too narrowly and that where expenditure is incurred for more than one purpose (for example, running expenses of a car used partly for private purposes), such expenditure would be apportioned and the part attributable to the employment allowed. He also claimed that it is a departmental practice that allowable expenditures may be estimated by reference to a certain percentage of income (up to a maximum of 10% of the income). The Taxpayer considered that he had also passed the test of 'necessarily', as his employers, Institute A and Institute B, did not provide him with an office to carry out his duties as a lecturer and a marker.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

- (b) As to the depreciation allowance on books, calculator and computer, he claimed that the books were necessities in performing his duties. The textbooks were prescribed by Institute A. The reference books were used to supplement the textbooks, for setting questions in tests and examinations and generally for teaching purposes. The Taxpayer also claimed that he required a calculator for doing calculations during lectures and adding up marks in examinations papers and scripts. As Institute A and Institute B did not provide him with a calculator, he had to procure one for himself. The computer was used mainly as a word processor for the preparation of lecture notes of an acceptable quality.

### The agreed facts

4. We are provided with a statement of the agreed facts between the Taxpayer and the Respondent (the CIR). Those agreed facts are stated below.

5. The Taxpayer is married with two children who were born on 24 August 1976 and 14 July 1979 respectively.

6. The Taxpayer resided at a unit in District C in the year ended 31 March 1996. The flat consisted of, inter alia, four rooms. Three rooms were used as bed rooms. The remaining room was used as study room.

7. The Taxpayer incurred the following expenses in respect of his residence for the year ended 31 March 1996:

Rates	\$21,584
Management fee	\$17,232
Mortgage interest	\$70,405
Telephone	\$792
Electricity (estimated amount)	\$4,204
	<u>\$114,217</u>

8. The Taxpayer incurred the following capital expenditures:

(a) Books

Date	Nature	Amount(\$)
1-4-1995	Reference book	320
1-4-1995	Reference book	271
13-5-1995	Reference book	147
18-9-1995	Text books	261

INLAND REVENUE BOARD OF REVIEW DECISIONS

999

- (b) Calculator of the sum \$200 was purchased in the year ended 31 March 1990.
- (c) Computer cost \$14,855 was acquired on 30 January 1992.

9. The Taxpayer derived his principal income as an assessor of the Inland Revenue Department. He also earned the following incomes from part-time employment during the year ended 31 March 1996:

<b>Part-time employer</b>	<b>Capacity in which employed</b>	<b>Income</b>
Institute A	Part-time lecturer	\$33,562
Institute B	Part-time marker	\$6,975

10. At the request of the assessor and the Taxpayer, Institute A provided the information below:

- (a) As a part-time evening lecturer of Department D ('the Department') of Technical Institute E, the Taxpayer taught the following subjects for the respective hours during the year ended 31 March 1996:

<b>Subject taught</b>	<b>Centre name</b>	<b>Total hours taught</b>
Subject 1	Technical Institute E	23.35
Subject 2	School F	50

- (b) Prescribed text books of the subjects taught by the Taxpayer are listed below:

<b>Subject</b>	<b>Text book</b>
Subject 1	1. Textbook 1 2. Textbook 2
Subject 2	Textbook 3

- (c) It is not the normal practice of the Department to provide complimentary copy of the prescribed text books to part-time lecturers.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

- (d) The prescribed text books are available in the institute's library. Part-time lecturers are allowed to borrow at a maximum of four books for three months. Any books borrowed will be the responsibility of the lecturer and is subject to the library regulations. In case of loss or damage of any of the books borrowed, the lecturer is required to inform the institute librarian immediately in writing. Should the lecturer require to use a book for a long period of time, it is suggested that he/she buys a copy from a bookshop.
- (e) Library hours for returning of books borrowed (except general holidays) are as follows:

Monday to Friday	9:00 a.m. to 6:45 p.m.
Saturday	Closed
- (f) Academic support services including printing of handouts, institute library and audio-visual teaching aids are available for part-time lecturers.
- (g) Stationery, such as paper, transparency and marker will be provided to part-time lecturers upon request.
- (h) It is not the Department's policy to provide calculator or word processor to part-time evening lecturers.
- (i) Reimbursement of expenses incurred in the preparation of personal teaching notes/materials is not available.
- (j) Part-time lecturers will not be assigned a specific working desk/area in the institute. Nevertheless, they are welcome to use such facilities which are available in the institute library.
- (k) Though the use of computer in the preparation of lecture notes, test paper and examination questions is getting common, however, this is not a MUST. In fact, it is not compulsory to submit draft question papers in typescript.
- (l) Due to the limited manpower resource in regard to typing, part-time lecturers are encouraged to have his/her lecture notes well typed before passing them to the Department for printing.

