Case No. D59/93

Salaries tax – travelling expenses – failure by taxpayer to keep any record.

Panel: Howard F G Hobson (chairman), Eric Lo King Chiu and Harry Wilken.

Date of hearing: 12 January 1994.
Date of decision: 21 February 1994.

The taxpayer claimed that he had incurred substantial travelling expenses in the course of his employment. The Deputy Commissioner by his determination accepted that the taxpayer was entitled to claim some travelling expenses but in the absence of any records maintained by the taxpayer he did not accept the estimated claim by the taxpayer. The taxpayer appealed to the Board of Review. At the hearing the taxpayer did not produce any evidence in support of his claim.

Held:

The onus of proving that an assessment is excessive is upon the taxpayer. The taxpayer had kept no record of travelling expenses and accordingly his appeal must fail.

Appeal dismissed.

Cases referred to:

CIR v Humphreys 1 HKTC 451
D37/92, IRBRD, vol 7, 391
D25/87, IRBRD, vol 2, 400

Chan Wai Mi, May for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

During the relevant period the Taxpayer was employed as an inspector of a technical field. In his 1991/92 salaries tax return he claimed a deduction of $36,000 for travelling expenses. However as the employer's return showed that the Taxpayer had received $4,000 as a travelling allowance for the year in question the assessor raised an

assessment which ignored the $36,000 but allowed the $4,000 to be deducted in arriving at the net assessable income. The Taxpayer thereupon objected. At a subsequent meeting the assessor proposed to treat 5%, namely $16,844, of the total assessable income, as deductible travelling expenses. Although the Taxpayer said he was not satisfied with that proposal, the assessor nevertheless formally put it forward in a letter to the Taxpayer. As the Taxpayer failed to reply the objection then went before the Deputy Commissioner (DCIR) on the basis of the $4,000 deduction. The DCIR confirmed the assessment after making the following remark:

> 'The Taxpayer is claiming that the travelling expenses he incurred in visiting various construction sites to carry out inspection works are deductible. Having regard to the nature of duties performed by the Taxpayer, I accept that he had incurred deductible travelling expenses. However, in the absence of any records, I do not accept that the estimate of $36,000 claimed by the Taxpayer is a true and fair reflection of the amount he actually incurred. In reaching this conclusion, I have had regard to the fact that he received a monthly travelling allowance and reimbursement of taxi fares from the employer. In raising the 1991/92 year of assessment, the assessor had already allowed the Taxpayer a deduction of $4,000 which is equal to the amount of travelling allowances he received. There is no evidence that such allowances fall short of the actual travelling expenses incurred. In the circumstances, I consider that the assessor's proposal at fact (9) to allow a deduction equal to *5%* of the Taxpayer's assessable income is far too generous. The Taxpayer had provided no evidence to support his claim and I am not prepared to grant any additional deduction.'

In his ground of appeal, the Taxpayer among other things made the following points:

> 'Overall cost of public transport from home to site in Place X using public transport.

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a) Tram		1.00
b) Tunnel bus		5.50
c) Train		9.00
d) Taxi		40.00
	Total:	55.50

The Chairman explained that expenses incurred in getting from home to an employee's place of employment and vice versa are not deductible (CIR v Humphreys 1 HKTC 451), hence the foregoing figures were of no assistance to his case.

The Taxpayer conducted his own appeal but produced no evidence in support of his claim. He accepted that the $36,000 was no more than an estimate. He agreed that on the basis of a 6 day's week and adopting $100 of the $40-$100 per day range mentioned in his grounds of appeal would result in $28,800 per year that is well short of his $36,000 but submitted that in fairness he should be allowed an amount roughly in the middle of the low of $4,000 and the high of $36,000. (By a strange coincidence the 5% figure of $16,844 would have met that suggestion.)

The relevant provision of the Inland Revenue Ordinance in material part reads as follows:

Section 12(1)

'In ascertaining the net assessable income ... there shall be deducted ...

(a) all ... expenses, ... wholly, exclusively and necessarily incurred in the production of the assessable income ...'

The Revenue's representative drew our attention to D37/92, IRBRD, vol 7, 391 which reviewed and adopted the views expressed in D25/87, IRBRD, vol 2, 400 where it is said in effect that expenses claims based upon rough estimates will fail because the Taxpayer 'must, if called upon, provide with reasonable precision details of the expenditure claimed to be deductible'.

The Chairman explained to the Taxpayer that whereas assessors are often amenable to adopting a lenient approach to the question of expenses based on empirical considerations the Board has no such discretion. As pointed out by the Revenue's representative the onus of proving that the assessment is excessive falls upon the Taxpayer accordingly since the Taxpayer confirmed before us that he kept no contemporary records of the travelling expenses he incurred, or even of the dates upon which he actually visited sites, this appeal must fail. There is therefore no need to consider whether the claimed expenses were incurred 'wholly, exclusively and necessarily' in the production of income as mentioned above.

This appeal is therefore dismissed.