

his contract also requires him to render services outside the geographical area of the Colony.

In the circumstances, can it be said that the Appellant's salary does not arise in or is derived from the Colony? We think not. In our view, it makes no material difference that funds required for the operation of W (HK) are supplied from a source outside the Colony. What we have been told by the Appellant in regard to the manner in which finance is supplied, is really the means by which W (HK) is enabled to conduct its business here. The position *vis-a-vis* W (HK) and the Appellant is not affected by the business arrangements which the head office may have with the local branch establishment. If a company carries on business in Hong Kong by having its capital or revenue remitted from elsewhere, the employees of the company do not, on that account, become exempt from salaries tax. There is every reason to assume that the funds when remitted become appropriated to the account of W (HK) which is under a legal obligation to pay and has been paying the Appellant's salary. One does not have to trace the source from which a company derives the means to pay an employee's salary if on the facts it is clear that his employment is with and his income paid by a company carrying on business in Hong Kong.

For the reasons given and having regard to all the circumstances of the case, we are of the view that the Appellant's salary arises in and is derived from the Colony. Accordingly, the appeal must be dismissed and the assessment confirmed.

Case No. BR 4/74

Board of Review:

L. J. D'Almada Remedios, *Chairman*, W. I. Cheung, N. A. Challis,
& E. J. S. Tsu, *Members*.

22nd July 1974.

Salaries tax—ascertainment of assessable income—assessment of salaries tax
on sums paid by company to taxpayer as managing director—sums

received by taxpayer as salary were applied to discharge company's debts and expenses—whether such sums should be discounted for the purpose of salaries tax.

The appellant was the managing director of a limited company and was paid a salary. The company went into receivership and business ceased resulting in the revision of the operative years of assessment for tax. As a consequence of the revision the appellant appealed against the assessment of salaries tax based on a Return submitted by him and on the Company's Returns showing the salary which was paid to him. The appellant claimed that the sums he received as salary were used to discharge the company's debts and expenses and should be discounted for the purpose of salaries tax. On appeal.

Decision: Appeal dismissed. Assessment confirmed.

Reasons:

This is an appeal against Salaries Tax. For the years of assessment with which we are concerned, the Appellant was the managing director of H Ltd. As this company went into receivership and business ceased, the provisions in the Inland Revenue Ordinance relating to cessation of business applied with the result that the operative years of assessment fell to be revised. As a consequence of such revision, this appeal relates to the years of assessment 1967/68 and 1968/69. The 1967/68 assessment was based on a Return signed by the Appellant for emoluments which he says he received. The 1968/69 assessment was based on the Company's Returns (signed by the Appellant) stating the salary which was paid to him. A comprehensive statement of the facts are set out by the Commissioner in paragraphs 1-15 of his Determination. These facts are not in dispute and we do not find it necessary to allude to them for the purpose of our decision.

The Appellant admitted that the sums stated in the Returns to which we have referred were, in fact, received by him as salary. However, he maintained that it was used to discharge the debts of the company. He, therefore, claims that having applied the salary he received in that manner he is entitled to have it discounted for the purpose of Salaries Tax. He further stated that his salary was also utilised in payment of certain expenses of the company in the sum of HK\$61,912 for which credit was given in company's Balance Sheet but which the assessor disallowed as a deduction in the company's assessment because of lack of vouchers to support such payment. As he paid this sum on behalf of the company for its expenses, he also claims a right of set-off for the amount so paid.

No accounts have been produced to show how his salaries have been absorbed by payment of the company's debts or the nature or extent of those debts or to whom they were paid or in what amounts or when. It seems to us curious that he should draw a salary so that month after month it may be channelled to the pockets of creditors through him. There is no real evidence before us other than his own statement to back up these assertions he has made, and we are unable to act on such a nebulous statement unsupported by particulars.

In any event, it seems to us that the peg on which the Appellant hangs his case finds no legal support. A taxpayer who gives away his salary or uses it to pay the debt of another or makes an unwise investment with it is still liable for tax on his salary irrespective of what he did with it. In the circumstances, the assessments as determined by the Commissioner are confirmed.

Case No. BR 5/74

Board of Review:

S. V. Gittins, Q.C. *Chairman*, Donald Q. Cheung, G. E. Fowle & R. Beynon, *Members*.

21st October 1974.

Salaries tax—income arising in or derived from the Colony . . . from office or employment of profit—taxpayer employed in Hong Kong by a company incorporated in the United States and having an office in Hong Kong—his employment required him to work in the company's Hong Kong office and in offices located in a number of countries in the Far East—employee's salary was paid in Hong Kong, in Hong Kong currency—whether the employee's salary for the period spent out of Hong Kong was liable for salaries tax—Inland Revenue Ordinance, s. 8(1).

The appellant who was interviewed and engaged in Hong Kong by the Hong Kong office of an American Company was appointed as the Communications Representative for the Far East Region of the company. His travels to the other countries of the Far East Region were part of his duties to the Hong Kong Office for which he was engaged and were incidental thereto. He was remunerated in Hong Kong for rendering services to the Hong Kong Office of the employer and he was governed by the Hong Kong Salary Programme of the company. His contract of employment was enforceable in Hong Kong. The appellant appealed against an assessment of salaries tax payable on the whole of his income on the ground that the portion of his salary attributable to the periods