

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. BR 4/74

*Board of Review :*

L. J. D'Almada Remedios, *Chairman*, W. I. Cheung, N. A. Challis, & E. J. S. Tsu,  
*Members.*

**22nd July 1974.**

Salaries tax—ascertainment of assessable income—assessment of salaries tax on sums paid by company to taxpayer as managing director—sums received by taxpayer as salary were applied to discharge company's debts and expenses—whether such sums should be discounted for the purpose of salaries tax.

The appellant was the managing director of a limited company and was paid a salary. The company went into receivership and business ceased resulting in the revision of the operative years of assessment for tax. As a consequence of the revision the appellant appealed against the assessment of salaries tax based on a Return submitted by him and on the Company's Returns showing the salary which was paid to him. The appellant claimed that the sums he received as salary were used to discharge the company's debts and expenses and should be discounted for the purpose of salaries tax. On appeal.

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

*Reasons :*

This is an appeal against Salaries Tax. For the years of assessment with which we are concerned, the Appellant was the managing director of H Ltd. As this company went into receivership and business ceased, the provisions in the Inland Revenue Ordinance relating to cessation of business applied with the result that the operative years of assessment fell to be revised. As a consequence of such revision, this appeal relates to the years of assessment 1967/68 and 1968/69. The 1967/68 assessment was based on a Return signed by the Appellant for emoluments which he says he received. The 1968/69 assessment was based on the Company's Returns (signed by the Appellant) stating the salary which was paid to him. A comprehensive statement of the facts are set out by the Commissioner in paragraphs 1-15 of his Determination. These facts are not in dispute and we do not find it necessary to allude to them for the purpose of our decision.

The Appellant admitted that the sums stated in the Returns to which we have referred were, in fact, received by him as salary. However, he maintained that it was used to discharge the debts of the company. He, therefore, claims that having applied the salary he received in that manner he is entitled to have it discounted for the purpose of Salaries Tax.

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He further stated that his salary was also utilised in payment of certain expenses of the company in the sum of HK\$61,912 for which credit was given in company's Balance Sheet but which the assessor disallowed as a deduction in the company's assessment because of lack of vouchers to support such payment. As he paid this sum on behalf of the company for its expenses, he also claims a right of set-off for the amount so paid.

No accounts have been produced to show how his salaries have been absorbed by payment of the company's debts or the nature or extent of those debts or to whom they were paid or in what amounts or when. It seems to us curious that he should draw a salary so that month after month it may be channelled to the pockets of creditors through him. There is no real evidence before us other than his own statement to back up these assertions he has made, and we are unable to act on such a nebulous statement unsupported by particulars.

In any event, it seems to us that the peg on which the Appellant hangs his case finds no legal support. A taxpayer who gives away his salary or uses it to pay the debt of another or makes an unwise investment with it is still liable for tax on his salary irrespective of what he did with it. In the circumstances, the assessments as determined by the Commissioner are confirmed.