Case No. D19/84

Board of Review:

Charles A. Ching, *Chairman*; Richard Mill-Owens & Patrick P. K. Wu, *Members.*

4 December 1984.

Profits tax—section 14 of the Inland Revenue Ordinance—profits arising in or derived from Hong Kong—source of profits—trading operations in Hong Kong—manufacturing operations overseas.

The appellant was incorporated in Hong Kong and was a wholly owned subsidiary of an American company which had other wholly owned subsidiaries in Japan and Taiwan. As well as carrying on business in Hong Kong the appellant sold goods produced by the Taiwan subsidiary to purchasers in U.S.A. The Commissioner assessed the appellant to Profits Tax for 1976/77 on the whole of its profits. The appellant appealed on the ground that the profits on the sale of the goods produced in Taiwan neither arose in nor were derived from Hong Kong.

Held:
On the facts the profits arose from trading operation in Hong Kong.

Appeal dismissed.

(*Note:* The decision of the Board of Review is subject to confirmation on appeal to the Court.)

Wong Ho-sang for the Commissioner of Inland Revenue.
Robert G. Kotewall on the instructions of Messrs. Johnson, Stokes & Master for the appellant.

Reasons:

On 3 May 1982, the Commissioner of Inland Revenue determined an objection against the taxpayer in relation to profits tax for the year of assessment 1976/77. On 28 May 1982, an appeal against that determination was lodged. It contained 13 grounds. However, when the matter came before us Mr. Robert Kotewall, who appeared for the taxpayer, restricted himself to a single point.

The Commissioner raised the tax in question under the provisions of section 14 in Part IV of the Inland Revenue Ordinance, Cap. 112. This provides, in part, that

> "Subject to the provisions of this ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a … business in the Colony

> in respect of his assessable profits arising in or derived from the Colony for that year from such … business …"

Section 2(1) provides, in part, that "profits arising in or derived from the Colony" for the purposes of Part IV

> "shall, without in any way limiting the meaning of the term, include all profits from business transacted in the Colony, whether directly or through an agent."

The point taken by Mr. Kotewall was that the profits in question did not arise in nor were derived from Hong Kong.

Mr. Wong Ho-sang, Chief Assessor (Appeals), assisted by Mr. Chan Kin-mou, Assessor, appeared for the Commissioner. He drew our attention to the words "without in any way limiting the meaning of the term" in section 2(1). He reminded us that this emphasised that the Ordinance does not provide an exhaustive definition for the term. In the end there was not dispute as to the law. No special meaning is to be given to the words "derived from" which are to be treated as being synonymous with the words "arising in"—see **Commissioners of Taxation vs. Kirk** (1900) A.C. 588. The source of the profits is a matter of fact. All the circumstances are to be examined. The place where payment is made is of no importance. The mere fact that the taxpaper is incorporated here, or that it is situated here, or that it carries on some business here does not mean that all of its profits are taxable here. The question to be answered is "Where do the operations take place from which the profits in substance arise?" **Smith vs. Greenwood** 8 T.C. 193, **Rhodesia Metal vs. Commissioner of Taxes** (1940) 3 A.E.R. 422, **Commissioner of Inland Revenue vs. The Hong Kong & Whampoa Dock Co., Ltd.** H.K.T.C. 85.

It is important to bear in mind the nature of the operations carried on by the taxpayer giving rise to the profits in question. Thus in the **HK Docks Case,** Reece J cited with approval the judgment of Cave L.C. in **Maclaine v Eccott 1926 AC 424** p. 432 where he said, "The question whether a trade is exercised in the United Kingdom is a question of fact and it is undesirable to attempt to lay down any exhaustive test of what constitutes such an exercise of trade; but I think it must now be taken as established that in the case of a merchant's business, the primary object of which is to sell goods at a profit, the trade is (speaking generally) exercised or carried on … at the place where the contracts are made … the most important and indeed the crucial question is where are the contracts of sale made." (Ibid p. 112). See also **Grainger v. Gough 1896 AC 325.**

The operations giving rise to the profit in question here are trading operations, the manufacturing operations being carried on by associated companies in Taiwan and Japan.

The onus of proving that an assessment appealed against is excessive or incorrect is on the Appellant, Inland Revenue Ordinance s. 68(4).

