

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D116/99

Salaries Tax – allowable deductions – dependent parent allowance – whether the dependent parent was ordinarily residing in Hong Kong in the relevant year of assessment – whether taxpayer entitled to claim deductions – section 30 of the Inland Revenue Ordinance (the ‘IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), Ronald Tong Wui Tung and Stephen Yam Chi Ming.

Date of hearing: 7 December 1999.

Date of decision: 8 February 2000.

The sold issue in this appeal was whether the taxpayer was entitled to deduct from her earnings for the year of assessment 1997/98 the dependent parent allowance as provided by section 30 of the IRO in respect of her mother, Ms A, who passed away in China on 18 April 1999. One Mr D, who was treated as her son by Ms A since his childhood, had applied for and was granted dependent parent allowance in respect of Ms A. The taxpayer’s father Mr E was a businessman in Country F. He sold his business in 1990 and rented accommodation in Hong Kong near Mr D. Mr E and Ms A returned to China in 1992. They erected a house in China. They also had relatives living there. Ms A returned to Hong Kong in February 1995 in order to renew her Hong Kong identity card and she returned to China after staying in Hong Kong for several months. Ms A allegedly planned to return to Hong Kong with Mr E. Unfortunately she had a fall and her movement was severely hampered. At all material times, the taxpayer was sharing a flat with an old couple. The taxpayer started maintaining Ms A since 1995. With regard to the present appeal, the taxpayer refused to enter into any discussion with Mr D as to who was entitled to put forward such claim.

Held:

1. The taxpayer was most bitter in relation to the treatment she received from her parents. She had nothing complimentary to say about Mr D. The overall impression of the Board was that the taxpayer sought recognition that she did discharge her filial duties towards her parents just as much as her entitlement to dependent parent allowance.
2. The Board accepted that the Taxpayer was the child of Ms A and during the relevant year of assessment, the taxpayer did maintain Ms A.

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3. However, the Board was not satisfied that Ms A was ordinarily residing in Hong Kong in the relevant year of assessment. Ms A's husband, Mr E, did not have any root in Hong Kong having spent his business life in another country. Ms A did not have any asset in Hong Kong. The couple erected a house in China which was much more spacious than any accommodation that could have been made available to them in Hong Kong. Apart from the taxpayer, their relatives were in China. Mr E did not visit Hong Kong since 1992.
4. The taxpayer laid considerable stress on the fact that Ms A came to Hong Kong to renew her identity card in 1995. The Board were of the view that Ms A was merely trying to preserve her convenient access into Hong Kong. She was not treating Hong Kong as her home. The taxpayer was not then in a position to accommodate her. The correspondences concerned produced by the taxpayer did not indicate that Ms A had a fall in China, which prevented her from returning to Hong Kong, as alleged by the taxpayer.
5. On these facts, Mr D likewise would not be entitled to claim any dependent parent allowance in respect of Ms A. The Board appreciated, of course, that the present decision did not bind him.

Appeal dismissed.

Pak Wai Man for the Commissioner of Inland Revenue.
Taxpayer in Person.

Decision:

Background

1. The Taxpayer contends that her mother is Ms A. Ms A was born on 15 March 1920. She passed away in China on 18 April 1999.
2. According to a pass issued by a procuratorate in China dated 30 June 1958, Ms A was permitted to travel with Ms B, her daughter of 4, to Hong Kong.
3. By a deed poll dated 5 March 1997, Ms B changed her name to Ms C, the name of the Taxpayer.

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4. According to records maintained by the Director of Immigration, Ms A returned to Hong Kong from China on 10 February 1995. She left Hong Kong for China on 8 May 1995. She had not returned to Hong Kong ever since.

5. The issue before us is whether the Taxpayer is entitled to deduct from her earnings for the year of assessment 1997/98 the dependent parent allowance as provided by section 30 of the Inland Revenue Ordinance. One Mr D had applied for and was granted dependent parent allowance in respect of Ms A. The Taxpayer refused to enter into any discussion with Mr D as to who is entitled to put forward such claim.

Sworn evidence of the Taxpayer

6. Ms A when young took pity on a child when she was on her way to the market in her home village. She started feeding the child. The child is Mr D.