11. Institute B supplied the following information in respect of the Taxpayer's part-time employment as a marker of the association:

- (a) The Taxpayer was the marker for an examination paper in the June 1995 diet. A set of marking scheme and question paper was provided for the Taxpayer to discharge his duties as a marker.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

- (b) The Taxpayer was appointed to mark scripts of the subject at an agreed fee of \$45 per script. He marked a total of 155 scripts.
- (c) The examination took place on 9 June 1995. The scripts were distributed to examiners the week following the examination. Markers should collect their scripts from the examiner direct within the same week.
- (d) The Taxpayer returned his scripts to the examiner directly after marking on or around 18 June 1995.
- (e) Institute B did not provide any specific working area or desk in their office for markers to mark the test papers. Nor did the association provided or reimburse for expenses incurred in connection with typing service for preparation of marker's report, calculator or stationery to markers.
- (f) The Taxpayer was required to incur his own expenses in marking papers. No claims for travelling or other expenses has been lodged by the Taxpayer.
- (g) The marker is required to mark all scripts assigned to him by his examiner and provide a marker's report. He may use any way and method to discharge his duties as a marker.
- (h) As for the marker's report, Institute B has a special report for marker to fill in but has no special requirement for how the marker is going to present it. The marker may present it in typed or hand-written format.

12. In his tax return for the year of assessment 1995/96, the Taxpayer declared, among other things, the following incomes:

	\$	\$
Income from principal employment		934,992
Income from part-time employment		
Institute A	33,562	
Institute B	<u>6,975</u>	<u>40,537</u>
Total		<u><u>975,529</u></u>

Against his incomes, he claimed deduction of outgoings and expenses as follows:

	\$	\$
Annual subscription to an overseas organization		2,223
Expenses on earning part-time income		

INLAND REVENUE BOARD OF REVIEW DECISIONS

Travelling	1,500	
Stationery, utilities, rates etc. (say 5% on \$40,537)	2,027	
Depreciation allowance (see schedule below)	<u>1,228</u>	<u>4,755</u>
Total		<u><u>6,978</u></u>

**Depreciation allowance schedule**

	20% Pool	30% Pool	Allowance
	\$	\$	\$
Written down value b/f	416	1,485	
Additions (Book)	<u>1,028</u>		
	1,444		
Initial allowance	<u>617</u>		617
	827		
Annual allowance	<u>165</u>	<u>446</u>	<u>611</u>
Written down value c/f	<u><u>622</u></u>	<u><u>1,039</u></u>	<u><u>1,228</u></u>

13. On 19 September 1996, the assessor raised on the Taxpayer the following assessment for the year of assessment 1995/96 allowing the deductions of subscription to the overseas organization and travelling expenses:

	\$	\$
Total assessable income		975,529
<u>Less: Deductions</u>		
(\$2,223 + 1,500)	3,723	
Charitable donations	<u>300</u>	<u>4,023</u>
Net chargeable income		<u><u>971,506</u></u>
Tax payable thereon		<u><u>145,725</u></u>

14. The Taxpayer objected to the assessment on the following grounds:

- (a) Expense of \$2,027, being 5% of the part-time income of \$40,537 have not been allowed; and
- (b) Depreciation allowance per schedule attached to the tax return has not been allowed.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

15. On 28 October 1996, the assessor revised the assessment for the year of assessment 1995/96 to grant Married Person's Allowance, Child Allowance and Dependent Parent Allowance as follows:

	\$	\$
Net chargeable income as previously notified [Fact (9)]		971,506
<u>Less: Married Person's Allowance</u>	158,000	
Child Allowance	44,000	
Dependent Parent Allowance	<u>56,000</u>	<u>258,000</u>
Net chargeable income		<u><u>713,506</u></u>
 Tax payable thereon		 <u><u>134,901</u></u>

### **The Taxpayer's case**

16. The Taxpayer claimed that during the year of assessment 1995/96, his study room at home was wholly and exclusively used to carry out his duties as a part-time evening lecturer and a part-time marker. The use of his study room was a practical necessity because neither Institute A nor Institute B provided him with a specific area or desk for his work. He claimed that he was a lecturer on Subject 1 from April 1995 to May 1995, a marker in June and July 1995 and a lecturer on Subject 2 from September 1995 to March 1996. The study room in his flat was therefore wholly and exclusively used for his part time employment.

