Case No. D16/13

Salaries tax – deductions – expenses for self-education – whether the expenses incurred were deductible – sections 12 of the Inland Revenue Ordinance (‘IRO’).

Panel: Cissy K S Lam (chairman), Hui Cheuk Lun Lawrence and Patrick Wu Yung Wei.

Date of hearing: 13 August 2013.
Date of decision: 25 October 2013.

The Appellant claimed deductions of $52,500 as expenses of self-education in the 2010/11 year of assessment, in relation to a private computer course he took at an institution. The Assessor concluded that the claimed deductions did not qualify as expenses of self-education and disallowed the same. The Deputy Commissioner affirmed the assessment. The Appellant appealed.

The evidence shows that although the institution jointly organised courses before with another organisation accredited under section 12(6)(c)(i) of the IRO, the institution itself was not so accredited. The course undertook by the Appellant was actually in the form of private one-to-one tuition, not jointly organised with any other organisation. The Appellant argued that the institution jointly organised courses with an accredited organisation. It had good teaching staff and a long positive history. The Appellant had to work shifts so he argued it was difficult for him to take courses in education institutes to suit his off-duty time.

Held:

According to section 12(6)(b) of the IRO, ‘expenses of self-education’ means expenses paid by the taxpayer as fees in connection with a prescribed course of education undertaken by the taxpayer. But the course undertaken by the Appellant did not qualify as a ‘prescribed course of education’ as defined under section 12(6)(c) of the IRO, because the institution providing the course was not an education provider as defined under section 12(6)(d) of the IRO, nor was it a trade, professional or business association, nor an institution specified in Schedule 13 of the IRO. It was irrelevant that the institution jointly organised courses with an accredited education provider before. The Appellant’s personal circumstances were also irrelevant. The deduction is a statutory deduction, and once the expenses fell outside the statutory provision, the Board had no discretion in allowing the deduction.

Appeal dismissed.

Wong Chi Keung, Vincent, Tax Manager of Sercoquin Business Limited for the Appellant.
Ong Wai Man Michelle and Yau Yuen Chun for the Commissioner of Inland Revenue.

Decision:

1. The Appellant objected to the salaries tax assessment for the year of assessment 2010/11 raised on him. He claimed that he should be allowed deduction of 'expenses of self-education' in the sum of HK$52,500 under section 12(1)(e) of the Inland Revenue Ordinance, Chapter 112 ('IRO').

The Facts

2. The facts are not in dispute. They are set out in paragraphs 1(1) to (9) of the Determination of the Deputy Commissioner of Inland Revenue dated 13 May 2013 ('the Determination'). We adopt those facts and set them out below.

3. In his Tax Return – Individuals for the year of assessment 2010/11, the Appellant declared his income and claimed deduction of approved charitable donations of $52,500. Assessment was raised accordingly as set out in paragraph 1(3) of the Determination.

4. Subsequently to the assessment, the Appellant, through his tax representative ('the Representative'), informed the assessor that due to clerical mistake, the deduction of HK$52,500 ('the Sum') should be inserted as 'the course fees' in the tax return instead of as 'the charitable donations'.

5. In support of the Sum, the Appellant provided 12 receipts issued by one Institution A in respect of a private computer course ('the Course') undertaken by him. Particulars of the receipts may be found in paragraph 1(5) of the Determination.

6. Upon the assessor's enquiries, the Representative stated in their letter of 30 November 2011 as follows: '*[The Appellant] is a [Position B] working in the [Office C of Employer D] on shift for all round of job request for many years. He works very hard in order to solve the problems frequently happened in [Office C] such as to supervise his subordinates in computer aspects likely multi-media for the business-linked products, to coordinate with personnel dealing with different prospects and customers in different languages etc. [The Appellant] works so hard to ensure his job of being a qualified [manager of Office C] whereas he studied hard for his career path. Because of his shift duty, he has to find out and join the individual/private class to suit his off-duty time. [The Appellant] joined [Institution A], a qualified vacation training centre which jointly*

organized with some professional organizations such as [Organization E]. ….. ’

7. After enquiries made with Institution A and the Secretary for Education, the Assessor concluded that the Sum did not qualify for deduction as ‘expenses of self-education’ and revised the Appellant’s 2010/11 salaries tax assessment by disallowing its deduction. The revised assessment was affirmed by the Determination.

Relevant Provisions of the IRO

8. Under otherwise stated, the statutory provisions referred to herein are provisions of the IRO.

9. Section 12(1)(e) provides that in ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person the amount of the expenses of self-education paid in the year of assessment not exceeding the amount prescribed in subsection (6).

10. Section 12(6)(b) provides that for the purposes of subsection (1)(e), ‘expenses of self-education’ (個人進修開支) means expenses paid by the Taxpayer as fees, including tuition and examination fees, in connection with a prescribed course of education undertaken by the Taxpayer.

11. It is important to note that not expenses of any course of education is deductible. The course of education must be a ‘prescribed course of education’ and its parameters are found in section 12(6)(c), which provides that for the purposes of subsection (1)(e), ‘prescribed course of education’ (訂明教育課程) means a course undertaken to gain or maintain qualifications for use in any employment and being –

(i) a course of education provided by an education provider;

(ii) a training or development course provided by a trade, professional or business association; or

(iii) a training or development course accredited or recognized by an institution specified in Schedule 13.

