Case No. D20/83

Board of Review:

Charles A. Ching, *Chairman*; C. G. Large & David K. P. Li, *Members.*

24 January 1984.

Dependant parent allowance—section 42B(1)(*d*) of the Inland Revenue Ordinance—permanent residence.

The appellant claimed Dependant Parent Allowance for both his parents for the year of assessment 1979/80, although neither visited Hong Kong in that year. The claim was disallowed. The appellant appealed on the ground that his parents were permanent residents having Hong Kong identity cards, a residence and a right to live in Hong Kong.

Held:
A right to reside is not sufficient. The dependant parent must be resident in Hong Kong at the relevant time.

Appeal dismissed.

So Chau-chuen for the Commissioner of Inland Revenue.
The appellant in person.

Reasons:

The facts in this appeal were not in dispute. The Taxpayer's parents were both over the age of 60 years in 1980 and the taxpayer contributed not less than $1,200 to their maintenance. His father is and at the material time was the owner of the flat in which he lives. His father pays the rates through him. In September of 1974 both of his parents emigrated to Canada. They have returned to Hong Kong on three occasions, namely 17th November 1975 to 8th October 1976, 18th September 1980 to 10th May 1981 and for one month in 1981/82. During the second visit they left Hong Kong twice, once to go to Taiwan for eight days and once to go to Canton for nine days. They obtained their Canadian passports on 30th July 1980. On 16th March 1981, the father was granted the right to land and remain in Hong Kong under section 8(1)(*c*) of the Immigration Ordinance, Cap. 115. The mother was granted an extension of stay until 3rd June 1985 on 27th March 1981. Both parents hold Hong Kong identity cards.

On these facts the taxpayer, who appeared without representation, claimed that for the year of assessment 1979/80 he was entitled to a Dependant Parent Allowance under section

42B(1)(*d*) of the Inland Revenue Ordinance, Cap. 112. One of the conditions to be fulfilled under that section is that the parent at any time in the year in question

"(i) was a permanent resident in the Colony."

It was clear from the undisputed facts that neither of the taxpayer's parents was physically in the Colony during the year in question. The taxpayer argued that it was sufficient that they had a right to live here. He pointed out that they hold Hong Kong identity cards and that they maintain a residence here.

We cannot accept the taxpayer's arguments. Mr. So Chau-chuen, Assessor (Appeals), who appeared for the Inland Revenue Department with Mr. Lee Kwok-lung, Assessor, brought to our attention the decisions in **Levene v. I.R.C.** (1928) T.C. 486, **I.R.C. v. Lysaght** 13 T.C. 511, **Bayard Brown v. Burt** 5 T.C. 667 and **Turnbull v. Foster** 6 T.C. 206. We agree with Mr. So that the right to reside is not sufficient. The section requires that the parent should be a permanent resident *in* Hong Kong and clearly the taxpayer's parents were not at the relevant time. Indeed, in argument the taxpayer told us that his parents do not live in Hong Kong and that apart from coming to Hong Kong or taking other holidays they live in Canada. It is to be noted that in their Arrival Cards they have consistently given their home address as being in Canada.

The taxpayer raised with us the point that in the explanatory notes in the tax return form mention is made to residents *of* Hong Kong. This is not what the Ordinance says and the explanatory notes are therefore misleading. They should be corrected.

Mr. So addressed an argument to us that the definition of "permanent resident" contained in section 41(4) of the Ordinance applies to section 42B. There is no other definition in the Ordinance. The draftsman may have intended that definition to apply to section 42B but section 41(4) begins with the words "In this section." It may well be that the section should be amended and for the purposes of this decision we have not taken section 41(4) into account.

We dismiss this appeal.