Case No. D16/90

Salaries tax – quantum of salary when calculating value of quarters for assessment – section 9(2) of the Inland Revenue Ordinance.

Panel: Howard F G Hobson (chairman), Colin Cohen and Anthony J H Wood.

Date of hearing: 10 April 1990.
Date of decision: 4 June 1990.

The taxpayer received an education allowance and was provided with quarters by his employer. When calculating the value of his quarters for salaries tax purposes, the assessor included the education allowance as part of the salary of the taxpayer. The taxpayer argued that this was incorrect and that in previous years this had not been done.

Held:

In dismissing the appeal, the Board of Review said that it was correct that the allowance should be included in the salary and that there is no doctrine of estoppel which would prohibit the Commissioner from assessing the taxpayer to tax as had been done.

Appeal dismissed.

Case referred to:

Glynn v CIR Privy Council Case No 23 of [1989]

Doris Lee for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

At all material times the Taxpayer was a lecturer employed by a university ('the university') receiving a salary and an education allowance, and the university also provided him with quarters. In assessing his salaries tax for the year 1988/89 the Inland Revenue Department added the education allowance to his salary to determine a taxable value of his quarters. Upon objection the Deputy Commissioner confirmed the assessment.

The following summarises the Taxpayer's grounds of appeal.

In all of his previous sixteen assessments his education allowance had not, in the final analysis, been added to his salary when the rental value of his quarters was computed. In three cases the allowance had been included but when he took the point the assessor deferred to his argument. He does not therefore understand why this time the Revenue has not yielded. He submits, in effect, that the Revenue is now estopped from departing from its former practice.

During the hearing the Taxpayer (who was unrepresented) said that he fully accepted the education allowance was taxable at 15% but he did not see why it should be added to his salary when calculating the taxable benefit of his quarters. The answer to this point is quite simply that section 9(2) of the Inland Revenue Ordinance states that 'the rental value … shall be deemed to be 10% of the income as described in sub-section (1)(a)' which states that 'income includes any wages, salaries … perquisite, or allowance …'

We were a bit unsure of the Taxpayer's submissions. If however the Taxpayer's argument is that the word 'allowance' in section 9(1)(a) does not cover an 'education' allowance we find no substance in it and this is the end to the matter.

Whatever past inconsistencies may have occurred in the interpretation by assessors of the interplay between section 9(1)(a) and 9(2), under the Privy Council ruling in Glynn v CIR (Privy Council Appeal No 23 of [1989]) so far as it relates to an employer who undertakes to pay the costs of the education of his employee's children, or to pay the employee an allowance for the same purpose, the amount thereof is a perquisite in the former case or an allowance in the latter case and hence must be included in determining the rental value pursuant to section 9(2).

As to estoppel we know of no authority which supports the argument put forward by the Taxpayer: indeed the Commissioner is bound to administer the Inland Revenue Ordinance in accordance with judicial interpretations as they stand at the time assessments are made, regardless of previous practices.

In closing we should mention that Commissioner's representative acknowledged that the former practice of ignoring the education allowance in this Taxpayer's case in the determination of rental value had been wrong.

Accordingly this appeal is dismissed.