12. By section 12(6)(d)(i) to (vi) ‘education provider’ (教育提供者) means one of six types of institutions:

(i) a university, university college or technical college;

(ii) a place of education to which the Education Ordinance (Chapter 279) does not apply by virtue of section 2 of that Ordinance;

(iii) a school registered under section 13(a) of the Education Ordinance

(Chapter 279);

(iv) a school exempted from registration under section 9(1) of the Education Ordinance (Chapter 279);

(v) an institution approved by the Commissioner for the purposes of section 16C; or

(vi) an institution approved by the Commissioner under paragraph section 12(6)(e).

Our decision

13. In the present case, Miss Ong representing the Commissioner of Inland Revenue ('the Commissioner') does not dispute that the Appellant took the Course to gain or maintain qualifications for use in his employment. But that is not sufficient to make it a 'prescribed course of education'. In addition, the Course must satisfy section 12(6)(c)(i), (ii) or (iii), but the evidence is clear that it did not.

14. Institution A was clearly not 'a trade, professional or business association' within section 12(6)(c)(ii), nor was it one of the 38 institutions listed in Schedule 13 of the IRO within the meaning of section 12(6)(c)(iii).

15. Institution A was clearly not a university, university college or technical college. Enquiries with the Secretary for Education confirmed that Institution A was not a place of education to which the Education Ordinance does not apply by virtue of section 2 of that Ordinance or a school registered under section 13(a) of the Education Ordinance or a school exempted from registration under section 9(1) of the Education Ordinance. And Miss Ong has demonstrated to us that it was not an institution approved by the Commissioner for the purposes of section 16C or under paragraph section 12(6)(e).

16. The assessor wrote directly to Institution A to ask whether it was registered under section 13(a) of the Education Ordinance. Instead of giving a direct 'yes' or 'no' answer, it replied that it '*has been jointly organized courses for the general public especially for [Profession F] with [Organization E] which is one of the recognized or accredited institution specified in Schedule 13(c) of the Education Ordinance.*'. But whether or not Organization E was a recognized or accredited institution (of which there is actually no proof), this had nothing to do with the status of Institution A. Mr Wong representing the Appellant confirmed to us at the hearing that the Course was a private one-to-one tuition. It was not one of the courses that Institution A organized jointly with Organization E or with any other organizations. We are not concerned with the status of Organization E. We are concerned with Institution A alone and the reply from the Secretary for Education confirmed that Institution A was not a school registered under section 13(a) of the Education Ordinance.

17. In his grounds of appeal, the Appellant argued the followings and we quote:

‘ 1. [The Course] provided by the course provider [Institution A] was not accredited by IRD but only accredited its course associate partner [Organization E].

2. I asked [Institution A] and was replied that both [Institution A] and [Organization E] had jointly organized different courses for the general public almost 20 years in Hong Kong. Lots of course takers had found useful to their jobs and beneficial to their livelihoods. I had such an experience like them.

3. Almost a quarter courses were organized by [Institution A] for [Organization E]. In fact [Institution A] had provided course for staff of IRD and provided historical firms for Hong Kong Museum before.

4. The average qualification course lecturers of [Institution A] were Degree Holders and some had Education Certificates or Diplomas. They had many years of teaching experience. [Institution A] had been established 30 years in Hong Kong to provide extensive courses for different course takers for upgrading human value.

5. As a [Position B] of [Employer D], I had to provide good service to customers. To meet different requests by different customers, I have to upgrade myself in computerization knowledge and communication language. So, I took up [the Course].

6. I worked under shift. It was difficult to take course in education institute to suit my off-duty time. Fortunately and as such, I found [Institution A] and took up private class of [the Course] in Mandarin teaching language.

7. I sincerely request to have my SEE deduction on my tax assessment as if Hong Kong Government encourages its citizens to enhance their ability.’

18. Ground 1 shows a misunderstanding of the facts. Apart from the fact that it was not for the Inland Revenue Department to give accreditation, more importantly, the Course in question was not jointly organised by Institution A with Organization E. There was no ‘course associate partner’.

19. Grounds 2 and 3 are irrelevant. Whether or not Institution A and Organization E had jointly organized courses before is totally irrelevant to the question whether Institution A itself falls within section 12(6)(c) and (d).

20. Ground 4 is also irrelevant. We are not concerned with the question whether Institution A should or should not qualify as an 'education provider'. We are only concerned with the question whether it was or was not, and the evidence is clear that Institution A was not an 'education provider' within section 12(6)(d).

21. As regards grounds 5, 6 and 7, as said above, there is no dispute as to the good intention of the Appellant in undertaking the Course, but that was not sufficient to make the Sum deductible. It is a statutory deduction and once the Sum falls outside the statutory provision, we have no discretion in the matter.

22. The burden of proving his contention that Institution A was an 'education provider' and that the Course was a 'prescribed course of education' within the meaning of section 12(6) of the IRO falls squarely on the Appellant (see section 68(4) of the IRO). There is no evidence to substantiate the contention. The evidence before us proves the contrary.

23. In the circumstances, we dismiss the appeal and confirm the revised assessment as set out in paragraph 1(9) of the Determination.