17. He disagreed with the Commissioner that the duties of a part-time evening lecturer could be carried out in Institute A's library. He claimed that it was impossible to do so because part of his work was confidential in nature, such as setting test papers and examination papers, marking answer scripts, adding up marks on answer scripts and on mark sheets, and the library was open to the students. Furthermore, the library was opened between 9:00 a.m. to 6:45 p.m. from Monday to Friday. It was impractical for him to prepare his lectures at the library as the preparation work took at least two hours and he usually left his office at District G at 6:00 p.m. By the time he arrived at Institute A's library at District H, it would be around 6:30 p.m. and he would only be left with 15 minutes to work. It was also not possible for him to bring a calculator and a computer to the library for work.

18. The Taxpayer asserted that his claim of deduction should not be affected by the fact that the expenditure derived from the use of his study room at home and that there were no separate bills for the items claimed. He calculated that the expenses incurred for the production of his assessable income in relation to his part-time employment as follows:

$$\$114,217 \times \frac{151}{100} = \$13,257$$

## INLAND REVENUE BOARD OF REVIEW DECISIONS

1301

1. \$114,217 represented the expenses incurred during the year of assessment 1995/96;
2. 151 represented the size of the study room in square feet; and
3. 1,301 represented the size of the Taxpayer's flat in square feet.

The Taxpayer asserted that 'the Inland Revenue Department recognised that a taxpayer who is subject to salaries tax may have incurred allowable expenses which cannot always be substantiated. The practice adopted by IRD is to allow 10% of the income as allowable deduction. As he was aware of this practice of the IRD, he claimed 5% of the income from his part-time employment as allowable expenses.

19. The Taxpayer submitted that the practice of the Inland Revenue Department, was not to construe the words 'wholly' and 'exclusively' too narrowly. He referred us to page 2-148 of Hong Kong Revenue Law – Volume 2 – Taxation of Income by Professor P G Willoughby, wherein it was stated that this liberal attitude was supported by the approach adopted by the House of Lords in IRC v Richards Executors [1971] 1 WLR 571.

20. On the use of residential premises, the Taxpayer addressed us to paragraph 10(g) of the DIPN No 9 which provides

*'Use of Residential Premises – A claim would not in general come within the tests listed in paragraph (1) but where it is necessary for the employee to do work at home i.e. where the employee is required by the terms and nature of his employment to work outside the employer's premises, the employer not providing office facilities, any expense would be limited to the additional cost of heating, lighting etc. unless the nature of the office or employment is such that it is necessary for a distinct and separate part of the residence to be used solely for the purposes of the employment, in which event the Department would agree to an appropriate proportion of the total expense incurred on rent, rates etc.'*

The Taxpayer submitted that in view of the nature of his work as a part-time lecturer and a marker, a distinct and separate part of his residence, that is, the study room, had to be used solely for the purpose of his part-time jobs.

21. On the claim of depreciation allowance, the Taxpayer claimed that as a part-time lecturer and a marker, he required a calculator for his work since neither Institute A nor Institute B provided him with one, he had to procure one for his own use.

22. The Taxpayer claimed that it was essential for him to use a computer to prepare study notes and handouts in type-written forms. He produced to the Board a sample of his

## INLAND REVENUE BOARD OF REVIEW DECISIONS

hand-written notes. He took the view that the students' request for type-written handouts was a reasonable one.

23. The Taxpayer claimed that the same textbooks were used in many of the courses organised by Institute A and there were not enough copies to go around. Thus he had to purchase his own copies. We were referred to the case of Munby v Funlongm 50 TC 491 wherein professional books were held to be plant.

24. The Taxpayer further claimed that he was required to give relevant outside textbook handouts to students in the course of discharging his duties as a lecturer and therefore there was a practical need for him to purchase reference books.

