**Case No. BR 19/73**

*Board of Review* :

S. V. Gittins, Q.C. *Chairman*, A. K. W. Lui, J. G. Oliver, & Chau Kai-yin, *Members.*

**27th February 1974.**

Salaries Tax—membership subscriptions to professional associations—whether such payments were deductible in ascertaining net chargeable income under section 12(1)(*b*) of the Inland Revenue Ordinance.

The appellant, an engineer, was a member of two societies relating to his profession to which societies he paid subscriptions. In his Salaries Tax Assessment 1972/73 he was allowed as a matter of the Inland Revenue Department's practice a deduction in respect of his subscription paid to one society, membership of which was considered a pre-requisite of his employment. The appellant appealed claiming that the subscriptions to both societies were expenses wholly exclusively and necessarily incurred in the production of his assessable income and were deductible in ascertaining his net chargeable income under section 12(1)(*b*) of the Inland Revenue Ordinance. On appeal.

**Decision:** Appeal dismissed. Assessment confirmed.

Appellant in person.
Benjamin Shih, Chief Assessor, for the Commissioner of Inland Revenue.

**Cases referred to:**—

1. Lomax v. Newton, 34 T.C. 561.
2. C.I.R. v. Humphrey, (1970) H.K.L.R. 464.
3. Lunney v. F.C. of T., (1958) 32 A.L.J.R. 139.
4. Simpson v. Tate, (1925) 2 K.B. 214; 9 T.C. 314.
5. Wales v. Graham, (1941) 24 T.C. 75.

*Reasons* :

The Taxpayer appeared in person to support his appeal against the disallowance of a deduction claimed in his Salaries Tax Assessment 1972/73 for his subscription to the Institute of Mechanical Engineers in the sum of £7.30 (HK$108).

The Taxpayer had also claimed the deduction of his subscription to the Society. In his Determination the Commissioner stated : —

> "Strictly speaking, the subscription to the Society is also not allowable; however, it is departmental practice to grant one such deduction where the qualification is a prerequisite of

employment and where the retention of membership and keeping abreast of current developments in the particular profession are of regular use and benefit in the performance of the Taxpayer's duties.".

Section 12(1) of the Inland Revenue Ordinance provides for deductions as follows : —

> "The net chargeable income for any year of assessment of a person chargeable to salaries tax under this Part shall be his assessable income for that year reduced by the following :
>
> (*a*) . . .
>
> (*b*) all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly exclusively and necessarily incurred in the production of such assessable income; and
>
> (*c*) . . .".

In the United Kingdom, Rule 7 of Schedule E of the Income Tax Act 1952 allows a taxpayer to deduct money expended "wholly, exclusively and necessarily in the performance of" the duties of his office or employment of profit. Speaking of this Rule, Vaisey, J. in **Lomax v. Newton**[1], [cited by Blair-Kerr, J. in the Full Court in **C.I.R. v. Humphrey**[2],] said : —

> ". . . the provisions of that rule are notoriously rigid, narrow and restricted in their operation. . . . it must be shewn that the expenditure incurred was not only necessarily but wholly and exclusively incurred in the performance of the relevant official duties. . . . The words are indeed stringent and exacting; compliance with each and every one of them is obligatory if the benefit of the Rule is to be claimed successfully.".

Dealing with deductibility, Dixon, C. J., in the Australian case of **Lunney v. F. C. of T.**[3] [cited in **Humphrey's** case at 472] said : —

> "Times have changed; the incidence of income tax greatly differs now in scope and weight from its incidence in the days when the law was settled; possibly the justice of the traditional legal view is a little more open to question and certainly its financial significance supplies a motive for questioning it . . . The relevant provisions of the English Income Tax Acts are not in the same terms as those of the Australian law, but the whole course of English authority involves a like conclusion. To escape from the course of reasoning on which they proceed requires the taking of refined and rather insubstantial distinctions. I confess for myself, however, that if the matter were to be worked out all over again on bare reason, I should have misgivings about the conclusion. But this is just what I think the Court ought not to do. It is a question of how an undisputed principle applies. Its application was settled by old authority long accepted and always acted upon. If the whole subject is to be ripped up now it is for the legislature and not the Court to do it.".

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[1] 34 T.C. 561.

[2] (1970) H.K.L.R. 464.

[3] (1958) 32 A.L.J.R. 139.

The Australian Commonwealth legislature has made express provision for subscriptions to professional societies, etc., in Section 73 of the Income Tax Act (1936-1960)—

> "(1) Where the carrying on of a business from which assessable income is derived by the taxpayer is conditional upon membership of any association, any periodical subscription paid by him in the year of income in respect of that membership shall be an allowable deduction.
>
> (3) Any periodical subscription, to which the foregoing provisions of this section do not apply, paid by the taxpayer in the year of income in respect of his membership of any trade, business or professional association, shall be an allowable deduction :
>
> Provided that the total deduction allowable under this subsection in respect of subscriptions to any one association in that year shall not exceed Twenty-one pounds.".

There is no comparable provision in the Hong Kong Ordinance.

On the narrow and restricted construction of the words "wholly, exclusively and necessarily" laid down in **Lomax v. Newton**[1] (*supra*) and applied in—

(*a*) **Simpson v. Tate**[4], where the subscriptions of a county medical officer to professional societies were disallowed; and

(*b*) **Wales v. Graham**[5], where the claim of a divisional engineer to the London County Council to deduct his subscription to the Institution of Civil Engineers was disallowed;

the Board is of the opinion that the Taxpayer's subscriptions to his 2 professional societies are not expenses wholly, exclusively and necessarily incurred in the production of his assessable income.

The Taxpayer informed the Board that the U.K. Tax Authorities had allowed the subscriptions to both professional societies to be deducted from his income when he was subject to U.K. Income Tax and offered to obtain evidence from the U.K. in support of this assertion. Accepting this assertion, if the U.K. law is as seen by the Board and set out above, the allowances could only have been granted in the U.K. as a matter of departmental practice, and would not be binding on the Commissioner of Inland Revenue nor on this Board.

Dixon, C. J. in **Lunney's** case (*supra*) has indicated his doubts as to whether the strict and narrow construction of the material words was appropriate at the present time. The Australian legislature has cured this by express legislation on the subject. The legal

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[1] 34 T.C. 561.
[4] (1925) 2 K.B. 214; 9 T.C. 314.
[5] (1941) 24 T.C. 75.

authorities reveal that no responsible court has sought to alleviate the situation by a more liberal construction.

The Board is not disposed to disturb the departmental practice of allowing one deduction of membership subscription to a professional society, applied in this case to the Taxpayer's subscription to the Royal Aeronautical Society.

The appeal is dismissed and the assessment confirmed.