Case No. D2/13

Salaries tax – dependent parent allowances – sections 30 and 33 of the Inland Revenue Ordinance – whether to consider evidence as at the date of hearing or limit to those available before the Commissioner – meaning of 'reason to believe' – the test of reason to believe – whether or not there was preferential right in claiming dependant parent allowances – whether or not disallowing the dependent parent allowances should be considered unfair in the absence of agreement between the eligible persons.

Panel: Albert T da Rosa, Jr (chairman), Chan Chi Hung and Chu Siu Lun Ivan.

Date of hearing: 25 February 2013.
Date of decision: 23 April 2013.

Appellant objected to the salaries tax assessment raised on him. The Appellant claims that he should be granted dependent parent allowances in respect of his mother but faces a competing claim by his brother. The Appellant could not make any agreement with his brother on which of them should claim the dependent parent allowances.

In the absence of agreement, the Commissioner in the Determination considered that by virtue of section 33(2) of the Ordinance, the Commissioner was enjoined from considering the claims of the Appellant and his brother claims for dependent parent allowances. Hence both the Appellant and his brother were not granted the dependent parent allowances in the years of assessment 2009/10 and 2010/11.

The Appellant's reasons are as follows: firstly, his mother has been depending on him for a long time. The Appellant is the person who is responsible for his mother and the real eligible person to claim dependent parent allowances. It is unfair to remove his claim for the allowances. Secondly, the Appellant does not agree that someone who only paid part of the domestic helper's salary is also eligible to claim the dependent parent allowances.

The issue to be decided by the Board is whether the Appellant should be granted the dependent parent allowances in respect of his mother for the years of assessment 2009/10 and 2010/11.

Held:

1. Section 33(2) does not require the Commissioner not to consider any claim of dependent parent allowances when merely faced with competing 'claim'.

Under Section 33(2) the Commissioner has to do so only when he 'has reasons to believe' that 'two or more persons are eligible to claim'.

2. The Board is satisfied that the Appellant is in no position to prove positively that his brother did not contribute the requisite amount in the relevant years for the maintenance of his mother.

3. The Board has to consider the evidence available as at the date of hearing and make a determination accordingly and not limit the Board itself to those available before the DCIR (D7/11, (2011-12) IRBRD, vol 26, 93 followed).

4. The phrase 'reason to believe' appears in many of the statutory provisions. While noting that the modern approach to statutory interpretation insists that context and purpose be considered in the first place and therefore meaning of words and phrases in the context of one ordinance may not necessarily be applicable to the same words or phrases in another ordinance. The test is therefore first whether at the hearing the Commissioner believes, and then whether the Board can say that the Commissioner is objectively unreasonable to maintain that view up to the conclusion of the hearing.

5. The Board is not satisfied that the Appellant has discharged his onus of proof to demonstrate to it that given the evidence available at the hearing, the Commissioner could not have reasons to believe that the Appellant's brother did make the requisite contributions. The Board has found that the Commissioner has reasons to believe that the Appellant's brother also satisfied section 30(4)(a)(ii) of the Ordinance for maintaining his mother for the years of assessment.

6. Section 30(4)(a)(ii) of the Ordinance provides that a person who contributes not less than $12,000 in the year of assessment to a parent is considered to have maintained that parent. The statutory threshold under the Ordinance for maintaining the parent is low. Provided that two persons each contributes not less than $12,000 in money towards their parents, they are both eligible to claim the dependant parent allowance in respect of their parents.

7. It is not uncommon that brothers and sisters jointly contributed money towards the maintenance of their parents. However, the Ordinance does not provide that the one who pays more has any preferential right in claiming the dependent parent allowances over the other claimant. Section 33(1) of the Ordinance requires that the dependent parent allowances in respect of his mother could not be given to both the Appellant and his brother at the same time for the years of assessment.

