Case No. D71/02

Property tax – whether certain items can be deducted from the rental income for the purpose of arriving at a net sum chargeable to property tax – legislature allows a flat rate of 20% per annum deduction for 'repairs and outgoings' – includes any cost of repair of the building that the owner may have to contribute – deduction for rates – appellants must show the rates were the subject of agreement between them and the tenant – neither here nor there that the appellants may have incurred over 20% of their rental income on repair – burden on appellants to show what actual cost of repair or maintenance was incurred or whether they did incur repair or maintenance cost higher than the 20% allowance – sections 5, 5B and 42 of the Inland Revenue Ordinance ('IRO') – section 10B(1) and (2) of the Interpretation and General Clauses Ordinance.

Panel: Benjamin Yu SC (chairman), Simon Ho Shun Man and Albert Yau Kai Cheong.

Date of hearing: 26 August 2002.
Date of decision: 25 October 2002.

The appellants, namely Mr B and his wife, appealed against a determination of the Commissioner in respect of the property tax assessment on the Property for the years of assessment 1996/97, 1997/98 and 1998/99.

There was no dispute that during those three years of assessment, the appellants did derive rental income from the Property, and that such income was chargeable to property tax.

What was in dispute was whether certain items could be deducted from the rental income for the purpose of arriving at a net sum chargeable to property tax.

The facts appear sufficiently in the following judgment.

Held:

1. Section 5 of the IRO is the charging provision with regard to property tax.

2. Under section 5B, the 'assessable value' of land or buildings or land and buildings is the consideration, in money or money's worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or

buildings or land and buildings. Generally, it is the gross income by way of rental derived by the landlord from his property.

3. It was apparent from section 5 that no provision was made for allowing interest payment to be deducted for the assessable value of the land or building.

4. The representative of the Commissioner pointed out that a taxpayer would only be entitled to deduct interest incurred in the production of income under section 42 of the IRO, provided that the taxpayer elected for personal assessment.

5. The Board was also informed that in the case of the appellants, they would, by reason of their combined income, have to pay even more tax had they elected for personal assessment.

6. In the light of the provisions of section 5 of the IRO, the Board agreed with the Revenue that it was simply not open to the appellants to ask for deduction of bank interest.

7. The answer to the point raised by the appellants on deduction for rates paid lied again in the provisions of section 5 of the IRO. The use of the word 'those' in the English version of the IRO in section 5(1A)(b)(i) to qualify the word 'rates' suggested that the owner would not get deduction of the amount of rates merely because the rates had been paid by him, he also had to show that the rates which he claimed deductions for were the subject of agreement between him and the tenant.

8. Admittedly, the Chinese version of the provision (section 5 of the IRO) was not as clear; but it could not be said to point to a different construction. The Board bore in mind that both the English language text and the Chinese language text of an ordinance shall be equally authentic, and that the provisions of the IRO were presumed to have the same meaning in each authentic text, see section 10B(1) and (2) of the Interpretation and General Clauses Ordinance (Chapter 1). Having regard to both versions, the Board was of the opinion that the Commissioner was correct in not allowing deduction of rates paid by the owner during the quarter when the Property was unoccupied. The rates that the appellants paid for that quarter (when the Property was vacant) would not be rates which they paid pursuant to any agreement.

9. Section 5(1A)(b)(ii) of the IRO again provided the answer to Mr B's contention for deduction for repairs. The legislature has, in its wisdom, decided that an annual deduction of 20% should be given for 'repairs and outgoings'. That must of course include any cost of repair of the building that the owner may have to contribute. The fact that the taxpayer may have incurred over 20% of his rental income on

repair was neither here nor there. Nor would it matter if in some years the owner did not have to spend anything on repairs or had to incur an amount way below the 20% allowed. The IRO had made it plain that a flat rate of 20% should be deducted per annum. In Board of Review decision D32/87, IRBRD, vol 2, 412, the Board was faced with a similar argument from the taxpayer, who claimed that the 20% allowance came no where near the actual repair costs plus crown rent outgoings incurred by him. The Board rejected the argument.

10. Similarly, the Board rejected any argument that the taxpayer was entitled to claim deduction for the actual cost of repair or maintenance.

11. The Board should add, however, that it was by no means satisfied that the appellants did incur repair or maintenance cost higher than the 20% allowance during any one of the three relevant years of assessment in question.

12. The Board had made it plain to Mr B that in so far as he sought to contend that the appellants had incurred a sum higher than the 20% allowed, the burden fell on the appellants to satisfy the Board of the fact. Mr B had only referred the Board to the three lists appended to the determination. Those lists only contained the Commissioner's analysis of the invoices produced by the appellants. It was plain from the description of many of those items that they could not possibly be related to the cost of repair and maintenance. Indeed, Mr B accepted this, but had not done anything further to show or demonstrate to the Board what actual cost of repair or maintenance was incurred in respect of the Property over the three relevant years of assessment.

13. The Board was of the view that Mr B had in any event failed to discharge the burden of showing that the appellants did incur an amount in excess of the 20% allowed by the IRO.

14. In the event, the Board found no merit in the points raised by Mr B. It accordingly dismissed this appeal and confirmed the assessments appealed against.

Appeal dismissed.

Case referred to:

D32/87, IRBRD, vol 2, 412

Chow Cheong Po for the Commissioner of Inland Revenue.
Taxpayer in person and for another taxpayer.

Decision:

The appeal

1. The Appellants are husband and wife and together hold a property at Address A ('the Property'). They seek to appeal from the determination of the Commissioner dated 16 April 2002 in respect of the property tax assessment on the Property for the years of assessment 1996/97, 1997/98 and 1998/99. It is not in dispute that during those three years of assessment, the Appellants have derived rental income from the Property, and that such income is chargeable to property tax. What is in dispute is whether certain items can be deducted from the rental income for the purpose of arriving at a net sum chargeable to property tax.

