

Case No. D23/84*Board of Review:*

William Turnbull, *Chairman*; E. J. V. Hutt & Della P. H. Chan, *Members*.

24 January 1985.

Salaries tax—section 9(2) of the Inland Revenue Ordinance—the meaning of “room” within the context of the proviso to the section.

The Appellant was provided for his accommodation with a suite in an hotel comprising a bathroom, a bedroom, a sitting room and a small storage or box room. The proviso to section 9(2) of the Ordinance provides inter alia that if the place of residence be a hotel, hostel or boarding house, the rental value shall be deemed to be 4% where the accommodation consists of not more than 1 room. The Appellant appealed on the ground that a suite of rooms which only has one bedroom comes within the category of “one room”.

Held:

The word “room” cannot have its literal and narrowest dictionary meaning of an interior portion of a building divided off by walls or partitions because this would mean that all hotel rooms with attached bathrooms would comprise 2 rooms. In the context of “hotel, hostel or boarding house” the word room has reference to a bedroom and accordingly a suite of rooms which only has one bedroom comes within the category of “one room”, even though it may be possible for someone to sleep in the sitting room provided that the primary purpose of the sitting room is for sitting and not sleeping.

Appealed allowed and assessment remitted to the Commissioner for revision accordingly.

L. A. Wimpress for the Commissioner of Inland Revenue.
Appellant in person.

Reasons:

Two questions arise for decision in this appeal. The first has already been determined by a higher authority than the Board of Review. The question is whether or not a hotel service charge is part of “rent” for purposes of section 9(1)(c) of the Inland Revenue Ordinance. The Appellant confirmed that the facts of his case were in all respects identical to those of an appeal by another Government servant. The High Court on appeal from the Board of Review has decided this question in favour of the Commissioner and accordingly the Board of Review rejects the Appellant’s first ground of appeal and affirms the decision of the Commissioner.

The second ground of appeal relates to the definition of the word “room” which appears in the proviso to section 9(2) of the Ordinance. The proviso reads as follows:—

"If such place of residence be a hotel, hostel or boarding house the rental value shall be deemed to be 8% of the income aforesaid where the accommodation consists of not more than 2 rooms and 4% where the accommodation consists of not more than 1 room."

The question to be decided is the meaning of "room" within the context of the proviso. The accommodation provided to the Appellant comprised in the first instance of a suite of rooms in the Lee Gardens Hotel comprising a bathroom, a bedroom, and a sitting room. Subsequently he occupied a suite at the Hong Kong Hotel comprising a bathroom, a bedroom, a sitting room and a small storage or box room. The Appellant said that he would have preferred to have had two bedrooms because his family comprised himself, his wife, and a small child. His request for two bedrooms was rejected and the sleeping arrangements were twin beds with a child's cot.

Obviously the word "room" cannot have its literal and narrowest dictionary meaning of an interior portion of a building divided off by walls or partitions because this would mean that all hotel rooms with attached bathrooms would comprise two rooms. This cannot be the meaning and intention of the proviso. Likewise we cannot believe that a box room or store room would constitute a separate room for this purpose.

The more difficult question is to decide whether "room" means bedroom in which case a hotel suite which includes a separate sitting room would comprise one room or whether the meaning is that a suite comprising a bedroom and a separate sitting room is two rooms.

The Board of Review has decided that in the context of "hotel, hostel or boarding house" the word room has reference to a bedroom and accordingly a suite of rooms which only has one bedroom comes within the category of "one room". We decide this to be the case even though it may be possible for someone to sleep in the sitting room provided that the primary purpose of the sitting room is for sitting and not sleeping. The fact that a settee may be capable of being converted into a bed is immaterial.

In reaching this decision the Board has borne in mind the evidence given before it. The evidence included the fact that the suite was categorised by the hotel with one room number only and with only one door leading onto the corridor. It would appear that in hotel parlance the accommodation occupied by the Appellant was described as one room with one room key. Another important fact is that the Government itself categorised the accommodation as

one room. On a form bearing the heading "Hong Kong Inland Revenue" and "Hong Kong Government Return of Allowances for the Year ended 31 March, 1982" and bearing the footnote "This form should be retained for completion of your salaries tax return" the quarters provided to the Appellant were described under the heading "hotel" as one room.

For the foregoing reasons the Board of Review finds in favour of the Appellant on his second ground of appeal and directs that the Tax Assessment be referred back to the Commissioner to be reduced accordingly.

Case No. D24/84

Board of Review:

William Turnbull, *Chairman*; E. J. V. Hutt & Yung Chu-kuen, *Lincoln, Members*.

31 January 1985.

S. 82A of Inland Revenue Ordinance—penalty assessment—whether ignorance or the employment of qualified accountants to handle the tax returns is reasonable excuse.

Additional tax was imposed on the Appellant under Section 82A in respect of incorrect profits tax returns. Appellant (deceased) appealed through her husband acting as her personal representative on a number of grounds including that her husband, who actually prepared the tax returns, was ignorant, illiterate or unable to understand what the obligations required and that since 1978 they had employed qualified to handle the tax returns.

Held:

Anyone who carries on business has obligations in respect to that business which include obligations under the Inland Revenue Ordinance. Such obligations cannot be avoided by saying that the taxpayer was ignorant, illiterate or unable to understand what the obligations required. Nor is it an excuse that qualified accountants were employed, as they could do no more than act on the information provided to them and in accordance with the instructions given to them.

Appeal dismissed.

Chan Sui-keung for the Commissioner of Inland Revenue.
Personal representative for the Appellant.