

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D38/90

Salaries tax – dependent parent allowance – section 42B(1)(d) and section 42B(2)(a) of the Inland Revenue Ordinance.

Panel: Henry Litton QC (chairman), Barry J Buttifant and Lim Ken Y.

Date of hearing: 27 September 1990.

Date of decision: 20 October 1990.

The taxpayer claimed a dependent parent allowance in respect of his father. A brother of the taxpayer also claimed a dependent parent allowance in respect of the father and submitted some evidence to the Inland Revenue Department to suggest that the father was living with the brother. The taxpayer appeared in person and made statements to the Board with regard to the fact that his father had been living with him and not with his brother.

Held:

The taxpayer was entitled to claim the dependent parent allowance and the evidence given to the Inland Revenue Department by the brother was not reliable.

Appeal allowed.

H Bale for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

#### Introduction

1. This appeal is concerned with a claim for dependent parent allowance made in the Taxpayer's salaries tax return for the year ending 31 March 1989. The claim is made under the provisions of section 42B of the Inland Revenue Ordinance in respect of the Taxpayer's father Mr X.

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2. Under the provisions of section 42B(1)(d) the allowance is given to an individual who 'maintains a parent' in the year of assessment in question. Sub-section (2) of section 42B then goes on to say:

'(2) for the purposes of sub-section (1)(d) –

(a) a parent shall only be treated as being maintained by an individual ... if

(i) the parent resides, otherwise than for full consideration, with the individual for a continuous period of not less than six months in the year of assessment; or

(ii) the individual ... contributes not less than \$1,200 in money towards the maintenance of the parent in the year of assessment.'

### Background Facts

3. The Taxpayer's father, Mr X, is nearly seventy years old and, during the year in question, was in poor health.

4. Mr X has a number of children but, for the purposes of this appeal, we need to consider only his two sons Mr Y and the Taxpayer. The Taxpayer is the younger brother of Mr Y and was, at the time in question, employed in the Police.

5. The father is illiterate and had not worked for a number of years. His residential address during the period in question was located at A Estate, B Place where his wife (the Taxpayer's mother) resided. For many years the old couple had not got along with each other and, from about August 1988, the father spent much of his time at the Taxpayer's residential flat located at C Plaza, B Place. The C Plaza flat was owned by the Taxpayer's sister and the Taxpayer slept there when he was not actually on duty with the Police. His schedule with the Police at that time was that he was on duty for twenty-four hours and off duty for forty-eight hours. The Taxpayer paid all the outgoings and expenses in respect of the C Plaza flat such as maintenance charges, water and electricity consumption etc.

6. From the statements made to us by the Taxpayer at the hearing, it appears that from about August 1988, the pattern of living for the father was this: he was ill for much of the time, and slept most nights at the C Plaza flat, but returned to the A Estate flat from time to time. He ate most of his meals outside. His wife never came to the C Plaza flat.

7. We find as a fact that, for practical purposes, the father resided at the C Plaza flat from about August 1988. The C Plaza flat was the Taxpayer's residence (during his time off with the Police) and, in terms of section 42B(2)(a), the father was residing with the Taxpayer for a continuous period of not less than six months within the year of assessment

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in question. Furthermore, the Taxpayer contributed not less than \$1,200 in money towards the maintenance of the father. It would therefore seem that both limbs of section 42B(2)(a) were satisfied, qualifying the Taxpayer to claim the dependent parent allowance in respect of his father.

### Competing Claim

8. After the Taxpayer had lodged his salaries tax return and before the assessment, an unfortunate complication intervened. It was this. His brother Mr Y also claimed the dependent parent allowance in respect of his father. The eligibility of Mr Y's claim rested on a document expressed in the English language (annexed to the Commissioner's determination) which is addressed to the Commissioner of Inland Revenue and it reads as follows:

'Dear Sir,

17 February 1990

### Letter of Certification

I write this letter in order to inform you that [Mr Y], [HKID Axxxxxxx(x)] was residing and is still residing with me from 1 April 1985 up to this present moment in [B Place, D Place, E Place, and F Place] respectively.

I further emphasise that only [Mr Y] was and is still supporting me in all my daily living expenses during the said period and up to this present time.

This letter is written by my son, [Mr Y], and is explained and agreed by me at the venue of the headquarters of the Inland Revenue Department on the date of this letter.

Yours faithfully,

[Mr Y's signature]

[Mr X's signature

(a cross mark)]

\_\_\_\_\_  
[Mr Y]

\_\_\_\_\_  
[Mr X]

9. On the strength of this letter, the Commissioner rejected the Taxpayer's claim that the father, Mr X, was maintained by the Taxpayer.

### Our Findings

10. On the face of the letter, it seems to us a very suspicious document. It is written in the English language and yet the father speaks not a word of English. The letter refers to

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the father having resided since 1 April 1985 at a number of locations with Mr Y, that is 'in [B Place, D Place, E Place, and F Place] respectively' without particularisation.

11. At the hearing, the Commissioner's representative called as his witness the assessor in the salaries tax section who had interviewed Mr Y and his father at the Inland Revenue Department's offices at Windsor House on 17 February 1990. Having heard the assessor, we are even less convinced that the father understood the content of the letter in subscribing to its content by putting his cross at the spot where his name in English appears. From the assessor's testimony, it seems that the father was brought to the Inland Revenue Department by his son Mr Y and took no part whatever in the interview with the assessor. According to the assessor, the old man just 'sat there' and did not appear alert. He was 'just like an old man; his reactions were very slow'. Mr Y apparently wrote out the letter in the English language in the assessor's presence. The assessor said in evidence that the content of the letter was explained by Mr Y to the old man but did not elaborate upon what he meant by Mr Y 'explaining the content'. When the assessor was asked by a member of the Board of Review whether it appeared to him (the assessor) that the father fully understood the content of the letter, the reply was:

'He just said yes. And he then signed. I can't say if he fully understood. I did not ask the father if he understood.'

It is plain from what we were told of that interview that the assessor took no steps of any kind to satisfy himself that the father had understood what was going on; he asked the father no questions concerning the letter from which he (the assessor) might have formed a judgment as to whether the father understood the content.

12. In these circumstances, we place no reliance whatsoever on the mark made by the father as his signature. We regard the letter as of no evidential weight whatever.

### Conclusion

13. In the circumstances as we find them, there is nothing to displace the evidence before us that, during the year of assessment in question, it was the Taxpayer who was entitled to claim the dependent parent allowance in respect of his father.

14. The appeal is accordingly allowed and we remit the case to the Commissioner with our findings that in respect of the year of assessment 1988/89 the Taxpayer is entitled to claim the dependent parent allowance in respect of his father Mr X.