

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D32/87

Board of Review:

H. F. G. Hobson, *Chairman*, Albert Chun-yan Ho and Donald Yeung, *Members*.

14 September 1987.

Property Tax—Section 5(1A)(b)(ii) of the Inland Revenue Ordinance—whether actual expenses can be substituted for the 20% statutory allowance.

The Appellant appealed against a Property Tax Assessment for 1985/86 in respect of her property. In reaching its tax assessment the Revenue deducted the rates from the rent, thereby arriving at the assessable value and then deducted 20% of the assessable value as an allowance for repairs and outgoings in accordance with Section 5(1A)(b)(ii) of the Inland Revenue Ordinance. The Appellant appealed on the ground that the 20% statutory allowance came nowhere near the actual expenses incurred.

Held:

There is no legal right to substitute the Appellant's actual expenses for the 20% statutory allowance.

Appeal dismissed.

Case referred to:

The Cape Brandy Syndicate v. C.I.R. 12 TC 366

J. G. A. Grady for Commissioner of Inland Revenue.
Appellant in person.

Reasons:

The Taxpayer appealed against a Property Tax Assessment for 1985/86 in respect to her property, consisting of a main house, some out buildings and about 59 sm of land, at Pan Long Wan, NT. She had let the property from 5 September 1985 to 31 March 1986 for a total rent of \$182,000. She had paid \$8,976 in rates.

In reaching its tax assessment the Revenue deducted the rates from the rent—thereby arriving at “assessable value” (see s.5B of the Inland Revenue Ordinance (IRO)) of \$173,024—and then deducted \$34,605 (i.e. 20% of \$173,024) as “an allowance for repairs and outgoings” to arrive at a net assessable value of \$138,419. As the then standard rate was 17% the tax assessment was \$23,531. The rates and the 20% allowance respectively accord with sub-paragraphs (i) and (ii) of s.5(1A)(b) of the IRO.

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The Taxpayer's grievance, in essence, was that the 20% allowance came nowhere near:—

- (a) the actual repair bills, totalling \$151,468, she had incurred to maintain the only access road (not government adopted) to the property nor \$32,000 for maintaining a well water system (the property not being connected to the mains); and
- (b) the crown rent outgoings of \$27,795.20 she had to pay for the 59 sm surrounding the main house.

The question which we have to decide is whether there is any legal right to substitute the Taxpayer's actual repairs and outgoings for the 20% statutory allowance. The answer is that there is none. We agree with the Revenue's representative (who quoted the well-known dicta of Rowlatt J. in *The Cape Brandy Syndicate* case—12 TC p366—to the effect that there is no equity about a tax; there is no presumption as to tax, etc.) that none of the relevant provisions is unclear or ambiguous. There is therefore no grounds upon which we can look behind those provisions to determine the intention of the legislature.

It follows therefore that whatever our sympathies maybe we (and for that matter the Inland Revenue Department) are powerless to substitute the actual figures for the statutory allowances: that is a matter for the legislature.

We therefore uphold the assessment.