### The issue

25. The issue for the Board to decide is whether the Taxpayer should be allowed deductions from his employment income in respect of the following items of expenditure in connection with his part-time employment:

	\$	\$
(a) Rates, management fee, mortgage interest, telephone and electricity (5% on part-time income of \$40,537)		2,027
(b) Depreciation allowance on		
books	782	
calculator	18	
computer	<u>428</u>	<u>1,228</u>
Total		<u><u>3,255</u></u>

### The relevant statutory provisions

26. Section 12 of IRO governs the deduction of expenses for salaries tax purposes. The relevant part of section 12 reads as follows:

*(1) In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person:*

*(a) All outgoings and expenses, other than expenses of domestic or private nature and capital expenditure, wholly, exclusively and necessarily incurred in the production of the assessable income;*

## INLAND REVENUE BOARD OF REVIEW DECISIONS

(b) *allowance calculated in accordance with Part VI in respect of capital expenditure on machinery or plant the use of which is essential to the production of the assessable income;*

(2) *Where any machinery or plant is not used wholly and exclusively in the production of assessable income, the amount of the allowances provided for in subsection (1)(b) shall be reduced in the proportion considered by the assessor to be fair and reasonable.'*

27. Section 68(4) of the IRO reads as follows:

*'The onus of proving that the assessment appealed against is excessive or incorrect shall be on the Appellant.'*

### **Our findings**

#### **Deductible expenses**

28. It was held by the Full Court in CIR v Humphrey HKTC 451 that the difference in the two phrases 'in the production of the assessable income' in our legislation and 'in the performance of the duties of the employment' in the United Kingdom legislation, was immaterial and the two phrases were held to have the same meaning.

29. In D36/90, IRBRD, vol 5, 295 the Board said:

*'It is generally accepted that the United Kingdom principles and tests relating to the words "wholly, exclusively and necessarily" in the performance of the said duties (that is, the duties of the office or employment) are applicable to claims for deductions under section 12(1)(a).'*

30. In order to succeed, the Taxpayer must be able to prove that (1) the expenses were incurred, (2) they were incurred in the performance of the Taxpayer's duties as a part-time lecturer and as a marker, (3) they were necessarily so incurred and (4) they were wholly and exclusively so incurred.

31. In this appeal, we are not concerned with the question, 'whether the expenses were incurred', as the Respondent (the CIR) had confirmed that it was satisfied that the expenses referred to in paragraphs 7 and 8 above, were incurred by the Taxpayer. We have only to deal with the remaining questions.

32. The duties of a marker in Institute B were straight forward, which were marking of answer scripts and preparation of a marker's report in a form provided by Institute B. We now look into the duties of the Taxpayer as a part-time lecturer. From the information supplied by Institute A to the assessor, it would appear that the duties of a part-time lecturer included delivery of lectures, preparation of lecture notes, test papers and examination

## INLAND REVENUE BOARD OF REVIEW DECISIONS

questions and marking of students' answer scripts. During the hearing, the Taxpayer gave evidence that he used to spend 6 hours every Sunday and 3 hours every Tuesday to prepare lectures during the months of April and May 1995, when he was teaching Subject 1 but when he started teaching new Subject 2 in September 1995, he had to spend more time on the preparation work before giving a lecture. He described his work as having to read the textbooks and reference books to ensure the topics he taught were widely covered, to write lecture notes on transparency, to select relevant problems from textbooks and reference books for demonstration in class and for students' classwork or homework and to prepare test papers, and examination papers. It seems from the above evidence that the work carried out by the Taxpayer in his study room comprised both the work in preparation for lecturing, and the work in preparation of a lecture. The work in preparation of a lecture was in performance of the Taxpayer's duties and the work in preparation for lecturing, was not. The work in preparation for lecturing was evident from the Taxpayer's own admission that he had to spend more time on preparation work when he took up Subject 2 in September 1995, which was a new subject to him.