8. Up to the date of hearing, there is still no agreement between the Appellant and his brother. This Board does not consider disallowing the dependent

parent allowances to be unfair. After all, the law encourages the persons eligible to claim the dependent parent allowances to agree among themselves on who should claim the dependent parent allowances. The Commissioner exercises his power under section 33(2) of the Ordinance only after the eligible persons could not reach any agreement on their claim for dependent parent allowances (D82/06, (2007-08) IRBRD, vol 22, 71 followed).

Appeal dismissed.

Cases referred to:

D7/11, (2011-12) IRBRD, vol 26, 93
HKSAR v Lam Kwong Wai (2006) 9 HKCFAR 574
HKSAR v Cheung Kwun Yin (2009) 12 HKCFAR 568
D82/06, (2007-08) IRBRD, vol 22, 71

Taxpayer in person.
Yu Wai Lim, Leung Kin Wa and Wong Pui Ki for the Commissioner of Inland Revenue.

Decision:

Introduction

1. Mr E ('the Appellant') objected to the salaries tax assessment raised on him for the years of assessment 2009/10 and 2010/11 as contained in the determination ('the Determination') dated 5 October 2012 by the Deputy Commissioner of Inland Revenue ('the DCIR').

2. The Appellant claims that he should be granted dependent parent allowances ('DPA') in respect of his mother Madam F ('Ms F') but faces a competing claim by his brother Mr G.

Language

3. The parties wished to use the Cantonese dialect of the Chinese language for all oral proceedings before the Board but to continue to use English for all written evidence without translation into Chinese. All documents submitted to the Board including all previous correspondence between the Appellant and the Respondent were in English. Thus, the parties consented to the following procedural directions and the hearing was conducted on the same basis:

3.1. that all oral evidence may be given in the Cantonese dialect of the Chinese language without English interpretation;

3.2. that the clerk be informed as soon as possible if it is proposed that any witness will give oral evidence other than in the Cantonese dialect of the Chinese language so that interpretation into that dialect could be arranged;

3.3. that all oral submissions be given in the Cantonese dialect of the Chinese language without English interpretation;

3.4. that all written submissions be in English;

3.5. that there be no need for any translation of the documents in one of the official languages to the other save for the Chinese translation already provided by the Respondent to the Appellant by copy of the Respondent's letter dated 28 December 2012 to the Office of the Clerk to the Board of Review in respect of certain paragraphs of the Determination ;

3.6. that the decision of the panel will be rendered in English; and

3.7. that the panel reserves the discretion to decide on and change the language of the proceedings and the decision if it should appear at a later stage that the choice is inappropriate in all the circumstances of the case.

The relevant statutory provisions

4. The relevant sections of the Inland Revenue Ordinance ('the Ordinance' and references to section numbers herein are to section numbers in the Ordinance) are set out below:

4.1. Section 30(1) provides that DPA shall be granted in any year of assessment to a person if the person maintains a parent in that year and if the parent at any time in that year was ordinarily resident in Hong Kong and aged 60 or more.

4.2. Section 30(4)(a) provides that a parent shall only be treated as being maintained by a person if:

(a) '*the parent resides, otherwise than for full valuable consideration, with that person … for a continuous period of not less than 6 months in the year of assessment*'; or

(b) '*the person or his or her spouse contributes not less than* [$12,000] … *in money towards the maintenance of that parent in the year of assessment*'.

4.3. Section 33(1) provides that 'a dependent parent allowance … shall not be given to more than one person in any year of assessment in respect of the same parent …'.

4.4. Section 33(2) provides that 'Subject to [provisions which only relates to child allowance], where the Commissioner has reason to believe that 2 or more persons are eligible to claim [the dependent parent allowance] in respect of the same parent …, the Commissioner shall not consider any claim until he is satisfied that the claimants have agreed which of them shall be entitled to claim in that year.'

4.5. Section 68(4) provides '*The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant*.'

The Appellant's grounds of appeal

5. The Appellant claims he should be granted the DPA in respect of Ms F for the years of assessment 2009/10 and 2010/11 for the following reasons*:*

5.1. Ms F has been depending on him for a long time. He is the person who is responsible for Ms F and the real eligible person to claim the DPA in respect of Ms F. It is unfair to remove his claim for the allowance.

