

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. BR 5/74

*Board of Review :*

S. V. Gittins, Q.C. *Chairman*, Donald Q. Cheung, G. E. Fowle & R. Beynon, *Members*.

#### **21st October 1974.**

Salaries tax—income arising in or derived from the Colony . . . from office or employment of profit—taxpayer employed in Hong Kong by a company incorporated in the United States and having an office in Hong Kong—his employment required him to work in the company's Hong Kong office and in offices located in a number of countries in the Far East—employee's salary was paid in Hong Kong, in Hong Kong currency—whether the employee's salary for the period spent out of Hong Kong was liable for salaries tax—Inland Revenue Ordinance, s. 8(1).

The appellant who was interviewed and engaged in Hong Kong by the Hong Kong office of an American Company was appointed as the Communications Representative for the Far East Region of the company. His travels to the other countries of the Far East Region were part of his duties to the Hong Kong Office for which he was engaged and were incidental thereto. He was remunerated in Hong Kong for rendering services to the Hong Kong Office of the employer and he was governed by the Hong Kong Salary Programme of the company. His contract of employment was enforceable in Hong Kong. The appellant appealed against an assessment of salaries tax payable on the whole of his income on the ground that the portion of his salary attributable to the periods spent working out of the Colony was not income arising in or derived from the Colony and should be deducted from the assessment of his taxable income. On appeal.

**Decision:** Appeal dismissed.

Appellant in person.

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

*Reasons :*

The taxpayer was appointed by T., a company incorporated in the United States of America, as the Communications Representative for the Far East Region on 10th October 1969. He was interviewed and engaged in Hong Kong and is regarded by the employer as a Hong Kong employee. His salary is paid in Hong Kong Dollars in Hong Kong.

The taxpayer's employment requires him to work in the company's offices located in a number of countries under the company's Far East Regional Office in Hong Kong. He contended that his salary for the periods spent out of Hong Kong was not "income arising in or derived from the Colony from . . . any office or employment of profit", and therefore not subject to Hong Kong Salaries Tax.

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We find as follows :

- (1) As admitted by the taxpayer, that his contract of employment was enforceable in Hong Kong.
- (2) Although disputed by the taxpayer, that he was remunerated for rendering services to the Hong Kong Office of the employer.
- (3) As admitted by the taxpayer, that he was employed by an office in Hong Kong of a non-resident business.
- (4) Although disputed by the taxpayer, that he has not discharged the onus on him of disproving the Commissioner's finding that he was remunerated by the Hong Kong Office of his employer.
- (5) That he has not discharged the onus of disproving the Commissioner's finding that he was governed by the Hong Kong Salary Program of the employer, which finding is strongly supported by the employer's return to the Inland Revenue Department of the taxpayer's full salary.
- (6) That he has not discharged the onus of disproving the Commissioner's finding that his outside travels were part of his duties to the Hong Kong Office for which he was engaged and were incidental thereto.

These findings support the Commissioner's Determination. The appeal is accordingly dismissed and the assessments as varied by the Commissioner in his Determination are confirmed.