33. In the case Humbles v Brooks 40 TC 500 where a headmaster being required to teach various subjects including history, attended a series of weekend lectures in history for the purpose of improving his background knowledge, the fee for the course was held not allowable deduction. At page 503, Ungood-Thomas J said:

*'There is, in my view, a distinction between qualifying to teach and getting background material – and even getting information and material which he reproduced in his own lecture – on the one hand, and preparing his own lecture for delivery on the other hand. The statement, in the passages in the Case Stated, that the lectures at the college provided the Respondent with material which he reproduced gets nearest to the performance of his duties within the Section, but even if this element could be treated in isolation, it goes no further than providing material – just as any background information would provide material – and is not, of itself, part of the preparation of his own lecture. It is, to my mind, qualifying for lecturing, or putting himself in a position to prepare a lecture. It is not the preparation of a lecture. In this sense, the distinction is between preparation for lecturing on the one hand and the preparation of a lecture on the other hand'.*

34. Also in a more recent case Fitzpatrick v IRC (No 2) [1994] STC 237, it was held where a journalist read newspapers and periodicals, he was not acting in the performance of his duties but for the purpose of ensuring that he would carry out his duties efficiently.

35. Since the work carried out by the Taxpayer in his study room as a lecturer was only partly in performance of his duties, it follows that the expenses incurred were not wholly and exclusively in the performance of his duties as a lecturer. Even assuming that the work carried out by the Taxpayer as above mentioned was totally in performance of his duties as a lecturer, the expenses incurred were still not wholly and exclusively related to those duties, because part of the expenses were attributable to the work carried out by the

## INLAND REVENUE BOARD OF REVIEW DECISIONS

Taxpayer as a marker. However, we do not accept the Taxpayer's claim that he was engaged as a marker for the month of June and July 1995. From the information supplied by Institute B and the Taxpayer's own evidence, the marking of the 155 scripts was in fact completed by him within a few days in June 1995. Furthermore, it is inconceivable that the Taxpayer never used his study room for any other purpose. Bearing in mind that the Taxpayers only gave 34 lectures of 73.25 hours in total and marked 155 scripts during the assessment year, we do not accept the Taxpayer's evidence that the study room was used by him wholly and exclusively for his part-time employment throughout the entire year of assessment. As there is no evidence to enable apportionment to be done, his claim of \$2,027 as allowable deduction must fail.

36. We do not accept the Taxpayer's contention that the nature of his income from his part-time employment was the same as that of a commission income. In his employment as a lecturer in Institute A, the Taxpayer was paid at the rate of \$330 per hour of lecturing and as a marker in Institute B, he was paid an agreed fee of \$45 per script. It did not matter how much time he spent on preparation of a lecture and on marking of the scripts, he would still be paid according to the number of hours spent on lecturing and the number of scripts marked by him. Thus, the nature of his income from his part-time employment was totally different from that of a commission income and he should not be entitled to the treatment given to a commission earner which is a maximum of 10% of the commission income as allowable expenses and, in his case 5% of the part-time income as allowable deduction, as claimed.

37. As the Taxpayer has failed to discharge his duty to prove that the expenses were incurred wholly and exclusively in the production of the assessable income within the meaning of section 12(1)(a) of the IRO, it is not necessary for us to consider the remaining question 'whether the expenses were incurred necessarily' in the performance of his duties as a part-time lecturer and as a marker. Had it been necessary, we would decide the issue against the Taxpayer because firstly, Institute A's library was available for his use as a lecturer and secondly, we do not accept the Taxpayer's contention that his duties as a lecturer or as a marker must be performed in a study room. While we appreciate that there was a certain degree of confidentiality in the Taxpayer's work as a lecturer and a marker, we do not accept that such work of a lecturer could not be performed in Institute A's library or that such work of a lecturer or a marker must be performed in a study room. Thus, his claim that the expenses were necessarily incurred in the production of his assessable income should also fail.

### **Depreciation allowance**

38. Section 12(1)(b) of IRO provides for deduction of depreciation allowances '*in respect of capital expenditure on machinery or plant the use of which is essential to the production of the assessable income*'.

39. In D89/89, IRBRD, vol 6, 328 the Board treated the words 'the use of which is essential to the production of income' as being equivalent to the words 'necessarily used in

## INLAND REVENUE BOARD OF REVIEW DECISIONS

the performance of the duties of the office or employment' or words of a similar import. It considered that such approach had the merit of bringing paragraph (b) in line with paragraph (a), thereby maintaining consistency between the two. For the purpose of this appeal, we will follow the same approach.