5.2. He does not agree that someone who only paid part of the domestic helper's salary is also eligible to claim the DPA in respect of Ms F.

The issues

6. The Respondent does not dispute that Ms F was ordinarily resident in Hong Kong and aged over 60 and the Appellant satisfied section 30(4)(a)(ii) of the Ordinance for maintaining Ms F for the years of assessment 2009/10 and 2010/11. As such, the Appellant is eligible to claim the DPA in respect of Ms F for those two years of assessment.

7. The Respondent submits

7.1. that the issue to be decided by the Board is whether the Appellant should be granted the DPA in respect of his mother, Ms F, for the years of assessment 2009/10 and 2010/11 in view that his brother, Mr G, also claims to be eligible to claim the same allowance; and

7.2. the question is whether there is sufficient evidence adduced by the Appellant to show that Mr G has not contributed $12,000 in the year of assessment to the maintenance of Ms F.

8. We do not agree with the proposition in paragraph 7.2 herein.

9. Section 33(2) does not require the Commissioner not to consider any claim of DPA when merely faced with competing 'claim'. Under Section 33(2) the Commissioner has to do so only when he '*has reasons to believe*' that '*two or more persons are eligible to claim*'.

10. Thus, while the issue to be decided by the Board is whether the Appellant should be granted the DPA in respect of his mother, Ms F, for the years of assessment 2009/10 and 2010/11,

10.1. if, as the Appellant seeks to do at the hearing, he can prove that Mr G did not make the contribution, the Appellant would certainly have made out his case;

10.2. but even if he fails on establishing paragraph 10.1 herein, the bone of contention is still whether Commissioner has or does not have reason to believe that for each of the two years of assessment in question Mr G has also contributed not less than $12,000 for maintaining Ms F.

The agreed facts

11. At the hearing, the parties agreed to the facts as stated in the Determination (the 'Agreed Facts');

12. Part of the Determination has not been agreed to by the Appellant because he does not agree that the Brother is also entitled to DPA.

13. The Agreed Facts are therefore:

' (1) [Mr E ("the Taxpayer")] has objected to the Salaries Tax assessments for the years of assessment 2009/10 and 2010/11 raised on him. The Taxpayer claims that he should be granted dependent parent allowance in respect of his mother.

(2) The Taxpayer's mother, [Ms F], was born in 1930. The Taxpayer has a brother known as [Mr G].

(3) At all relevant times, the Taxpayer owned a property at [Address H] ("the Property").

(4) In the Tax Returns – Individuals for the years of assessment 2009/10 and 2010/11, the Taxpayer claimed dependent parent allowance in respect of [Ms F]. He declared in the tax returns that he contributed not less than $12,000 in money towards her maintenance during each year of assessment. He also declared that [Ms F] was ordinarily resident in Hong Kong during the year of assessment 2009/10.

(5) After learning that [Mr G] was entitled to and was granted dependent parent allowance in respect of [Ms F] for the year of assessment 2009/10, the Assessor raised on the Taxpayer the following Salaries Tax assessment for the year of assessment 2009/10 without granting any dependent parent allowance:

	$
Income	457,238
Less: Retirement scheme deductions	9,000
Other deductions	7,274
Net income	440,964
Less: Basic allowance	108,000
Net chargeable income	332,964
Tax payable (after tax reduction)	38,603

(6) As the Taxpayer had not declared in his tax return whether [Ms F] was ordinarily resident in Hong Kong during the year of assessment 2010/11, the Assessor raised on the Taxpayer the following Salaries Tax assessment for the year of assessment 2010/11 without granting any dependent parent allowance:

	$
Income	552,747
Less: Retirement scheme deductions	12,000
Other deductions	8,335
Charitable donations	1,000
Net income	531,412
Less: Basic allowance	108,000
Net chargeable income	423,412
Tax payable (after tax reduction)	53,980

(7) The Taxpayer objected to the above assessments on the ground that he should be granted dependent parent allowance in respect of [Ms F] for the years of assessment 2009/10 and 2010/11. He also declared that [Ms F] was ordinarily resident in Hong Kong during the year of assessment 2010/11.

