

- (c) As to 11(m) we find that when the Taxpayer acquired the property, with the inevitability of future redevelopment, outside financing could have been a possibility.
- (d) As to 11(n), this is accepted subject to our findings in paragraph 13.

17. We have come to the conclusion that the property was acquired by the Taxpayer as a long term investment when it was incorporated in 1965.

18. But that when the Taxpayer's directors resolved on 15 July 1971 to redevelop by a 14 storey building and to sell units to pay for this redevelopment and then implemented this resolution by advertisements and sales brochures followed by actual sales before completion of the building, these activities constitute badges of trade. We find that the Taxpayer embarked on the business of trading in land on 15 July 1971.

19. The appeal is allowed to the extent that assessable profits are to be computed on the cost of land being at the agreed value of \$1.7 million on 15 July 1971 and the proportion of this amount attributable to the units sold being allowed as part of the cost thereof.

Case No. D 13/80

Board of Review:

L. J. D'Almada Remedios, *Chairman*; Charles Ching; D. Evans;
David A. Lyle, *Members*.

21 January 1981.

Inland Revenue Ordinance—s. 9(1)(c)—Hospital employee—quarters provided by employer—whether s. 9(1)(c) applied in respect of assessing rental value.

An additional salaries tax assessment was raised against the Appellant on the ground that quarters were provided for her by her employer.

The Appellant was employed by a Hospital as a medical superintendent. Her employment was temporary and she had no formal contract either in respect of her employment or the quarters which she was told would be provided. She was not required to take the quarters offered to her.

The Appellant had her own residence where she had lived for 34 years. She had told her employers that she would only be in the quarters in emergencies. She used the quarters about 3 times in 2 years during typhoons. Her employers used the store room in the quarters and on certain days the dining room was used by them. The \$100.00 per month paid by her to her employers was a voluntary contribution.

Held:

- (i) The Appellant was not contractually bound to accept the quarters and it cannot be said that a place of residence was provided.
- (ii) Her employers regularly used the quarters or part of them and the Appellant did not have exclusive possession.
- (iii) The quarter were used as a "call room" rather than a place of residence.
- (iv) Suitability of the quarters as a place of residence does not in itself make the Appellant liable under s. 9(1)(c) since there was no obligation nor intention to use them as such.
- (v) The additional assessment set aside.

A. K. Gill for the Commissioner of Inland Revenue.
Appellant in person.

Reasons:

An additional Salaries Tax Assessment was raised on the Taxpayer on the ground that the original assessment omitted the value of quarters provided for her by her employers.

The facts on which the Commissioner's determination was arrived at showed that the Taxpayer was employed as a medical superintendent and that quarters in the hospital were provided for the Taxpayer for which she paid \$100 per month as rent. Those quarters consist of a bedroom, study room, dining room, sitting room, store room and pantry. The total area is approximately 900 square feet. As the rental value of those quarters exceeds the rent paid by the Taxpayer, the additional assessment was raised under section 9(1)(c) of the Inland Revenue Ordinance.

The Taxpayer has appealed against the determination. She was unrepresented. She gave evidence before us which was unchallenged. We find her to be an honest and candid witness and we accept her evidence. This shows that the facts are as follows. Her employment was temporary and she was told that she was eligible for quarters. There was no formal written contract. There was no contract in regard to quarters. She was not obliged to take the quarters that were offered to her. She had a residence of her own at No. 15, A B Road, 3rd floor, which she has been occupying for 34 years. In regard to quarters she told the Executive Committee of the hospital that she might need a room for the night in case of emergency. In one year she used the quarters once and in another year she used it twice during typhoons. Her employers use the store room and both she and the steward have a key to the quarters. During flag days the dining room is also used by her employers. She has never paid any rent for the quarters, the \$100 per month being a voluntary contribution. The hospital is always in need of money and all the doctors and nurses make such contributions in amounts depending upon their salary.

We think that the circumstances of this case show that although the Taxpayer was eligible for quarters, her employers with knowledge that she did not require accommodation had from time to time put the quarters or part thereof to their own use therefore it cannot be said that a place of residence was provided for her. She does not have exclusive possession of the quarters. Unless the Taxpayer was bound by contract to accept the quarters offered—and in this case, there was no contract for quarters—accommodation or a place of residence cannot be foisted on the Taxpayer if she did not think fit to accept it.

In a letter dated 28 December 1978, the Chairman of the Board of Directors of the hospital has confirmed that the quarters are used by the Taxpayer as a 'call room' when she has to stay overnight for official duties or during emergencies. From the fact that her employers knew that she had her own residence and from what she said to the Executive Committee it is also implicit that these quarters were provided as a call room rather than as a place of residence. Even if the quarters in the hospital are suitable for accommodation as a dwelling, that alone is not sufficient if it be shown on the evidence, as in this case, that she was not obliged and did not intend to accept them as a place of residence. As the quarters were put to use as a call room, then it also cannot be said that a place of residence was provided for her.

For the reasons given, the additional assessment is set aside. In fairness, we would add that when the Commissioner raised the additional assessment he was not aware of the facts brought out in evidence before us.

Case No. D 1/81

Board of Review:

S. V. Gittins Q.C., J.P. *Chairman*; T. J. Bedford; N. B. Rafe;
Maurice P. K. Wong, *Members*.

2 April 1981.

Salaries Tax—Company director—whether Director holding office can also have contract of employment—apportionment of earnings—relief under section 8 Inland Revenue Ordinance Cap. 112.

The Appellant was a managing director of a company and received an annual salary. Most of his work for the company was outside Hong Kong and in fact he was also the managing director of a UK company the salary from which was considerably more than for the Hong Kong company.