Case No. BR 20/69

Board of Review:

L. J. D'Almada Remedios, *Chairman*, R. S. Huthart, B. A. Bernacchi & W. T. Grimsdale, *Members.*

13th October 1969.

Salaries tax—"income arising in or derived from the Colony"—employee of H.K. company living and working abroad—whether liable to salaries tax—Inland Revenue Ordinance, s. 8(1).

The appellant was employed by a Hong Kong company under an employment agreement in general terms which did not specify the place where he was to perform his work. It was common ground that the appellant resided in Japan and it was conceded that he was employed in Japan. It was also not disputed that his remuneration was in consideration of services which he rendered in Japan for the benefit of his employers in Hong Kong. The appellant was assessed with salaries tax in Hong Kong. On appeal.

Decision: Assessment appealed against confirmed.

Cases referred to:—

1. Hong Kong & Whampoa Dock Co. Ltd. (No. 2), (1960) H.K.L.R. 166.

2. Coltness Iron Co. v. Black, 6 A.C. 315.

3. Ormond Investment Co. v. Betts, (1928) A.C. 143.

Reasons:

What we have to decide is whether a person residing abroad but employed by a local company is liable to salaries tax for services rendered in a foreign country. That, in essence, is the question that falls for determination in this appeal and the answer lies in the construction of section 8 of the Inland Revenue Ordinance which reads :—

> "Salaries tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person in respect of his income arising in or derived from the Colony from the following sources—
>
> (*a*) any office or employment of profit; and
>
> (*b*) any pension.".

Although we were referred to English and Australian cases on the subject we do not think that they materially assist as their decisions were based on differently worded statutes and mainly dealt with the question of residence. Of the Hong Kong cases referred to us we take note of the decision in Appeal No. 3 of 1968 to the Board of Review but the facts in that case were very different and the decision turned upon the situs of the employment. The **Hong Kong & Whampoa Dock Co. Ltd. (No. 2)** case[1] concerns a completely different section of the Inland Revenue Ordinance dealing with corporation profits tax and the problem before the court was to determine whether the profits from a salvage operation outside Hong Kong fell within the words "profits arising in or derived from the Colony". We do not think that this case is of very much help in interpreting section 8 of the Inland Revenue Ordinance. We are, therefore, left with the task of determining whether the section in question is wide enough to bring within its taxing net a case such as the one we are dealing with. In saying this, we are not unmindful of the words of Lord Blackburn in **Coltness Iron Co. v. Black**[2]:—

> "No tax can be imposed on the subject without words in an Act of Parliament clearly showing an intention to lay a burden on him.".

But this must be read with the corollary that was stated by Lord Buckmaster in **Ormond Investment Co. v. Betts**[3] at p. 151 where he said :—

> "The subject ought not to be involved in these liabilities by an elaborate process of hair-splitting arguments. In this case, however, the imposition of the tax is quite plain; it is the charge in respect of income arising . . .".

On our reading of the section, we are unable to conclude that only where services are rendered in the Colony is income from employment taxable. As the word "income" is defined, one can, for practical purposes, substitute the word "salary", "wages" or "remuneration" in its place, so that if the remuneration arises in or derives from Hong Kong it is taxable. The expression "income arising in or derived from the Colony" is referable to the locality of the source of income; in other words not the place where the duties of the employee are performed but the place where the payment for the employment is made. The section does not say : "income arising in or derived *from services rendered* in the Colony". If it was so intended it would have said so as it does in section 13B. It is another tenet of interpretation that the section is to be read with other sections especially in the same part of a statue. Under section 8(2)(*h*) appeared formerly an exclusion of "any pension paid to a person who has left the Colony permanently". That exclusion pre-supposes that section 8(1) could involve tax on somebody not resident in Hong Kong. Similarly, the income referred to in section 9(1)(*a*) includes income which, from its very nature, is payable from Hong Kong to a person outside Hong Kong as also does section 9(4). We think too that there would be no need for sections 13A and B if the interpretation of section 8(1) is limited in the way that the appellant urges upon us. "Income arising in or derived from" means the source

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1 (1960) H.K.L.R. 166.
2 6 A.C. 315.
3 (1928) A.C. 143.

of income. Locality of the source of income at least prima facie is the place where the employee gets his "income" from the place from where it is paid. In our view, therefore, a person employed by a Hong Kong company and who is paid by the Hong Kong company from money originating in Hong Kong to perform services elsewhere, is liable to salaries tax because his income arises in or is derived from the Colony.

For the reasons given, this appeal fails. In arriving at this decision it has not been necessary for us to consider the provisions of section 13A(2) which does not apply and we do not therefore purpose to comment on the effect of that subsection save to say that the position might have been different if the appellant had proved that his salary had borne tax elsewhere.