(8) In support of his objection, the Taxpayer contended that:

(a) He had claimed dependent parent allowance in respect of [Ms F] for many years as he had made contributions towards her living.

(b) He had paid the monthly bank installments of the Property where [Ms F] resided.

(c) The dependent parent allowance in respect of [Ms F] should not be granted to other persons as they had not made any contribution.

(d) No agreement could be reached with [Mr G] on who should claim the dependent parent allowance in respect of [Ms F].

(9) The Taxpayer provided the following documents to support his claim:

(a) Demands for rates and government rent of the Property issued by the Rating and Valuation Department to the Taxpayer for the quarters ended September 2011 and December 2011.

(b) Bills dated 26 October 2010 and 29 June 2011 issued by the Water Supplies Department to the Taxpayer in respect of the Property.

(c) Bills dated 14 July 2011 and 11 March 2011 issued by The CLP Power Hong Kong Limited and The Hong Kong and China Gas Company Limited respectively to the Taxpayer in respect of the Property.

(d) Statement of Account dated 1 March 2011 issued by Synergis Management Services Limited to the Taxpayer for the management fee of the Property for the month of March 2011.

(10) [Not agreed.]

(11) The Assessor issued a letter to [Mr G] for his agreement with the Taxpayer on whom dependent parent allowance in respect of [Ms F] should be granted for the years of assessment 2009/10 and 2010/11 (Appendix A). Up to date, no agreement has been reached between them.

(12) In the absence of agreement, the Assessor raised on [Mr G] additional Salaries Tax assessments for the years of assessment 2009/10 and 2010/11, disallowing his claim for dependent parent allowance in respect of [Ms F].'

Further relevant facts

14. Based on the documents available at the appeal stage, this Board also finds as proved the following additional facts:

14.1. The replies from Mr G to the Revenue's letters: In the replies, Mr G claimed that he gave Ms F not less than $1,200 per month (that is over $12,000 a year) since he worked and he was responsible for the major part of the salaries of the domestic helpers.

14.2. Employment contracts entered into between Mr G and the domestic helpers and the related insurance policy schedules*:* The contracts show that Mr G was the employer of the domestic helpers and he was also the insured of the related insurance policies.[1]

14.3. Record from the Land Registry*:* These records show that the Appellant is the registered owner of the property at Address H.

Oral evidence

15. The Appellant also gave evidence on oath which is in essence as follows:

15.1. For a number of years he was the nominal employer of the domestic helper who took care of Ms F and during such time the siblings contributed to the household expenditure of Ms F including paying the domestic helper's salary of $3,700 in the following proportions per month:

(a) $1,600 from sister 'A'

(b) $1,200 from sister 'B'

(c) $1,000 from sister 'C'

(d) $800 from sister 'D'

(e) $1,000 from Mr G

which totalled $5,600 per month and Appellant contributed by paying for the instalment for his flat which Ms F lived (unaccompanied by the

1 We note this appeal only concerns the years of assessment 2009/10 and 2010/11 and that R1-37, 38 and 40 relate to matters beyond end of March 2011 and are therefore beyond the relevant periods of this appeal.

Appellant or any of his siblings) with her domestic helper(s) and also paid for groceries.

15.2. Subsequently in February 2010 Mr G took over the role as nominal employer of the domestic helper and the Appellant asked of and was told by sister 'A' and sister 'D' that they continued with their contribution as before but he did not ask the other siblings and therefore did not know whether Mr G contributed as before.

15.3. Since Mr G took over as the nominal employer of the domestic helper Ms F from time to time complained of having no money to spend and the Appellant contributed additional money to Ms F but told her not to tell the other siblings.