7. In the relevant year of assessment, Mr D was working as a care-taker in a hospital in Hong Kong earning about \$9,000 a month. He has 5 children and was in no position to maintain Ms A.

8. Her father Mr E was a businessman in Country F. He sold his business in 1990 and rented accommodation in Hong Kong near Mr D.

9. Mr E and Ms A returned to China in 1992 after the death of her grandmother. They were induced by Mr D to purchase a piece of land in China. They erected a house on that piece of land. The house consisted of 2 storeys with 4 to 5 bedrooms. Mr E was reluctant to return to Hong Kong as he had tremendous difficulties in gaining entry after losing his identity documents.

10. Mr E and Ms A had relatives living in China. Ms A used to have a bank account in Hong Kong but the Taxpayer has no knowledge of its details. The Taxpayer is not aware of any other asset of Ms A in Hong Kong.

11. Ms A returned to Hong Kong on 10 February 1995 in order to renew her Hong Kong identity card. She allegedly expressed preference to live in Hong Kong. Ms A returned to China after staying in Hong Kong for several months.

12. Ms A allegedly planned to return to Hong Kong with her husband. Unfortunately she had a fall and her movement was severely hampered.

13. At all material times, the Taxpayer was sharing a flat with an old couple. The flat had a sitting room and 2 bedrooms. The Taxpayer occupied one of the bedrooms.

14. The Taxpayer started maintaining Ms A since 1995. She effected remittances from Shenzhen in favour of Mr G (the village elder) who in turn paid various outgoings of Ms A. The

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Taxpayer tendered for our consideration correspondence she had with Mr G and a bundle of receipts evidencing the remittances. The receipts were for the period between 18 October 1998 to 10 April 1999.

The relevant statutory provisions

15. Section 30 of the Inland Revenue Ordinance provides:

‘(1) An allowance (dependent parent allowance) shall be granted under this section in any year of assessment if the person ..., maintains a parent ... in the year of assessment and that parent at any time in that year was

(a) ordinarily resident in Hong Kong; and

(b) aged 60 or more ...

(2) ...

(3) ...

(4) For the purpose of this section –

(a) a parent shall only be treated as being maintained by a person ... if–

(i) the parent resides, otherwise than for full valuable consideration, with that person ...; or

(ii) the person ... contributes not less than the prescribed amount in money towards the maintenance of that parent in the year of assessment.

(b) “parent ...” means, in relation to any person –

(i) a parent of whose marriage, the person ... is the child;

(ii) a parent by whom the person ... was adopted ...’.

Our decision

16. The Taxpayer was most bitter in relation to the treatment she received from her parents. She had nothing complimentary to say about Mr D. Our overall impression is that the

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Taxpayer seeks recognition that she did discharge her filial duties towards her parents just as much as her entitlement to dependent parent allowance.

17. We have no doubt that the Taxpayer is the child of Ms A. We further accept that during the year of assessment in question, the Taxpayer did maintain Ms A. Whilst the remittance receipts that she tendered are for a different period, her evidence that she did not keep all her receipts is credible.

18. We are however not satisfied that Ms A was ordinarily residing in Hong Kong in the year of assessment. Her husband Mr E did not have any root in Hong Kong having spent his business life in Country F. Ms A did not have any asset in Hong Kong. The couple erected a house in China which is much more spacious than any accommodation that could have been made available to them in Hong Kong. Apart from the Taxpayer, their relatives were in China. Mr E did not visit Hong Kong since 1992. The Taxpayer laid considerable stress on the fact that Ms A came to Hong Kong to renew her identity card in 1995. We are of the view that Ms A was merely trying to preserve her convenient access into Hong Kong. She was not treating Hong Kong as her home. The Taxpayer was not then in a position to accommodate her. There is no reference in the Taxpayer's correspondence with Mr G indicating that the then conditions of Ms A was attributable to a fall as opposed to her old age.

19. For these reasons, we are of the view that the Taxpayer fails in her appeal.

20. On these facts, Mr D likewise would not be entitled to claim any dependent parent allowance in respect of Ms A. We appreciate, of course, that the present decision does not bind him.