

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D94/01

Salaries tax – home loan interest deduction – property – joint tenant becoming sole owner – when entitled to claim full deduction – section 26E of Inland Revenue Ordinance (‘IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), Samuel Chan Yin Sum and Cheung Wai Hing.

Date of hearing: 28 August 2001.

Date of decision: 7 November 2001.

The appellant and her husband bought, as joint tenants, a property financed by a loan in 1995. In June 1997, she divorced her husband and it was ordered by the court that the interest of her husband in the property be transferred to her. However, it was effected by an assignment in January 2001 only.

For the years of assessment 1998/99 and 1999/2000, the appellant paid loan interests. She claimed that she was entitled to deduct home loan interest in the sum of \$100,000 for each of these two years as she was the sole beneficial owner.

Held:

The Board held that the appellant became the sole owner and thus being entitled to claim full home loan interest deduction only when the interest of her husband in the property was vested to her in January 2001.

Appeal dismissed.

Wong Kuen Fai for the Commissioner of Inland Revenue.
Taxpayer in person.

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Decision:

Background

1. The Appellant and Mr A were husband and wife.
2. By an agreement dated 21 December 1995, the Appellant and Mr A purchased as joint tenants a flat at Housing Estate B ('the Flat') for \$1,850,000. The purchase was financed by a loan of \$1,295,000 from Bank C and by a further loan \$462,500 from the Hong Kong Housing Society ('the Housing Society'). Bank C and the Housing Society respectively held a first and second charge over the Flat.
3. By a Petition dated 30 September 1996, the Appellant petitioned for dissolution of his marriage with Mr A. A decree nisi was granted by Judge Bruno Chan on 20 June 1997. It was part of that Order that Mr A do transfer to the Petitioner all his interest in the Flat upon the decree nisi being made absolute. The decree nisi was made absolute on 17 July 1997.
4. By letter dated 4 May 1999, the Housing Society, subject to a like consent from Bank C, gave their consent to the transfer by Mr A of his interest in the Flat to the Appellant.
5. By letter dated 8 June 2000, the Appellant's solicitors wrote to Bank C and sought their consent. This was duly given on 28 June 2000.
6. By a deed of assignment dated 30 January 2001 ('the Deed'), Mr A assigned his interest in the Flat to the Appellant. The operative clause of that Deed reads as follows:

‘NOW THIS DEED WITNESSETH that in pursuance of the Order and with the consent of [Bank C] and the Housing Society AND IN CONSIDERATION of the payment of all moneys and interest now due and henceforth to accrue due under the First Charge and the Second Charge, the Assignor as BENEFICIAL OWNER ASSIGNS AND RELEASES to the Assignee all the Assignor's share estate right title benefit and interest of and in the said Property...’
7. During the years of assessment 1998/99 and 1999/2000, the Appellant paid loan interests in the sums of \$138,400 and \$116,480. She claims that she is entitled to deduct home loan interest in the sum of \$100,000 for each of these two years of assessment as she was the sole beneficial owner paying all the mortgage interests.

The relevant provisions in the IRO

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8. Section 26E of the IRO provides:

'(1) Subject to the other provisions of this section and to section 26F, where a person pays during any year of assessment any home loan interest for the purposes of a home loan obtained in respect of a dwelling which is used at any time in that year of assessment by the person exclusively or partly as his place of residence, a deduction in respect of the home loan interest shall be allowable to that person for that year of assessment.

(2) (a) Subject to paragraphs (b) and (c) and subsection (3), a deduction allowable to a person under subsection (1) in respect of any home loan interest paid by the person during any year of assessment shall be –

(i)(A) where the dwelling is used by the person exclusively as his place of residence during the whole of that year of assessment, the amount of the home loan interest paid; or

(B) in any other case, such amount (whether representing the full amount of the home loan interest paid or any part thereof) as is reasonable in the circumstances of the case; or

(ii) the amount specified in Schedule 3D in relation to that year of assessment,

whichever is of the lesser amount.

(b) For the purposes of this section, where a dwelling is held by a person otherwise than as a sole owner, the amount of the home loan interest paid referred to in paragraph (a)(i) shall be regarded as having been paid –

(i) where the dwelling is held by the person as a joint tenant, by the joint tenants each in proportion to the number of the joint tenants; or

(ii) where the dwelling is held by the person as a tenant in common, by the tenants in common each in proportion to his or her share in the ownership in the dwelling.

(c) For the purposes of paragraph (a), where a dwelling is held by a person other than as a sole owner, the relevant amount specified in

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Schedule 3D referred to in paragraph (a)(ii) shall be regarded as having been reduced –

¹ Schedule 3D of the IRO provides that for the year of assessment 1998/99 and for each year after that year, the relevant amount is \$100,000.

(i) *where the dwelling is held by the person as a joint tenant, in proportion to the number of the joint tenants; or*

(ii) *where the dwelling is held by the person as a tenant in common, between the tenants in common each in proportion to his or her share in the ownership in the dwelling.'*

9. Section 26F of the IRO provides that:

'(1) Where –

(a) a deduction is allowable to a person under section 26E for any year of assessment; and

(b) the person has no income, property or profits chargeable to tax under this Ordinance for that year of assessment,

the person may nominate his or her spouse, being a spouse not living apart from that person, to claim the deduction for that year of assessment.'

10. The word 'owner' is defined by section 2 of the IRO to include *'a person holding directly from the Government, a beneficial owner, a tenant for life, a mortgagor, a mortgagee in possession...'*

Our decision

11. The issue for our consideration is whether the Flat was 'held by [the Appellant] otherwise than as a sole owner' within the meaning of section 26E(2)(b) and section 26E(2)(c) of the IRO so that her claim is not to be reduced in accordance with those provisions.

12. We are of the view that the Revenue is correct in their contention that at the material times the Flat was not held by the Appellant as the sole owner. At all material times until the assignment on 30 January 2001, it was held by the Appellant and Mr A as joint owners. The assignment vested for the first time the legal and beneficial title of the Flat in the Appellant. It was only at that point that she became the sole owner.

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13. Section 26F of the IRO is inapplicable as the Appellant is no longer the spouse of Mr A.
14. For these reasons, we dismiss the Appellant's appeal.