15.4. He therefore believed that Mr G did not contribute money for the support of Ms F in the relevant years of assessment.

16. From the above, it would appear that with $5,600 per month the siblings took care of the domestic helper's salary of $3,580 per month leaving $2,020 per month for Ms F's daily living expenses and they or some of them would have contributed from time to time if there is shortfall.

17. The Appellant did not call Ms F or any of his siblings or the domestic helper to give evidence.

18. The Appellant's evidence as we have found in paragraph 15 herein did not come about in a consistent flow when he gave his evidence.

18.1. His initial stance was that he knew that Mr G did not contribute at all. When challenged, the Appellant changed his stance and finally conceded that since he only asked sister 'A' and sister 'D' he could not have known whether Mr G needed to contribute or had contributed.

18.2. His initial description on how additional money was given to Ms F by himself and Mr G also changed from the money having been given to the domestic helper direct (so that as he had only asked Ms F on the subject, he could not have known whether Mr G did so) to that market money having been given to Ms F direct and Ms F would then go to the market daily on wheelchair with the domestic helper to ensure that the domestic helper will not be cheating on her money (so that Ms F would be in a position to know whether additional money had been given to her by Mr G or other siblings).

19. At the end of the day, the Appellant's case is that he suspects Mr G as not having contributed. However, mere suspicion is not fact.

20. We are satisfied that the Appellant is in no position to prove positively that Mr G did not contribute the requisite amount in the relevant years for the maintenance of Ms F.

Reasons to believe

21. The Respondent does not dispute that Ms F was ordinarily resident in Hong Kong and aged over 60 and the Appellant satisfied section 30(4)(a)(ii) of the Ordinance for maintaining Ms F for the years of assessment 2009/10 and 2010/11. As such, the Appellant is eligible to claim the DPA in respect of Ms F for those two years of assessment. We are told by the Appellant that this was the position prior to the year of assessment 2009/10.

22. Mr G was first granted the dependent parent allowance in respect of Ms F for the years of assessment 2009/10 and 2010/11. The Appellant later also claimed the DPA in respect of Ms F for those two years of assessment.

23. The Appellant's ultimate challenge is that under section 33(2) it is necessary that '*…the Commissioner has reason to believe that 2 or more persons are eligible to claim* [the dependent parent allowance] *in respect of the same parent…*' before the Commissioner can cease to deal with the claim pending agreement between the claimants.

Relevant evidence

24. The Board in Case D7/11, (2011-12) IRBRD, vol 26, 93 said:

> '*The issue in an appeal before the Board is whether the assessment appealed against is incorrect or excessive, not whether the reasons given by the Commissioner were wrong*[2]*. The appeal is a hearing de novo*[3]*. The onus of proving that the assessment appealed against is excessive or incorrect is on the taxpayer*[4]*. …The Revenue's treatment of facts at the objection stage is at best of historical interest and it is seldom, if ever, helpful to indulge in criticism of the Revenue's treatment of facts at the objection stage. As Lord Walker NPJ said in Shui On Credit Company Limited v Commissioner of Inland Revenue, (2009) 12 HKCFAR 392, at paragraph 30:*
>
> > *"The taxpayer's appeal is from a determination (section 64(4)) but it is against an assessment (section 68(3) and (4))".'*

2 CIR v The Board of Review, ex parte Herald International Ltd [1964] HKLR 224 page 237; and Cheung Wah Keung v CIR [2002] 3 HKLRD 773 at paragraph 43.

3 Shui On Credit Company Ltd v CIR (2009) 12 HKCFAR 392 at paragraph 30.

4 Section 68(4) of the Ordinance and Mok Tsze Fung v CIR [1962] HKLR 258 at page 281; and All Best Wishes Limited v CIR (1992) 3 HKTC 750 at page 772.

25. Thus, we have to consider the evidence available as at the date of our hearing and make our determination accordingly and not limit ourselves to those available before the DCIR.