Mr. Kotewall's case was not that the Commissioner's findings of fact were wrong, but that the picture before him was incomplete. He accordingly called two witnesses W and X. W was a Director of the taxpayer and of its parent company. The other director of the taxpayer was Y. X is a lawyer and an accountant who has looked after the legal affairs of the parent company since 1976.

We feel we should state at the outset that we found the evidence of each of these gentlemen unsatisfactory. Much of their "evidence" was of matters not shown to be within their personal knowledge, was overgeneral or argumentative and indeed in may respects conflicted with such documentary evidence as was made available to us. We would be disinclined to accept the testimony of these witnesses unless the facts to which they speak are agreed or independent support is to be found elsewhere in the evidence.

The taxpayer, A, is a private limited company incorporated in Hong Kong. It was incorporated on 15 March 1974 when its name was B. It was a wholly owned subsidiary of C, a publicly quoted American company which also had wholly owned subsidiaries in Japan and Taiwan. In August 1975, Y owned or controlled all of the shares in a private American company called D. He caused that company to purchase all the issued share capital of the taxpayer and the other subsidiaries in Japan and Taiwan. He has now disposed of his interests in these companies, although it is not clear whether he sold the shares or the assets.

W was a director of both taxpayer and D. He told us that he had ceased to have any connection with the taxpayer since 1981, he believed on 19 June. Mr. Wong produced an Employer's Return for the year ended 31 March 1983 (Exhibit 3) signed on behalf of a company called C. It showed that W was the managing director of that company and that he had been wholly or partly paid and had had quarters supplied to him by D of New York. Mr. Wong also produced a record from the Companies Registry (Exhibit 4) which showed that C was incorporated in Hong Kong on 27 March 1981, when its name was E. W explained that when Y sold his shares in D he retained the right to use the name and that he had incorporated another company of the same name. W stated that the shares in the taxpayer had not been sold: Only the assets had been sold. They had been sold to C which had taken over the operations of the taxpayer. He is the managing director of C.

We found this part of the evidence confusing. However, we accept that he severed his connections with the taxpayer in about June of 1981.

The evidence of W as to the reason for the incorporation of the taxpayer was as follows. The Taiwanese subsidiary owns a factory. When that subsidiary was set up it was offered a tax holiday of five years. W produced to us a translation of a photocopy of a letter in the Chinese language dated 16 November 1972 (Exhibits 1 and 1A). Mr. Wong accepted the accuracy of the translation but objected to the photocopy of the original letter being put in. Technically, Mr. Wong was correct. Indeed, W was not even connected with the taxpayer at the date of the letter. However, we accept that the Taiwanese subsidiary was given a tax holiday for a period of five years. Questions were asked of W as to when it began and when it ended. We do not think this is matter of importance but it is an indication of the manner in

which W gave evidence that when he was asked if he had any documentary evidence his only reply was that the authorities in Taiwan and the taxpayer's accountants could supply them. He gave similar answers on a number of other occasions.

Notwithstanding the tax holiday and notwithstanding that profits could be remitted from Taiwan. W said that it was discovered that obtaining permission to make such remittances could take anywhere from between six to nine months. This evidence was confirmed by X who claimed to have spoken to lawyers in Taiwan on the matter. W said that this delay was unacceptable to the American parent company which badly needed cash flow. Mr. Wong asked him if the parent company could not have arranged bridging finance and his answer was "Absolutely not". Mr. Wong produced pages from a volume called "International Tax Summary 1983" (Exhibit 7) which showed that not only profit but capital could be remitted out of Taiwan. We agree with Mr. Kotewall that we cannot rely on the information contained in that volume. It is a matter of foreign law which must be proved as a fact. In any event the text appears to relate to the position in 1983. Finally, it is common ground that profits could be remitted from Taiwan but Exhibit 7 does not deal with the length of time that may be taken to obtain permission to do so. Although no corroborative documentary evidence was produced we are prepared to accept that obtaining such permission could have taken six to nine months.

According to W, because of the delay that would be caused by obtaining permission another solution was devised. The taxpayer was incorporated. Purchasers would contract with the taxpayer and open Letters of Credit in its favour. The taxpayer would then open back to back Letters of Credit in favour of the Taiwanese subsidiary at an arbitrary, low price. The result was that the profits never went to Taiwan and could be freedly remitted form Hong Kong.

