

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D38/00

Salaries tax – single parent allowance – whether or not pro rata allowance should be granted – whether or not financial loss is one of the consideration to decide – purpose of section 32(2) of the Inland Revenue Ordinance (‘IRO’) – abuse the process of the Board – section 68(9) of the IRO.

Panel: Anna Chow Suk-han (chairman), Colin Cohen and Douglas C Oxley.

Date of hearing: 31 May 2000.

Date of decision: 12 July 2000.

The taxpayer divorced from his former wife on 10 May 1995 and the child was remained in the custody of the taxpayer. The taxpayer remarried on 10 January 1998. The taxpayer objected to the salaries tax assessment 1997/98 and claimed that he should be entitled to single parent allowance for the year of assessment 1997/98.

The taxpayer contended that he should at least be granted a pro rata allowance for nine months in the year of assessment 1997/98 and he also pointed out that his new spouse would not support his son and that he still needed to support his son solely. The taxpayer contended that section 32(2)(a) of the IRO was unreasonable and claimed that the said subsection discriminated single parents and defeated the objective of the law to help single parents. The taxpayer urged the Board to take into consideration the financial loss he suffered as a result of section 32(2)(a) of the IRO.

Held :

1. The purpose of section 32(1) of the IRO is to provide the rule for granting the single parent allowance and subsection (2) of section 32 provides three exceptions to the said rule. Apart from subsection (3) of section 32 which provision is not applicable to the taxpayer, there is no provision in the IRO for apportionment of single parent allowance. Thus the Board is not empowered to grant the taxpayer single parent allowance on pro-rata basis. In addition, the legislation is not made and cannot be made to meet each taxpayer's individual needs or personal circumstances.
2. Prior to the commencement of the hearing, the Board explained to the taxpayer that he was not entitled to single parent allowance by reason of his marrying his present wife in the assessment year and that there was no provision in the IRO for single parent

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allowance on pro-rata basis. The Board found that the taxpayer's desire of bringing his concerns to the Board's attention could still have been achieved, without proceeding with the appeal. The taxpayer had badly abused the process of the Board. Accordingly pursuant to section 68(9) of the IRO, the taxpayer was ordered to pay costs in the sum of \$3,000.

Appeal dismissed and a cost of \$3,000 charged.

Chow Chee Leung for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

The appeal

1. The Taxpayer has objected to the salaries tax assessment for the year of assessment 1997/98 raised on him. The Taxpayer claims that he should be entitled to single parent allowance for the year of assessment 1997/98.

The facts

2. The Taxpayer was divorced from his former wife (' Ms A ') on 10 May 1995. The Taxpayer and Ms A have a child (' the Child ') who was born on 6 March 1990. The Court ordered that the Child remained in the custody of the Taxpayer. The Taxpayer married to Ms B on 10 January 1998.

3. (a) The Taxpayer furnished a tax return for the year of assessment 1997/98 declaring that he had employment income of \$332,437.

(b) In the return, the Taxpayer claimed child allowance in respect of the Child and dependant parent allowance in respect of his father. The Taxpayer also claimed single parent allowance by reason that he had the sole or predominant care of the Child.

4. The assessor was of the view that the Taxpayer was not entitled to single parent allowance for the year of assessment 1997/98 as he was married on 10 January 1998. He raised the following salaries tax assessment for the year of assessment 1997/98 on the Taxpayer :

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	\$	\$
Assessable income		332,437
<u>Less</u> : Basic allowance	100,000	
Child allowance	27,000	
Dependent parent allowance	<u>27,000</u>	<u>154,000</u>
Net chargeable income		<u><u>178,437</u></u>
Tax payable thereon		<u><u>24,887</u></u>

5. The Taxpayer objected to the assessment on the ground that he should be entitled to single parent allowance for the year of assessment 1997/98. In amplification of his grounds of objection, the Taxpayer stated that it was unreasonable to totally cut his single parent allowance in the year of assessment 1997/98 as he was single for nine months in the year of assessment 1997/98. He contended that he should at least be granted a pro rata allowance. He also pointed out that his new spouse would not support his son and that he still needed to support his son solely.