The issues

2. From Mr B's address to this Board, it appears to us that there are three issues raised in this appeal:

(a) Mr B and his wife have incurred bank interest during the years of assessment 1997/98 and 1998/99. From the figures shown to us by the Respondent, these appear to be in the amount of $19,956 for the year of assessment 1997/98 and $35,856 for the year of assessment 1998/99. Mr B questions why these interest payments were not deducted from the income generated from the Property in arriving at the net assessable value during those two years of assessment.

(b) During the year of assessment 1998/99, the Appellants let the Property out for only three quarters within the year but had paid the rates for the entire year. Mr B questions why the Commissioner only allowed deduction of rates for the three quarters, but not for the entirety of the year.

(c) Mr B's last point is that he and his wife had incurred expenses in respect of the maintenance and repair of the Property, including contribution towards maintenance cost of the building. He queries the Commissioner's approach of allowing only a flat 20% deduction for repairs.

Section 5 of the IRO

3. Section 5 of the IRO is the charging provision with regard to property tax. It provides:

> *'(1) Property tax shall, subject to the provisions of this Ordinance, be charged for each year of assessment on every person being the owner of any land or buildings or land and buildings wherever situate in Hong Kong and shall be computed at the standard rate on the net assessable value of such land or buildings or land and buildings for each such year.*
>
> *...*
>
> *(1A) In subsection (1), "net assessable value" means the assessable value of land or buildings or land and buildings, ascertained in accordance with section 5B –*
>
> *(a) ...*
>
> *(b) less –*
>
> *(i) where the owner agrees to pay the rates in respect of the land or buildings or land and buildings, those rates paid by him; and*
>
> *(ii) an allowance for repairs and outgoings of 20% of that assessable value after deduction of any rates under subparagraph (i).'*

Under section 5B, the 'assessable value' of land or buildings or land and buildings is the consideration, in money or money's worth, payable in that year to, to the order of, or for the benefit of, the owner in respect of the right of use of that land or buildings or land and buildings. Generally, it is the gross income by way of rental derived by the landlord from his property.

Deduction for interest payment

4. It is apparent from section 5 that no provision is made for allowing interest payment to be deducted for the assessable value of the land or building. Mr Chow pointed out that a taxpayer will only be entitled to deduct interest incurred in the production of income under section 42 of the IRO, provided that the taxpayer elects for personal assessment. Mr Chow informed the Board that in the case of the Appellants, they would, by reason of their combined income, have to pay even more tax had they elected for personal assessment.

5. In the light of the provisions of section 5 of the IRO, we have to agree with Mr Chow that it is simply not open to the Appellants to ask for deduction of bank interest.

Rates

6. The answer to the point raised by Mr B on deduction for rates paid lies again in the provisions of section 5 of the IRO. The use of the word 'those' in the English version of the IRO in section 5(1A)(b)(i) to qualify the word 'rates' suggests that the owner does not get deduction of the amount of rates merely because the rates have been paid by him, he also has to show that the rates which he claims deductions for are the subject of agreement between him and the tenant. Admittedly, the Chinese version of the provision is not as clear; but it cannot be said to point to a different construction. We bear in mind that both the English language text and the Chinese language text of an ordinance shall be equally authentic, and that the provisions of the IRO are presumed to have the same meaning in each authentic text, see section 10B(1) and (2) of the Interpretation and General Clauses Ordinance (Chapter 1). Having regard to both versions, we are of the opinion that the Commissioner was correct in not allowing deduction of rates paid by the owner during the quarter when the Property was unoccupied. The rates that the Appellants paid for that quarter (when the Property was vacant) would not be rates which they paid pursuant to any agreement.

Deduction for repairs

7. Section 5(1A)(b)(ii) of the IRO again provides the answer to Mr B's query. The legislature has, in its wisdom, decided that an annual deduction of 20% should be given for 'repairs and outgoings'. That must of course include any cost of repair of the building that the owner may have to contribute. The fact that the taxpayer may have incurred over 20% of his rental income on repair is neither here nor there. Nor would it matter if in some years the owner did not have to spend anything on repairs or had to incur an amount way below the 20% allowed. The IRO has made it plain that a flat rate of 20% should be deducted per annum. In Board of Review decision D32/87, IRBRD, vol 2, 412, the Board was faced with a similar argument from the taxpayer, who claimed that the 20% allowance came no where near the actual repair costs plus crown rent outgoings incurred by him. The Board rejected the argument.

8. Here, similarly, we reject any argument that the taxpayer is entitled to claim deduction for the actual cost of repair or maintenance. We should add, however, that we are by no means satisfied that the Appellants did incur repair or maintenance cost higher than the 20% allowance during any one of the three relevant years of assessment in question. We have made it plain to Mr B that in so far as he seeks to contend that the Appellants have incurred a sum higher than the 20% allowed, the burden falls on the Appellants to satisfy this Board of the fact. Mr B has only referred us to the three lists appended to the determination. Those lists only contain the Commissioner's analysis of the invoices produced by the Appellants. It is plain from the description of many of those items that they cannot possibly be related to the cost of repair and maintenance. Indeed, Mr B accepts this, but has not done anything further to show or demonstrate to this Board what actual cost of repair or maintenance was incurred in respect of the Property over the three relevant years

of assessment. In our view, he has in any event failed to discharge the burden of showing that the Appellants did incur an amount in excess of the 20% allowed by the IRO.

9. In the event, we do not find merit in the points raised by Mr B. We accordingly dismiss this appeal and confirm the assessments appealed against.