X told us that he is a partner in a firm of American attorneys. He qualified as an attorney in October 1947 and as a Chartered Public Accountant in 1940. He explained to us the American tax position and this part of his evidence was not challenged. We therefore accept it. The authorities in America raise tax upon profits earned by any company incorporated in America wherever that profit is earned. Profits of an operating foreign subsidiary are not subject to tax unless and until they are repatriated to America. There is an exception known as "Subpart F income," which is income generated when the manufacture or purchase of goods *and* their sale does not take place in the country of incorporation of the foreign subsidiary. Subpart F income is treated as a dividend to the American parent whether or not it is repatriated so that tax can be raised on it. In the present case, manufacturing in Taiwan and selling in Hong Kong would have created subpart F income but for the "safe harbour" rules. Those rules exclude transactions which do not pass from a high tax foreign jurisdiction to a low tax foreign jurisdiction. Since in the present case the Taiwanese company was enjoying a tax holiday during the year in question the safe harbour rules applied and no subpart F income arose. Another exception to the general rule that profits of a foreign subsidiary are not taxable unless and until they are repatriated to America occurs if the foreign subsidiary uses its assets in America by, for instance, purchasing assets there, issuing a guarantee for the parent company's obligations or lending money there. The result

in the present case is that the profits of the taxpayer would not be taxed unless and until they were repatriated to America.

We were surprised at the evidence that bridging finance could not be arranged for the period of six to nine months and also that this assertion was not pursued further in cross-examination. Whether or not the parent company could have arranged bridging finance, no details of any efforts made to obtain it were given to us. Moreover we were told nothing about any cash flow from the Japanese subsidiary. We were told that the Taiwanese subsidiary began production in 1974. W told us that in the beginning of 1975 the business of the group of companies had expanded to the extent that it became convenient for him "to maintain offices in Hong Kong, Taiwan and Japan". It is common ground that in the year of assessment 1976/77 the taxpayer made a gross profit of $22,916,789. During the same period the taxpayer had more than 10 bank accounts in Hong Kong.

Both W and X told us how business was conducted. X told us how, for instance, business with Z was conducted. He said that that company had two divisions. Mail Order and Retail. Each division had different requirements. If they wanted delivery by, say, September they would have to place their orders in February or Mach. Large quantities were involved. Y would go over to the office of Z and meet with their "merchandising people" and would suggest what he thought were good items for them. He would take photographs or artistic renditions with him. He would describe what they were. There would be discussions on the appearance of the articles and the buyer would make suggestions. There would be further meetings and the buyer would advise Y whether it was interested. If it was, prices and quantities would be discussed. Z has a "price points" policy. That is to say, it would prefer to price an item at, for instance, $99.99 rather than $100 and then $120.95 rather than $130. Y would be anxious to obtain the highest price while Z would be eager to keep within their price points. There would be negotiations. Eventually, differences would be resolved and a rough bargain would be struck. The buyer would then plan a trip to the Far East. In the case of Taiwan the buyer would go to the factory of the Taiwanese subsidiary where there would be mock-ups. The final price, cosmetics and shipping dates would be agreed. There would be final agreement in Taiwan which would be embodied in a purchase order. The factory would plan its production and production would commence very soon after the buyer left. Eventually there would be a letter of credit. Each side kept its own notes.

We cannot accept X's evidence on this. He was not a director of either the taxpayer or the U.S. parent company until 1981, well after the year in question. Apart from his evidence that he had discussed the remittance of profits from Taiwan with Taiwanese lawyers there was no evidence that he had ever been to Taiwan. There was further no evidence that he accompanied Y on his visits to Z or other buyers. When asked by Mr. Wong how he was able to describe the daily operations of the group in 1976 he replied that he had "spent an awful lot of time with the company and its affairs". He stated that apart from W and Y there were no real executives in New York. When asked if he had any documentary evidence to show that in 1976 he was constantly in contact with W and Y in relation to their customers he offered to send Mr. Wong his time records, which however he did not have with him. We

were not satisfied that as the lawyer acting for the American parent X would have had the detailed personal knowledge of the matters he related to us albeit in the most general terms. We were therefore left with the evidence of W and such documents are there were on this point.

It is common ground that the taxpayer did in fact carry on business in Hong Kong. The Commissioner found in his Determination that for the year of assessment 1976/77 the taxpayer had sales from business in Hong Kong in the sum of $15,194,465 at a cost of $13,003,447 to give a gross profit of $2,192,018. These figures were apparently taken from the taxpayer's tax return. They were not challenged. W told us that the business in Hong Kong involved low value consumer items which ranged from electrical hair care products to portable radios and clock radios. He said that on the other hand, the Taiwanese factory was involved in larger items such as hi-fi sets. The figures for what was described as the "off-shore" business were $229,958,840 in sales, $207,042,051 for cost of sales and $22,916,789 for gross profit for the same period.

