

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D57/87

Personal assessment – personal allowances – parent living abroad but paying brief visits to Hong Kong – whether parent a ‘permanent resident’ of Hong Kong – s 42B(1)(d)(i) of the Inland Revenue Ordinance.

Panel: Howard F G Hobson (chairman), Denis Evans and Ma Ching Yuk.

Date of hearing: 25 November 1987.

Date of decision: 19 January 1988.

The taxpayer claimed a dependant parent allowance with respect to his mother-in-law who held a Hong Kong identity card but had lived in the Philippines with her husband for nine years. She made four short visits to Hong Kong during that time and stayed with the taxpayer on each occasion. The taxpayer claimed (among other things) that his mother-in-law was a permanent resident of Hong Kong because she was entitled permanently to reside in Hong Kong.

Held:

On an objective view of the facts, the taxpayer resided in the Philippines and could not be said to be a permanent resident of Hong Kong.

Appeal dismissed.

Cases referred to:

D20/83, IRBRD, vol 2, 57  
Hooper’s Trust, re (1865) 13 WR 710  
Levene v CIR (1928) 13 TC 486

Mrs Jennifer Chan for the Commissioner of Inland Revenue.  
Taxpayer in person.

Decision:

This appeal is concerned with the interpretation of s 42B(1)(d)(i) of the Inland Revenue Ordinance which in *pari materia* reads:

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‘an allowance of \$9,000, if the individual or his wife, not being a wife living apart from her husband, maintains a parent of the individual or his wife in the year of assessment and that parent at any time in that year –

(i) was a permanent resident in Hong Kong;...’

This allowance was claimed for the years 1979/80, 1980/81, 1982/83 and 1983/84 (no assessment has yet been raised for 1981/82) by the Appellant with respect to his mother-in-law, Madam B.

The facts as set out in the Commissioner’s Determination, save in one minor detail, are not in dispute. The bare essentials are:

1. That Madam B was born and married in China.
2. She came to Hong Kong in 1952/53: she holds a Hong Kong Certificate of Identity and a Hong Kong Identity Card.
3. She went to Manila, where her husband resides, in May 1975 in connection with a dispute involving her husband’s concubine.
4. In Manila she has a separate address from her husband though he comes to stay with her every alternate half month.
5. She came to Hong Kong in the years 1980 (twice for a total of 15 days) and 1984 (twice for a total of 9 days) and on each occasion she stayed with the Taxpayer.

An affidavit, sworn in Manila by Madam B, was not put in evidence which in part supported certain of the foregoing but also went on to state that Madam B looked upon her stay in Manila as temporary and consequently considered her place of permanent residence to be Hong Kong, not least because she said for sojourn in Manila is at the pleasure of the Philippines Immigration authorities.

The Appellant conducted his own case (ably we thought) and gave us his version of the interpretation to be put on the above quoted provision. However he took issue with the Commissioner for using an answer to the Taxpayer’s return as factual support for the Commissioner’s conclusion. The printed return contains a box in the part headed ‘Claim for Dependant Parent Allowance’: the printed words are ‘Residential address of parent’ – beside this the Taxpayer had entered the Manila address. The Taxpayer argued that this entry should not be taken as an estoppel admission of ‘permanent’ residence. We are inclined to agree but need say no more about it.

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1. The taxpayer correctly pointed out that s 42 carries no definition of the words ‘permanent resident’ and turned to the Immigration Ordinance wherein, at s 2, ‘Chinese resident’ is defined to mean an immigrant who:
  - (a) is wholly or partly of Chinese race, and
  - (b) has at any time been ordinarily resident in Hong Kong for a continuous period of not less than 7 years.
2. Next, recognizing that he had to overcome the consequences of ‘at any time in that year’ in the taxing provision, the Taxpayer argued that these words meant ‘at any one time’ (citing re Hooper’s Trust (1865) 13 WR 710). We understood the argument to mean that if the dependant relative met the ‘permanent resident’ criterion in any one year then thereafter that status remained in force. That is to say if Madam B qualified in the year 1979/80 then she automatically qualified for all subsequent years.
3. This proposition led to the Taxpayer noting that the IRD (in the assessments rejecting his claim to the dependent relative allowance) used the expression ‘not a permanent resident of Hong Kong’, and suggesting that at least someone in the IRD agreed with him that physical presence in Hong Kong in any year was not necessary so long as the dependent relative had at some earlier time become a permanent resident. He submitted therefore that a permanent resident is one ‘who is entitled permanently to reside in Hong Kong’: the Taxpayer said he deliberately intended the adverb ‘permanently’ to qualify the word ‘entitled’ for in his view it was the permanency of the residency that counted.
4. Finally the Taxpayer contended that the allowance was introduced into law in recognition of that Confucian ethic which lays great store on filial piety: this aspect should therefore be borne in mind when interpreting the words in question. However he was unable to show that this was indeed the reason for this allowance.

Not surprisingly, the IRD representative Mrs Jennifer Chan referred us to the English Income and Corporation Act 1970 which talks, in s 108(1), of ‘any person residing’, and to the dicta of Viscount Cave who endorsed the Oxford English Dictionary definition of the word ‘reside’ as ‘to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place’ (Levene v CIR (1928) 13 TC 486, 505).

We do not consider that we need deal with Mrs Jennifer Chan’s other carefully argued counter-submissions for the following case, to which she referred, alone sufficiently convinced us that the Taxpayer’s submissions must fail.

In Board of Review case D20/83 the taxpayer claimed dependant relative relief for his parents who held Hong Kong Identity Cards and enjoyed the right to live in Hong Kong but did not visit Hong Kong during the year for which relief was sought. The Board in dismissing the ‘entitlement’ argument noted that the section requires ‘permanent residence

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in Hong Kong' (the Board's emphasis). The Board felt that the section could be improved by adopting the definition of 'reside' in s41(4) – in so doing the Board was, to our mind, accepting that that definition was a reasonable test.

Now that case is distinguishable in the sense that unlike the case before us the Taxpayer there admitted his parents did not live in Hong Kong.

It only remains therefore for us to decide whether Madam B, on an objective view, was a permanent resident in Hong Kong in any of the years in question. In our opinion she was not because the place at which she resided – whether voluntarily or involuntarily – was undoubtedly the Philippines (which was the place of residence also of her husband). She had a residence there and it would be a gross distortion of common sense to suggest that a period of some nine years stay in Manila was temporary and that the 4 very short visits to Hong Kong were manifestations of permanency here. It follows that we reject the Taxpayer's argument that once permanent residency has been reached it remains in force for ever thereafter. It also follows that even if Madam B had permanent residence in Hong Kong before leaving for Manila in 1975 we are of the opinion that she had lost it by 1979/80.

Accordingly we dismiss this appeal.