**Case No. D 9/80**

*Board of Review:*

L. J. D'Almada Remedios, J.P., *Chairman*; Michael W. Y. Choy; Louis E. Saubolle; R. S. Sheldon, F.C.A. *Members*.

**15 October 1980.**

Inland Revenue Ordinance – ss. 8(1A), 9(1)(c) – Employee of Foreign Corporation – only part of income attributable to services rendered in Hong Kong – whether total yearly rent paid by employee to employer is apportioned for tax purposes on the same basis as salary.

The Appellant's yearly salary was US$89,888.00. It consisted of income derived abroad and from Hong Kong. Tax was payable in respect of that part of the salary derived from Hong Kong. The Appellant contended that the total sum of his yearly rent which he paid to his employer was deductible from the rental value calculated under section 9(1)(c) of the ordinance. The Revenue argued that the Appellant's rental contributions should be apportioned on the same basis as was his income.

**Held:** The Board found nothing in section 9(1)(e) which required the rent which the Appellant pays to his employer to be apportioned. The words "such rent" in s. 9(1)(c) means all the rent payable by the employee and not merely an apportioned amount.

The case was remitted to the Commissioner to review the assessments. [The Decision of the Board of Review was confirmed on appeal to the Court. The Court's judgment was given on 13 March 1981.]

A. K. Gill for the Commissioner of Inland Revenue.
D. Flux of Peat, Marwick Mitchell & Co. for the Appellant.

*Reasons:*

The Appellant is employed by a foreign corporation. His income is not derived from Hong Kong. But as he renders services in the Colony, such part of his income as is attributable to services rendered in Hong Kong is deemed income arising in or derived from the Colony: section 8(1A) of the Inland Revenue Ordinance. His total yearly remuneration (including services rendered out of the Colony) is US$89,888.00. His employer provides him with accommodation in Hong Kong. Accommodation is provided for the entire year and the rent he pays to his employer is US$4,200.00 per annum. His assessable income will, therefore, be the proportion which his salary bears to the number of days he has worked here

to which must be added the excess of rental value over rent (section 9(1)(c)). As the Appellant rendered services for 251 days in Hong Kong, his computation is as follows:

*Appellant's Calculation:*

| | | | |
|---|---|---|---|
| Salary etc. (US$89,888 x $\frac{251}{365}$ ) | = | | US$61,813 |
| Rental Value (10% x 61,813) | = | 6,181 | |
| *Less* Rent | = | 4,200 | 1,981 |
| Assessable | | | US$63,794 |

The Revenue, while accepting that rental value is to be calculated by taking 10% of the Appellant's chargeable income, contends that in applying section 9(1)(c) of the Inland Revenue Ordinance the total or annual rent contributed by the Appellant must be apportioned on the same basis as was his income. So we have the Revenue's calculation as follows:

*Revenue's Calculation:*

| | | | |
|---|---|---|---|
| Salary etc. (US$89,888 x $\frac{251}{365}$ ) | = | | US$61,813 |
| Rental Value (10% x 61,813) | = | 6,181 | |
| *Less* Rent (4,200 x $\frac{251}{365}$ ) | = | 2,888 | 3,293 |
| Assessable | | | US$65,106 |

We find nothing in section 9(1)(c) which required the rent which the Appellant pays to his employer to be apportioned. Section 9(1)(c) reads:

'Income from any office or employment includes –

(c) where a place of residence is provided by an employer or an associated corporation at a rent less than the rental value, the excess of the rental value over such rent;'

In the plain meaning of the section the words "such rent" means the rent which the Appellant pays to his employer for the residence provided. As the Appellant pays a rent of US$4,200.00, it is that rent which is to be deducted from the rental value and not the proportion thereof attributed to his length of stay in the Colony.

This case is, therefore, remitted to the Commissioner to revise the assessments under appeal which relate to the years 1977/78 and 1978/79 in accordance with our opinion.