W told us that when the taxpayer was incorporated it leased premises consisting of 600 square feet in Star House and had a resident staff of two, namely a designer and a shipping clerk. It is not to be forgotten that the sole reason given by W for the incorporation of the taxpayer was that the American parent was trying to avoid the delay in remitting profits from Taiwan. We take that to mean that the taxpayer was used, initially, simply as a conduit pipe for that purpose. If that be true, we see no reason why the taxpayer should have employed a designer and no explanation was given to us.

W told us that in 1976 he spent 124 business days in Hong Kong, primarily on the business of the taxpayer relating to the Hong Kong business. Assuming that "business days" excludes Saturdays, Sundays and public holidays this means that he spent something like half of the year of 1976 in Hong Kong. He says that he stayed at a hotel "one a long term basis." We find it extraordinary that in half a year W claims to have generated an "on-shore" gross income for the taxpayer of a little short of $2,200,000 whereas in the other half of the year the taxpayer managed to generate a gross profit just short of $23,000,000 in "off-shore" income. It would seem hardly to have been worth his while to spend that amount of time in Hong Kong dealing, as we are told, solely or principally with "on-shore" business.

W told us that as at 31 December 1976, the taxpayer had 13 employees in Hong Kong. This contrasts with the two employed at the beginning of 1975. Of those 13 people he said that eight were engaged full time on the taxpayer's Hong Kong business. Three others were engaged part time on the taxpayer's Hong Kong business. They were:—

(1) The shipping manager, who split his time approximately equally between "on-shore" and "off-shore" business. This means that it was claimed that the shipping manager divided his time approximately equally between assisting in earning a gross profit of $2,200,000 for "one-shore" business and $23,000,000 for "off-shore" business.

(2) The chief accountant, who spent approximately 30% of his time on matters arising out of "off-shore" business. This means that he spent 30% of his time entering or drawing up his accounts for something in the region of 90% of the taxpayer's gross income.

(3) The telex operator who spent between 30% and 50% of her time on "off-shore" matters.

The remaining two employees were shipping clerks who were engaged full time on the taxpayer's "off-shore" business.

W told us that Y and the staff of the American parent would formulate a concept for a design in New York. That design would be shown to potential customers in America, including Z and K who together accounted for more than half of the business in 1976. Discussions would then ordinarily ensue in America and modifications could be made to any design produced by the Taiwanese subsidiary. During this process, negotiations on the price would take place. If these activities did not take place in America they would take place in Taiwan or elsewhere outside Hong Kong. Thereafter, arrangements would be made for the customer to issue a letter of credit and a formal purchase order. In the case of K, a draft order would be drawn up by its Taiwan office and sent to its head office in America where the purchase order would be signed and issued. Conformations of orders issued by the buyers were usually signed by W outside Hong Kong. He said this was done on the advice of counsel although a few may have been signed in Hong Kong.

In cross-examination W referred to a bundle of papers evidencing a transaction with Z annexed to the Commissioner's Determination as Appendix D. He pointed out that the first two pages were a contract prepared by the buyer for the taxpayer. It had been signed by the buyer but not by the taxpayer. He said that "I am not stating that all documents are not signed, I am stating that it was not customary to acknowledge orders because if you would read the small print in such a contract, it is extremely complex. As long as you would like to perform the business with the client, you just comply to the basic text of document, even if it is in U.S., it is binding." He went on to point to the third page of Appendix D, a sales confirmation signed by him. He pointed out that the buyer had not signed as accepting "meaning that the binding contract for the buyer was his purchase order confirmed with a letter of credit." He also pointed out that the letter of credit on the fourth page of Appendix D was dated 4 March 1976, whereas his sales confirmation was dated 17 May 1976. He asserted that this clearly showed that the confirmation was of no importance.

