

Case No. D77/05

Salaries tax – home loan interest deduction – sections 26E & 26F of the Inland Revenue Ordinance ('IRO') – whether loan of money applied wholly or in part for the acquisition of a dwelling – whether appellant discharged burden of showing assessments were excessive.

Panel: Kenneth Kwok Hing Wai SC (chairman), Ivan Chu Siu Lun and K L Alex Lau.

Date of hearing: 17 February 2006.

Date of decision: 10 March 2006.

The appeal of the appellant was heard by the Board together with her husband's appeal in D76/05. The facts are summarized in the headnote to D76/05, and stated in full in the Board's reasons for decision in that appeal. This appeal was dismissed for the same reasons given by the Board in the husband's appeal.

Held:

1. A deduction for home loan interest was introduced in 1998 by the addition of sections 26E and 26F in the IRO. In order to be deductible, the loan of money must have been applied wholly or partly for the acquisition of a dwelling. In other words, unless the acquisition of the dwelling was financed wholly or in part by a mortgage loan, the claims for deduction are bound to fail.
2. On the facts, there was no allegation and no evidence that any of the three loans were applied wholly or in part for the acquisition of property. In addition, the first loan had already been discharged prior to the relevant period in this appeal. Accordingly, the appellant had failed to prove that the loans were 'home loans' within the meaning of section 26E of the IRO.
3. *Obiter*. Whether an appellant is entitled to a deduction is governed by statute, and leaflets issued by the IRD do not change the law, and is not binding on the Board. More importantly, the leaflet did state that the home loan interest must have been paid for acquisition of a dwelling. There was no allegation nor evidence that this was the case. On the basis of what is stated in the leaflet, the deduction would not be granted.

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Appeal dismissed and costs order in the sum of \$2,500 imposed.

Taxpayer represented by her husband.

Lai Wing Man and Wong Kai Cheong for the Commissioner of Inland Revenue.

Decision:

1. This is an appeal against the Determination of the Deputy Commissioner of Inland Revenue dated 4 October 2005 whereby:

- (a) Additional salaries tax assessment for the year of assessment 1998/99 under charge number 9-2325685-99-7, dated 24 March 2005, showing additional net chargeable income of \$50,000 with additional tax payable thereon of \$8,500 was confirmed;
- (b) Salaries tax assessment for the year of assessment 2000/01 under charge number 9-2309992-01-5, dated 26 May 2005, showing net chargeable income of \$43,666 with tax payable thereon of \$1,306 was confirmed;
- (c) Additional personal assessment for the year of assessment 2000/01 under charge number 6-2308877-01-3, dated 26 May 2005, showing net chargeable income of \$318,766 with tax payable thereon of \$43,690 (the appellant's share being \$15,548) was confirmed;
- (d) Salaries tax assessment for the year of assessment 2001/02 under charge number 9-3502147-02-0, dated 23 November 2004, showing net chargeable income of \$198,259 with tax payable thereon of \$20,204 was confirmed;
- (e) Personal assessment for the year of assessment 2001/02 under charge number 6-3551076-02-1, dated 26 May 2005, showing net chargeable income of \$449,859 with tax payable thereon of \$62,976 (the appellant's share being \$30,431) was confirmed;
- (f) Personal assessment for the year of assessment 2002/03 under charge number 6-2113384-03-4, dated 26 May 2005, showing net chargeable income of \$498,492 with tax payable thereon of \$74,243 (the appellant's share being \$38,362) was confirmed;
- (g) Additional salaries tax assessment for the year of assessment 2003/04 under charge number 9-1916125-04-6, dated 26 May 2005, showing additional net

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chargeable income of \$50,000 with additional tax payable thereon of \$9,250 was confirmed; and

- (h) Additional personal assessment for the year of assessment 2003/04 under charge number 6-1916143-04-A, dated 26 May 2005, showing net chargeable income of \$502,761 with tax payable thereon of \$82,285 (the appellant's share being \$40,718) was confirmed.

2. The appellant in B/R 83/05 ('the Husband') and the appellant in B/R 84/05 ('the Wife') are husband and wife. The two appeals were heard together.

3. For reasons given in the Board's Decision in the Husband's appeal, we dismiss the Wife's appeal and confirm the assessments appealed against as confirmed by the Deputy Commissioner.

4. We order the Wife to pay the sum of \$2,500 as costs of the Board, which \$2,500 shall be added to the tax charged and recovered therewith.