Case No. BR 2/73

Board of Review :

L. J. D'Almada Remedios, *Chairman*, A. K. W. Lui, A. E. Chaney & V. O. Roberts, *Members.*

18th October 1973.

Salaries tax—income derived from services in the Colony—taxpayer employee of Hong Kong company, but salary paid in the U.S.A. by American company—whether liable to Hong Kong salaries tax—Inland Revenue Ordinance, s. 8(1).

The appellant, a resident of Hong Kong, was the Managing Director of a Hong Kong company which was the subsidiary of an American company. His salary was paid into his account in the U.S.A. by the parent company but was debited to the account of the Hong Kong company and reimbursed to the American company. The appellant was assessed to salaries tax in Hong Kong. Although the appellant's salary was credited to his account in the U.S.A. by a foreign company it was in the nature of an advance which was charged against his employers in Hong Kong. On appeal.

Decision: Appeal dismissed. Assessment confirmed.

Reasons:

The Appellant appealed against a Salaries Tax assessment for the Year of Assessment 1969-70. The grounds of appeal are: —

1. That his income was not derived form a source in the Colony; and,

2. That his remuneration did not come to him by virtue of his office and employment with the Hong Kong Company.

The facts as set out by the Commissioner are not disputed. Stated briefly, the Appellant took up residence in Hong Kong in August 1969. At that time he was the Vice-President of I. (Los Angeles) (an American Company) which is a member of the D. Inc. Group of Companies in the U.S.A. On the 3rd of September 1969, I. (Far East) Limited (the Hong Kong Company) was incorporated in Hong Kong and the Appellant was appointed to the office of Managing Director.

The Appellant's case is that in the fiscal year with which we are concerned he spent 63 days out of the Colony so that in respect of such services which he rendered out of the jurisdiction the computation for salaries tax should exclude that period.

In giving reasons for the objection to the assessment, the case put forward by the Appellant's accountant to the commissioner was:

> "…that (the Appellant) was employed and paid by I. (Los Angeles) to 26th April 1970. From the date he has been employed and paid by the parent corporation, D. Inc. He has never received any remuneration form I. (Far East) Ltd., although he is the Managing Director. (The Appellant) should therefore only be taxed on income for services rendered in the Colony…"

This statement is not, however, an accurate presentation of the facts. In the returns filed, the appellant gave his employer's name as I. (Far East) Ltd., the Hong Kong Company. It is also admitted that although the Appellant's salary was paid by D. Inc. into his Bank account in America, the Hong Kong Company was debited with such payment by D. Inc. and such amount as was paid by D. Inc. was reimbursed by the local company to D. Inc. In substance, therefore, D. Inc. merely acted as the paying agent for the Hong Kong Company who are the Appellant's employers. The reason why such payments have been charged to the Hong Kong Company (as stated by the Appellant's accounts to the Revenue) was because it is the Hong Kong Company that benefits from the services rendered by the Appellant.

It is clear, therefore, that when regard is had to these facts, the Appellant's emoluments arose in or were derived form the Colony. It is in respect of services which he renders to the Hong Kong Company that he is paid his remuneration. Although his salary is credited to his account in the U.S. by a foreign company it is in the nature of an advance which is charged against the account of his employers in Hong Kong. The whole of his income is, therefore, properly chargeable to salaries tax notwithstanding that part of his services may have been rendered out of the Colony.