In re-examination W said that the substantial part of the sales confirmations for "off-shore" business was singed by him outside Hong Kong. He said that none of them had even been signed and returned by the buyer "since the buyer did not consider it a valid document." He said that the sale confirmation was not an order confirmation and continued

> "It is primarily for internal control rather than confirmation of a contract. A contract in the U.S. with major clients is basically a verbal negotiation, agreement reached on prices,

> followed up by a final purchase order from the client, followed up as all terms on a letter of credit basis stipulating many conditions to perform the order. The really binding and final draft was the letter of credit, if we could perform and comply with the documents as indicated. The sales confirmations administrative functions for the office to enter the sales. The administrative day to day functions of negotiating a letter of credit, to control if the amounts are equal to what the letter of credit gives, etc."

He said that when he referred to his singing of confirmations of orders issued by buyers he meant his own sales confirmations.

One of the most important documents for consideration on this appeal is an agreement which was annexed to the Commissioner's Determination as Appendix B (which we will refer to as the "Agency Agreement"). It was dated 1 January 1976, and was signed on behalf of the taxpayer (therein called "Limited") by W and on behalf of the American parent (therein called "Corp") by Y. Both W and X, who took part in drawing it up, were cross-examined upon it.

By Clause 1, the taxpayer appointed the American parent its exclusive sales agent and representative in America and Canada. It goes on to state that the American parent "hereby accepts such appointment and shall act in accordance with the terms of this Agreement."

Clause 2 dealt with the duties of the American parent. Subclause (*a*) provided that the American parent was to "solicit orders for the Products on behalf of and in the name of Limited, quoting only such prices and terms as are fixed by Limited." Subclause (*b*) provided that the American parent was to "promptly forward to Limited in Hong Kong all orders so obtained, for acceptance by Limited."

Clause 3 dealt with additional duties of the American parent. Subclause (*d*) required the American parent to "promptly forward to Limited any inquiry or other communication of any source whatsoever regarding the Products."

Clause 5 required that in soliciting orders the American parent was to quote only such prices as may be set forth in the taxpayer's schedule. All prices were to be F.O.B. at the "point of delivery of the Products to a common carrier or port in the Far East and shall be payable in United States currency." The taxpayer was to send bills to the customer directly and payment was to be made by confirmed irrevocable letter of credit established at the time of placing the order.

Clause 7 dealt with the compensation to be paid to the American parent. For all services performed under clause 2 there was to be a commission of 2% of the net invoice price. For all services under clause 3 there was to be a monthly fee of US$65,000 provided that such compensation was not to exceed 3% of the net invoice price of all shipments.

W told us that the purpose of the Agency Agreement was to insulate Hong Kong and Taiwan from the IRS so that they could be considered as doing business in America. For that reason its terms were designed to read so as to make it appear that any Sales Contract

entered into was entered into outside America. In this way complications of tax in America could be avoided. When asked if the terms of the Agency Agreement were adhered to his answer was "substantially no". He said that so far as clause 2(*a*) was concerned, the American parent did solicit orders but the prices were no fixed by the taxpayer. Clause 2(*b*) was carried out, that is to say that orders obtained were promptly forwarded to the taxpayer in Hong Kong for acceptance by the taxpayer. Other clauses which we have not thought necessary to set out were also carried out, namely clauses 2(*d*), 2(*e*), 3(*a*), 3(*b*), 3(*c*) and others were carried out some extent, namely clauses 3(*d*), 3(*e*) and 3(*f*). Insofar as clause 5 was concerned, prices were in fact F.O.B. payable in American currency and the taxpayer did send bills to the customer directly but the letters of credit were not confirmed in all cases. By clause 6, the American parent did not supply its own samples but obtained them from the Taiwanese subsidiary. The provisions as to compensation contained in clause 7 were carried out. The amounts and percentages were fixed having regard to the figures upon which unrelated parties would agree so as to lend verisimilitude to the agreement. It was a way of getting money to America and thus to help the cash flow of the American parent. Clause 8 provided that the American parent was not to have authority to accept any returns of or to make any allowance in respect of the products without the written approval of the taxpayer. This was not adhered to because Y made all the decisions.

Having participated in the drafting of the Agency Agreement X would have known of its purpose and we accept his evidence in that respect. However, we are not satisfied that he was in position to have known which of the terms of the agreement were in fact carried out in the year 1976/77. There is no question of his having obtained such knowledge by having represented the taxpayer in litigation. He told us that the American parent had never been sued by Z and there is no evidence of any other litigation. We therefore do not accept that part of his evidence.