Elements of proof

26. The phrase 'reason to believe' appears in many of our statutory provisions. Annotated Ordinances of Hong Kong states[5]:

> *' "Having reason to believe" is synonymous with the words "reasonably believes", which require not only that the person in question has reason to believe but also that he does actually believe: see R v Banks [1916] 2 KB 621; [1916-17] All ER Rep 356; and R v Harrison [1938] 3 All ER 134; 159 LT 95; and see also Nakkuda Ali v Jayaratne [1951] AC 66 (PC). Belief includes or absorbs suspicion: see Gifford v Kelson (1943) 51 Man R 120 (Man KB) at p 124, per Dysart J.*
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> *The existence of the reason to found the belief is ultimately a question of fact to be tried on evidence and the grounds on which the decision maker acted must be sufficient to induce in a reasonable person the required belief. See Nakkuda Ali v Jayaratne, (supra); McArdle v Egan (1933) 150 LT 412; [1933] All ER Rep 611 (CA); Registrar of Restrictive Trading Agreements v W H Smith & Son Ltd [1969] 1 WLR 1460 at p 1468, ; [1969] 3 All ER 1065 (CA) at p 1070, per Lord Denning MR; and Inland Revenue Commissioners v Rossminster Ltd [1980] AC 952; [1980] 1 All ER 80 (HL) at pp 84, 92, 103, 104.'*

27. While noting that the modern approach to statutory interpretation insists that context and purpose be considered in the first place[6] and therefore meaning of words and phrases in the context of one ordinance may not necessarily be applicable to the same words or phrases in another ordinance, we find no material difference in the context of the Ordinance in the application of the principle in paragraph 26 herein.

28. At the hearing the Respondent maintains the view that section 33(2) is applicable.

29. The test is therefore first whether at the hearing the Commissioner believes, and then whether we can say that the Commissioner is objectively unreasonable to maintain that view up to the conclusion of the hearing.

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5 See Chapter 114 Miscellaneous Licences Ordinance at paragraph [6.05] in the context of discussing section 6 of Miscellaneous Licences Ordinance which reads '*If it is made to appear to a magistrate by information upon oath that there is reason to believe that an offence against this Ordinance is being committed in any place, the magistrate may issue a warrant authorizing any police officer to enter and search such place and to arrest such persons as may be found therein. (Amended 15 of 1952 s. 4; 47 of 1997 s. 10)*'

6 Sir Anthony Mason NPJ pointed out in HKSAR v Lam Kwong Wai (2006) 9 HKCFAR 574 at paragraph 63. Reiterated by Li CJ in HKSAR v Cheung Kwun Yin (2009) 12 HKCFAR 568 at paragraphs 12 to 13.

Findings

30. The Appellant submits that the evidence presented by the Respondent are not substantial evidence to show that Mr G made the requisite contributions.

31. However, this Board also takes into consideration the evidence presented at the hearing.

32. We are not satisfied that the Appellant has discharged his onus of proof to demonstrate to us that given the evidence available at the hearing, the Commissioner could not have reasons to believe that Mr G did make the requisite contributions.

33. The evidence include,

33.1. the available facts in certain pages in the IRD's submission;[7]

33.2. the pre-existing arrangement at the time when the Appellant was the nominal employer of the domestic helper; and

33.3. absence of any evidence that in fact the change of nominal employer from the Appellant to Mr G necessitated or resulted in any change in the proportion of contributions by the siblings.

Conclusion

34. Section 30(4)(a)(ii) of the Ordinance provides that a person who contributes not less than $12,000 in the year of assessment to a parent is considered to have maintained that parent. The statutory threshold under the Ordinance for maintaining the parent is low. Provided that two persons each contributes not less than $12,000 in money towards their parents, they are both eligible to claim the DPA in respect of their parents.

35. We have found that the Commissioner has reasons to believe that Mr G also satisfied section 30(4)(a)(ii) of the Ordinance for maintaining Ms F for the years of assessment 2009/10 and 2010/11.