6. The assessor maintained the view that single parent allowance could not be granted to the Taxpayer for the year of assessment 1997/98 in view of section 32(2)(a) of the Inland Revenue Ordinance (‘ the IRO’). He invited the Taxpayer to withdraw the objection.

7. The Taxpayer declined to withdraw his objection and stated that the objective of the law in granting single parent allowance was to lessen the financial burden of a single parent. The assessment was a breach of the objective.

8. By virtue of the Tax Exemption (1997 Tax Year) Order (‘ the Order’) which became effective on 10 March 1999, any person who is chargeable to tax for the year of assessment 1997/98 shall be exempt from the payment of an amount equivalent to 10% of the amount of the tax to which he is so chargeable. On 27 March 1999, the Taxpayer’s salaries tax assessment for the year of assessment 1997/98 was revised to give effect to the Order such that the tax payable was reduced from \$24,887 to \$22,398.

The law

9. The granting of single parent allowance is governed by section 32 of the IRO. Subsections (1) to (3) read as follows:

- ‘ (1) An allowance (“single parent allowance”) of the prescribed amount shall be granted if at any time during the year of assessment the person had the sole or predominant care of a child in respect of whom the person

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was entitled during the year of assessment to be granted a child allowance.

- (2) *A person shall not be entitled to claim single parent allowance : -*
- (a) *if at any time during the year of assessment the person was married and not living apart from his or her spouse;*
 - (b) *by reason only that the person made contributions to the maintenance and education of the child during the year of assessment; or*
 - (c) *in respect of any 2nd or subsequent child.*
- (3) *Where 2 or more person are entitled to claim single parent allowance in respect of the same child for the same year of assessment, the allowance due shall be apportioned on such basis as the Commissioner may decide: -*
- (a) *having regard to the respective periods for which each person had the sole or predominant care of the child during the year of assessment; or*
 - (b) *if, in the opinion of the Commissioner, those periods are uncertain, on such basis as the Commissioner may decide as being just.'*

The Taxpayer's contention

10. In his objection letter of 4 June 1999, the Taxpayer claimed that the assessor's assessment breached the objective of single parent allowance.

11. In his notice of appeal dated 23 February 2000, the Taxpayer contended that section 32(2)(a) of the IRO was unreasonable. He also claimed that the said subsection discriminated single parents and defeated the objective of the law to help single parents.

The proceedings

12. Prior to the date of the hearing of the appeal, the Respondent (the Revenue) presented this Board with a written submission on the Taxpayer's appeal.

13. On the day of the hearing of the appeal, the Taxpayer appeared in person and confirmed that he was given a copy of the written submission before the hearing and he had an opportunity of reading it.

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14. Before the commencement of the hearing of the appeal, the Taxpayer acknowledged that he was aware of the submission by the Respondent that when a person became married and ceased to be granted single parent allowance, that person would be entitled to claim married person allowance in that year of assessment and thus, section 32 (2)(a) of the IRO was not unreasonable as contended by the Taxpayer.

15. It was then explained to the Taxpayer that should the Board find no merit in his appeal, the Board was empowered to order him to pay the costs of the proceedings, up to a maximum amount of \$5,000.

16. The Taxpayer suggested to the Board that if the Board found the legislation unreasonable, the Board should take the initiative to amend it. It was then explained to the Taxpayer that a function of the Board was to interpret the law as it stood and the Board was not empowered to change the law whether the Board found it reasonable or not.

17. Notwithstanding the explanation, the Taxpayer elected to proceed with his appeal and gave evidence under oath.

18. The Taxpayer contended that it was unreasonable that once a person became married, that person should be denied single parent allowance for the whole assessment year. He claimed that that person should be entitled to single parent allowance, if not, for the whole amount, at least on a pro-rata basis, or else, the Revenue would gain at the expense of such taxpayer.

19. The Taxpayer also contended that so far as he was concerned, marrying again only affected his marital status. He claimed that since he and his present wife were financially independent from each other, married person allowance was of no consequence to them. He further claimed that because he and his wife, each having his or her own child to maintain, suffered financial loss as a result of section 32(2)(a) of the IRO, and furthermore, apart from the financial loss, they had to face other problems arisen out of the marriage.