40. The Taxpayer claimed depreciation allowance on (1) reference books (2) text books (3) calculator and (4) computer.

41. The Taxpayer incurred the following capital expenditures on books:

<b>Date</b>	<b>Nature</b>	<b>Amount (\$)</b>
1-4-1995	Reference book	320
1-4-1995	Reference book	271
13-5-1995	Reference book	147
18-9-1995	Text books	<u>261</u>
		<u>999</u>

42. Copies of four receipts respectively dated 1 April 1995, 1 April 1995, 13 May 1995 and 18 September 1995 issued by different book shops were produced. However, names of the books purchased did not appear on those receipts.

43. The Taxpayer gave evidence to the effect that although he could borrow four books at a time from Institute A's library, it was impossible for him to borrow them as the prescribed textbooks for his course were also used in many other courses organised by Institute A. As to the reference books, the Taxpayer used them to supplement the textbooks, but he confirmed that not every lecturer used the same reference books.

44. The Taxpayer asserted that it was necessary for him to use a calculator in his part-time employment. As a lecturer, he used it in lectures to demonstrate the working of accounting problems when figures were required to be added up, and in adding up marks in test and examination papers. As a marker, he used it to add up marks in answer scripts.

45. Further, he required a computer to prepare test papers, lecture notes and handouts, because the students requested for typed-written lecture notes and handouts. Although Institute A provided typing service to teaching staff, their secretarial department was heavily engaged and even the full time teaching staff had to do their own typing.

46. We agree that the textbooks would have been essential to the production of the Taxpayer's income from his part-time employment as a lecturer, if there were no lending facility provided by Institute A to the Taxpayer. The Taxpayer claimed that it was impossible to borrow the text books from the library but we had no evidence that he had tried to borrow them and they were not available due to heavy demand by other users of the library.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

47. As to the reference books, we do not accept that they were essential to the production of the Taxpayer's income from lecturing. Reference books are used by lecturers for the purpose of preparing for lecturing or enabling them to discharge their duties more proficiently. Each and every lecturer has his own choice of reference books. Presumably, the Taxpayer could also borrow reference books from Institute A's library and it was not essential that he should buy his own copies. Furthermore, the Taxpayer does not provide us with the names of the reference books acquired by him. We are unable to ascertain whether they were books related to the subject taught by the Taxpayer.

48. As to the calculator, we agree that a calculator would assist the Taxpayer to discharge his duties more efficiently and expeditiously. Nonetheless, we do not agree that it was essential to his work. The Taxpayer tried to give us an impression that the calculations he required to do in class and in marking papers were so complicated that a calculator was an absolute necessity. However, from the Taxpayer's description of them, they were only calculations which involved adding up figures, as opposed to working out complicated equations or alike. However, we do agree that a calculator would be useful and convenient for the Taxpayer to discharge his duties, but it was not essential.

49. As to the computer, both Institute A and Institute B confirmed that the lecture notes, test papers or examination papers or marker's report needed not be typed. The use of a computer was therefore not essential to the Taxpayer for the discharge of his duties as a lecturer or as a marker. We do appreciate the Taxpayer's eagerness to accede to the students' request for typed-written lecture notes. However, it was not essential in the discharge of his duties as a lecturer.

50. For the reasons given, the Taxpayer's claim of depreciation allowance on all the items, also fail.

### **The decision**

51. It follows that this appeal is dismissed and that the assessment in question is hereby confirmed.

### **Order under section 68(9)**

52. Under section 68(9) of IRO, where after hearing the appeal, the Board does not reduce or annul the assessment, the Board may order the taxpayer to pay as costs of the Board up to a sum of \$5,000.

53. The Taxpayer as an assessor, should be fully aware of the provision of the said section 68(9) and the cost of a Board of Review hearing. He should also realize that the amount he claimed in this appeal represents only a small fraction of the cost of the present Board hearing. By bringing an appeal before this Board, the Taxpayer must also be prepared that an order of cost may be made against him in case of an unsuccessful appeal. Pursuant to

## INLAND REVENUE BOARD OF REVIEW DECISIONS

the said section 68(9), we now order the Taxpayer to pay the sum of \$2,000 as costs of the Board, which \$2,000 shall be added to the tax charged and recovered therewith.