

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D103/00

**Salaries tax** –statutory meaning of ‘ expenses of self-education’ – interest on fees must have been paid by the taxpayer not merely incurred – sections 12(6)(c) and 68(9) of the Inland Revenue Ordinance (‘ IRO’ ).

Panel: Kenneth Kwok Hing Wai SC (chairman), Edmund Leung Kwong Ho and Francis Lui Yiu Tung.

Date of hearing: 6 November 2000.

Date of decision: 8 December 2000.

The taxpayer appealed against the determination of the Commissioner of Inland Revenue upholding the relevant assessor’s notice of refusal to correct the salaries tax assessment for the year of assessment 1998/99 on the ground that her claim for deduction of a sum of estimated interest on cash advance as self-education expense 1998-99 ought to be allowed.

#### **Held:**

1. Section 12(6)(c) of the IRO defined ‘ expenses of self-education’ . The Board assumed, without deciding, that ‘ expenses’ include interest.
2. To come within the statutory meaning of ‘ expenses of self-education’ , the interest must be interest paid by the taxpayer on fees. Interest must have been paid, not merely incurred as contrasted with section 12(1)(a). The interest must be on fees.
3. There was no evidence of any interest having been paid during the year of assessment 1998/99 on the fee concerned.
4. The taxpayer had therefore failed to prove any payment of any interest on any fee during the year of assessment 1998/99 in accordance with section 68(4) of the IRO.
5. Pursuant to section 68(9) of the IRO, the Board ordered the taxpayer to pay the sum of \$5,000 as costs of the Board.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### **Obiter:**

1. This was an appeal involving a claimed deduction estimated to be in the sum of \$516.25. Any person with any commercial or common sense would have given the matter including the merits of the appeal, serious thought before lodging and proceeding with an appeal to the Board of Review.
2. The mere fact that the taxpayer may have good grounds to appeal against a subsequent determination of another case did not detract from the fact that this appeal was wholly unmeritorious and a clear abuse of the process.

### **Appeal dismissed and a cost of \$5,000 charged.**

Chan Tak Hong for the Commissioner of Inland Revenue.  
Taxpayer represented by her husband.

### **Decision:**

1. This is an appeal against the determination of the Commissioner of Inland Revenue dated 14 July 2000 upholding the assessor's notice of refusal dated 5 May 2000 to correct the salaries tax assessment for the year of assessment 1998/99 and confirming the salaries tax assessment for the year of assessment 1998/99 under charge number 9-1891829-99-1, dated 5 May 2000 showing net chargeable income of \$173,080 with tax payable of \$18,923.
2. The assessor considered that section 70A of the IRO, Chapter 112, was not applicable and refused to correct the salaries tax assessment for the year of assessment 1998/99.
3. The Taxpayer appealed on the ground that her 'claim of deduction of \$516.25 interest (estimated) on cash advance as self-education expense 1998-99' ought to be allowed.
4. The Taxpayer did not attend the hearing of her own appeal. She was represented by her husband. At the end of the Taxpayer's case and after the husband had concluded his testimony and submission, we invited the husband to address us on section 68(9) of the IRO which he did. We told the parties that there was no need for Miss Chan Tak-hong who represented the Respondent to respond. We also told the parties that we would give our decision in writing which we now do.

## INLAND REVENUE BOARD OF REVIEW DECISIONS

5. The only loan relied on by the husband was a credit card cash advance of \$47,900 on 16 October 1998.

6. The credit card monthly statements show that between 10 and 17 November 1998, repayments totalling \$11,230 had been made.

7. The following is the Taxpayer *estimate* of the interest:

Date	Fee	Interest period	Interest accrued at 24% p.a. \$
17-11-1998	AUD851.62 =\$4,137.17	17-11-1998 – 31-3-1999	369.965
17-11-1998	GBP12	17-11-1998 – 31-3-1999	13.8102
4-12-1998	AUD348.38 =\$1,707.40	4-12-1998 – 31-3-1999	132.4755
		Total:	<u>516.2507</u>

8. On AUD851.62, the husband categorically stated in his testimony that he instructed his bank to convert his GBP deposit to AUD and give him an AUD draft. Under cover of a letter dated 17 November 1998 that bank enclosed a draft for AUD851.62 and charged the husband GBP12. The husband stated under cross-examination that he did not use any of the \$47,900 cash advance on 16 October 1998 to pay into his GBP account.

9. On AUD348.38, the husband produced a remittance memo dated 4 December 1998 issued by another bank recording a sale of a draft for AUD348.38 for a total of \$1,707.40 paid in cash.

10. The husband categorically declined to say that any part of the \$47,900 cash advance on 16 October 1998 was used for the AUD348.38 draft or to pay any self-education expense.

11. The Taxpayer's case as formulated by the husband was that if he did not have to pay self-education expense, the amount of his repayments to the credit card issuer up to 31 March 1999 would certainly be more, and the extra repayment which he could have made would be equivalent to AUD851.62 plus AUD348.38. Because he had to pay self-education expense, he therefore had to incur more interest paid.

12. 'expenses of self-education' is defined by section 12(6)(c) of the IRO to mean:

*'expenses paid by the taxpayer on fees, including tuition and examination fees, in connection with a prescribed course of education ...'*

## INLAND REVENUE BOARD OF REVIEW DECISIONS

13. We assume, without deciding (because it is not necessary for us to do so), that 'expenses' include interest.
14. To come within the statutory meaning of 'expenses of self-education', the interest must be interest paid by the taxpayer on fees. Interest must have been paid, not merely incurred [contrast section 12(1)(a)]. The interest must be on fees.
15. On the husband's own testimony, the AUD851.62 fee was paid from the husband's GBP deposit. No interest had been paid during the year of assessment 1998/99 on this fee of AUD851.62.
16. The husband categorically declined to say that any part of the \$47,900 cash advance on 16 October 1998 was used more than 1½ months later on 4 December 1998 for the AUD348.38 fee. Thus, there is no evidence of any interest having been paid during the year of assessment 1998/99 on this fee of AUD348.38 (equivalent to \$1,707.40).
17. The Taxpayer had therefore failed to prove any payment of any interest on any fee during the year of assessment 1998/99. Section 68(4) of the IRO provides that '*the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant*'. The Taxpayer has not begun to discharge this onus. We dismiss the appeal; uphold the refusal to correct the salaries tax assessment for the year of assessment 1998/99; and confirm the assessment appealed against.
18. This is an appeal involving a claimed deduction estimated to be in the sum of \$516.25. Any person with any commercial or common sense would have given the matter, including merits of the appeal, serious thought before lodging and proceeding with an appeal to the Board of Review.
19. The husband submitted that he had requested that this appeal be heard together with an intended appeal against the determination of the Commissioner (which in the event was dated 16 October 2000 and which we have not seen) in respect of the subsequent year of assessment 1999/00. The Taxpayer may or may not have good grounds to appeal against that determination. But the mere fact that the Taxpayer *may* have good grounds to appeal against a subsequent determination does not detract from the fact that this appeal is wholly unmeritorious and a clear abuse of the process.
20. The husband claimed that he was in financial difficulty. He did not allege any financial difficulty on the part of the Taxpayer. This is the Taxpayer's appeal, not the husband's.
21. Pursuant to section 68(9) of the IRO, we order the Taxpayer to pay the sum of \$5,000 as costs of the Board, which \$5,000 shall be added to the tax charged and recovered therewith.