

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. BR 13/69

Board of Review:

L. J. D'Almade Remedios, *Chairman*, G. E. S. Stevenson, Lamson Kwok & Dr. S. Y. Chung, *Members*.

14th January 1970.

Salaries tax—allowance received by police officer during civil disturbances—whether income from office or employment—Inland Revenue Ordinance, section 8.

During the civil disturbances in 1967 the appellant, who was then a police officer, received what was called a “Hard-lying Allowance” at the rate of \$15 per day, which was payable to all ranks of the Police Force. The assessor included the allowance as part of the appellant’s assessable income. On appeal.

Decision: Assessment appealed against confirmed.

Case referred to:—Attorney General of British Columbia v. Ostrum, (1904) A.C. 144.

Reasons:

During the disturbances in 1967 the appellant received what is called a “Hard-lying Allowance” at the rate of \$15 a day, which was payable to all ranks of the Police Force. The allowance received by the appellant was included by the assessor as part of the appellant’s assessable income and the point that falls for consideration is whether the allowance received is taxable as part of the appellant’s emoluments under section 8 of the Inland Revenue Ordinance.

The substance of the appellant’s argument was stated in his letter to the Commissioner of Inland Revenue. A Senior Officer of the Royal Hong Kong Police Force, who appeared on behalf of the appellant, has most ably enlarged upon those arguments but we have come to the conclusion, after a careful consideration of the contentions put forward, that it is not possible for us to arrive at any other view than that the payments made to the appellant are liable to salaries tax.

Section 8 (and not section 9) of the Inland Revenue Ordinance is the charging section in respect of salaries tax. It is this section that imposes a tax on “income” from any office or employment. The word “income” includes “all gains and profits derived from personal exertions, whether such gains and profits are fixed or fluctuating, certain or precarious, whatever may be the principle or basis of calculation”: **Attorney General of British**

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Columbia v. Ostrum¹. The word is, therefore, sufficiently embracing to bring within the taxing net voluntary cash payments and allowances for services rendered in the employment.

The appellant's "income" for the year ended 31st of March 1968 is not just his normal fixed salary but that amount plus the extra cash payment he has received at the rate of \$15 per day. It is clearly the combination of these two amounts that formed his "income" for that year. It is common ground that the sum of \$15 a day was paid to all members of the Police Force, irrespective of the use to which any recipient might have put it. In the circumstances it cannot be regarded otherwise than in the nature of remuneration and is income from employment in every sense of the word. It is something additional to the appellant's stated salary and we do not see how it can be seriously contended that it was not at least a form of perquisite. It is paid as a result of members of the Police Force having to perform longer periods of duty. This automatically stamps the payment as arising by virtue of the appellant's office. We are told by the Senior Officer who appeared for the appellant that in certain circumstances, officers are given either free meals or subsistence allowance, but that the \$15 per day with which we are concerned is something extra or additional. If so, it must for tax purposes be included as part of the appellant's salary, since it is part of his income from employment. It is a further sum of money in cash received by him for which he need not account to his employers. We are not bound by the tag which the employer chooses to ascribe to a payment. We must look to what the payment really amounts to and decide whether, from the standpoint of the person who receives it, it accrues to him by virtue of his office. If the answer is in the affirmative it is taxable.

It has been urged upon us that the payment is akin to a subsistence allowance which is not taxable. We are not aware of any case that decides that a subsistence allowance is not taxable, and it is our hope that the point taken will not have the effect of reaping a whirlwind.

Our sympathies are entirely with the appellant. He has properly earned the deserving gratitude to the people of Hong Kong for his work and efficiency in dealing with the very delicate and difficult situation that existed during the disturbances in 1967. That, however, is not a matter which we can take into account and, for the reasons we have given, the assessment must be confirmed.

¹ (1904) A.C. 144 at p. 147.