36. It is not uncommon that brothers and sisters jointly contributed money towards the maintenance of their parents. However, the Ordinance does not provide that the one who pays more has any preferential right in claiming the DPA over the other claimant.

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7 We note this appeal only concerns the years of assessment 2009/10 and 2010/11 and that these pages in the IRD's submission relate to matters beyond end of March 2011 and are therefore beyond the relevant periods of this appeal.

37. Section 33(1) of the Ordinance requires that the DPA in respect of Ms F could not be given to both the Appellant and Mr G at the same time for the years of assessment 2009/10 and 2010/11.

38. The Appellant asserts that he could not make any agreement with Mr G on which of them should claim the DPA in respect of Ms F. In spite of the issue of agreement forms, Mr G could not agree with the Appellant on which of them should claim the DPA in respect of Ms F. Up to the date of the hearing before us, there is no agreement which could be reached between the Appellant and Mr G on who should claim the DPA in respect of Ms F for the years of assessment 2009/10 and 2010/11.

39. In D82/06, (2007-08) IRBRD, vol 22, 71, the dependent parent allowances in respect of the appellant's parents were first granted to the appellant's sister. The appellant later claimed the dependent parent allowances in respect of his parents. Though the appellant claimed that his sister agreed to let him have the allowances, he could not produce to the Commissioner his sister's written confirmation. The Commissioner determined that neither the appellant nor his sister was entitled to be granted the dependent parent allowances in respect of their parents. The Board upheld the Commissioner's determination and held at pages 78 and 79:

> '*31. We are satisfied that the Commissioner was entitled to take the view, on the evidence before him at the time when he made the Determination, that he was not satisfied that the Appellant and his sister had agreed which of them would be entitled to claim dependent parent allowances for the year 2003/04. By virtue of section 33(2) of IRO, the Commissioner is enjoined from considering any claim for dependent parent allowance until he is so satisfied. It follows that the Commissioner was correct in determining that the Appellant was not entitled to claim dependent parent allowances for the year 2003/04.*
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> *32. In the Determination, the Commissioner stated that in exercise of his discretion under section 33(4) of IRO, he considered just that neither the Appellant nor his sister should be granted dependent parent allowances in respect of the parents for the year 2003/04. We do not consider that any exercise of discretion under section 33(4) is relevant here. The Commissioner is simply enjoined by section 33(2) from considering the Appellant's claim for dependent parent allowance until he is satisfied that there has been agreement within the meaning of that subsection. Whether the Commissioner would proceed to raise additional assessment against the sister is another matter. That question falls to be dealt with under section 33(3) and section 60 of IRO. As far as the Appellant's objection was concerned, the Commissioner was simply acting in accordance with section 33(2).*'

40. In the absence of agreement, the DCIR in the Determination considered that by virtue of section 33(2) of the Ordinance, the DCIR was enjoined from considering the claims of the Appellant and Mr G claims for the DPA in respect of Ms F. Hence, both the Appellant and Mr G were not granted the DPA in respect of Ms F for the years of assessment 2009/10 and 2010/11. Up to the date of hearing, there is still no agreement between the Appellant and Mr G to change this position.

41. Provided other taxpayers under similar situation are treated in the same way, for example the appellant in D82/06, this Board does not consider disallowing the DPA to be unfair. After all, the law encourages the persons eligible to claim the DPA to agree among themselves on who should claim the DPA. The Commissioner exercises his power under section 33(2) of the Ordinance only after the eligible persons could not reach any agreement on their claim for DPA.

Disposal

42. For the above reasons, the Board finds that in the absence of any agreement between the Appellant and Mr G on which of them should claim the DPA in respect of Ms F for the years of assessment 2009/10 and 2010/11, the Appellant could not be granted the DPA of Ms F for those two years of assessment.

43. This Board therefore dismisses the Appellant's appeal and upholds the Respondent's assessment.