We have already referred to W's evidence as to pre-contract negotiations. It would have been unobjectionable for W to have taken part in those negotiations as a director of the taxpayer. It would have been understandable therefore if W had said that he had never adverted to the question of whether he was acting qua director of the taxpayer or qua director of the American parent. He was insistent, however, that he would have been present in his capacity as a director of the American parent and not as a Director of the Taxpayer. We do not accept that he did in fact draw such a distinction in his own mind at the time.

We have also already dealt with W's evidence concerning the documentation. Again he would have us believed that when he signed a sales confirmation he consciously donned the cap of a director of the taxpayer. We do not accept that such a distinction was in his mind at the time.

It is admitted and indeed averred by the taxpayer that the Agency Agreement was specifically drawn up to make it appear that it was not doing business in America and that its sales agreements were not concluded in that country. Whatever may be said of the first of these purposes, it is clear, if W's evidence is to be believed, that the second purpose would intentionally involve the presentation of a false picture to the IRS. In other words, the

agreement would then be an attempt to evade American tax. A taxpayer who is admittedly prepared to act in such a way cannot expect us to accept the evidence of its Directors simply at face value.

On the evidence, the agreement was not drawn up with the aim avoiding Hong Kong tax. In these circumstances it seems to us distinctly odd that there should now be insistance that almost no part of the taxpayer's "off-shore" business was conducted in Hong Kong. W was here for 124 days in the year in question. Z and K both had buying offices in Hong Kong. Those two customers accounted for more that half of the taxpayer's business in the same year. We do not believe that W would not have dealt with the taxpayer's "off-shore" business with those two customers in Hong Kong especially having regard to the relatively small volume of the taxpayer's "on-shore" business. Regional travelling expenses of Mr. & Mrs. W, Y, M and R totalling $203,776 were borne by the Taxpayer for the year in question. Although these travelling expenses were not claimed as a deductable expenses they were in fact incurred and it is not suggested they were reimbursed. W told us that he signed the majority of the sales confirmations outside Hong Kong on the advice of "counsel". We do not know whether that counsel was an American or a Hong Kong lawyer nor why the advice was given. We find it difficult to understand why this was thought necessary if in reality W regarded the Sales Confirmations as of no importance. They do not on their face purport to be signed anywhere other than in Hong Kong.

In any appeal to this Board, the burden is on the taxpayer. We hold that in the present case the taxpayer has not discharged that burden. On the evidence presented to us we are quite unable to find that the Commissioner's Determination was wrong.

A number of matters were put before us which we decided were not material. They were as follows: —

(1) Evidence was given by both W and X that the American parent had given Z a guarantee in relation to its dealings with the taxpayer. The guarantee was not produced and Mr. Wong rightly took objection to the evidence. We ruled that the fact of the guarantee was admissible but that no evidence of its contents was admissible. We did not think this an important matter. The customers were large American customers who would naturally look to the American parent.

(2) We heard evidence that the American parent had another subsidiary in American which dealt with defects. Some personnel from the Taiwanese subsidiary were also stationed in America for the same purpose. Again this can be of no significance since the buyers were American and the products would be in America.

(3) In the year in question the taxpayer had all bank accounts in Hong Kong. This on its own means nothing. It seems that, generally, the directors were the authorised signatories but one would expect them to be.

(4) Mr. Wong cross-examined W on a letter from the taxpayer's solicitors dated 20 December 1977, (Exhibit 3A). It was alleged that this letter never mentioned the Taiwanese subsidiary. We agree with Mr. Kotewall that the basic facts were asserted. This shows consistency but the letter is self-serving and takes the taxpayer no further.

(5) Mr. Wong asserted that the taxpayer risked its capital in Hong Kong. But so does any company incorporated here.

(6) Mr. Wong had some criticisms regarding the margin of profit of the Taiwanese subsidiary. We were not shown any accounts of the Taiwanese subsidiary. In the end we did not consider this relevant.

(7) Mr. Wong drew our attention to the legal effect which letters of credit have on the passing of title. As we understand the authorities, however, we are to look at the matter as a hard practical matter of fact.

(8) W gave evidence of the difference in earnings, assets, turn-over, profit, premises and staff between the Taiwanese subsidiary and the taxpayer. We do not see that this is material. The position is no different from many small companies in Hong Kong which have, or whose parent has, another larger company or a factory elsewhere. It was said that it would not have been physically possible for the staff of the taxpayer dealing with the taxpayer's business to have handled the volume of turnover of the "off-shore" business. We do not see how this can be said or how the position differs from many other small companies in Hong Kong.

For the reasons given above we dismiss this appeal.