20. The Taxpayer urged the Board to grant him single parent allowance, and if not, for the whole amount, at least on a pro-rata basis.

Our decision

21. The governing section in the IRO is section 32. The terms of section 32 are plain and unambiguous. Subsection (1) of section 32 provides that single parent allowance shall be granted to a person who has the sole or predominant care of a child in respect of whom the person is entitled to be granted child allowance during the year of assessment. The purpose of subsection (1) is to provide the rule for granting the single parent allowance. Subsection (2) of section 32 provides three exceptions to the said rule, one of which as provided under subsection (2)(a) is that the person shall not be entitled to claim single parent allowance ‘*if at any time during the year of*

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assessment the person was married and not living apart from his or her spouse during the assessment year'. As the Taxpayer married his present wife on 10 January 1998, he came within this exception as of the year of assessment 1997/98 and was therefore not entitled to claim single parent allowance. Other than subsection (3) of section 32 which provides that '*where 2 or more persons are entitled to claim single parent allowance in respect of the same child for the same year of assessment, the allowance due shall be apportioned on such basis as the Commissioner may decide*' (which provision is not applicable to the Taxpayer), there is no provision in the IRO for apportionment of single parent allowance. Thus, the Board is not empowered to grant the Taxpayer single parent allowance on pro-rata basis as the Taxpayer urged us to do.

22. The Taxpayer urged us to take into consideration the financial loss he suffered as a result of section 32(2)(a) of the IRO which provision as he claimed, was unreasonable and defeated the objective of the law to lessen a single parent's financial burden and also the other problems he had to encounter as a result of the marriage. In this regard, the Taxpayer ought to realize that legislation is not made and cannot be made to meet each taxpayer's individual needs or personal circumstances.

23. For the aforesaid reasons, the Taxpayer has failed to satisfy us that he had valid grounds of appeal. Consequently, the appeal must fail and the determination is hereby confirmed.

24. Prior to the commencement of the hearing, this Board explained to the Taxpayer in no uncertain terms that the Board was empowered to amend the law whether it was reasonable or not and also that the Board was empowered to order payment of costs by the Taxpayer, if the Board found that there was no merit in the appeal. Notwithstanding this explanation, the Taxpayer chose to proceed with his appeal, knowing fully well that he was not entitled to single parent allowance by reason of his marrying his present wife in the assessment year and that there was no provision in the IRO for single parent allowance on pro-rata basis.

25. The Taxpayer is an educated person. He appeared to us to be intelligent and also capable of understanding the issues under appeal. During the hearing, he acknowledged that after he received the determination, he understood that the Revenue was proceeding with his objection to the determination according to the law. However, he felt that the law was unreasonable and should be amended. He claimed that he had even approached Equal Opportunity Commission, Single Parent Association and District Board members. He said that they sympathized with him and urged him to address his concerns to the Board. We take the view that if the Taxpayer felt that the law was unreasonable and it should be amended and he genuinely wished to bring his concerns to the Board's attention, he could have done so prior to the commencement of the hearing. His desire of bringing his concerns to the Board's attention could still have been achieved, without proceeding with the appeal. However, he elected to proceed with the hearing, and he had totally failed to establish that he had any ground of appeal. The Taxpayer had badly abused the process of the Board.

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26. Under section 68(9) of the IRO, where after hearing the appeal, the Board does not reduce or annul the assessment, the Board may order the Taxpayer to pay costs of the hearing up to a maximum sum of \$5,000. By electing to proceed with the appeal notwithstanding the explanation given to him prior to the commencement of the hearing that the Board was not empowered to change the law, the Taxpayer must have been prepared to meet an order of cost against him in case of an unsuccessful appeal. Accordingly, pursuant to section 68(9) of the IRO, we hereby order the Taxpayer to pay the costs of this proceedings in the sum of \$3,000 which, we hope the Taxpayer realizes, only represents a very small fraction of the total costs of a Board of Review appeal.