

INLAND REVENUE BOARD OF REVIEW DECISIONS

**Case No. D15/03**

**Penalty tax** – incorrect tax return – whether appellant can use mistaken reliance on tax representative as a reasonable excuse – whether or not due allowance has been given in assessing additional tax at 7.47%.

Panel: Ronny Wong Fook Hum SC (chairman), Vincent Kwan Po Chuen and Robert Law Chi Lim.

Date of hearing: 31 March 2003.

Date of decision: 14 May 2003.

The appellant worked as assistant solicitor with Firm X between 1 April 2000 and 30 September 2000. The appellant submitted her return for the year of assessment 2000/01 and omitted from her return the entirety of her earnings from Firm X. The Commissioner imposed additional tax in the sum of \$3,200.

The appellant appealed and submitted that her omission was completely due to mistaken reliance on tax representative and to oversight of the tax return prepared by tax representative and further submitted that the sum of \$3,200 was too high.

**Held:**

1. A taxpayer may not shelter behind the fact that she entrusted professionals to discharge her legal duties on her behalf (D46/01, IRBRD, vol 16, 412 followed).
2. That was the first transgression by the appellant. The omission was however a glaring one. She completely omitted one source of her income. Her income from Firm X amounted to 45.3% of her total income. The appellant was a solicitor. She should be well familiar with her fiscal responsibilities. The Board was of the view that the Commissioner had given her due allowance in assessing additional tax at 7.47% of the amount of tax involved.

**Appeal dismissed.**

Case referred to:

## INLAND REVENUE BOARD OF REVIEW DECISIONS

D46/01, IRBRD, vol 16, 412

Leung Chi Ho for the Commissioner of Inland Revenue.  
Taxpayer in person.

### **Decision:**

1. For the period between 1 April 2000 and 30 September 2000, the Appellant worked as an assistant solicitor with Firm X. Her earnings from Firm X for that period amounted to \$251,831.
2. The Appellant commenced work with Company Y on 16 October 2000.
3. The Appellant submitted her return for the year of assessment 2000/01 on 14 July 2001. She reported her earnings from Company Y amounting to \$303,791. She omitted from her return the entirety of her earnings from Firm X.
4. After considering explanations from the Appellant dated 6 November 2002, the Commissioner, by notice dated 26 November 2002, imposed additional tax on the Appellant in the sum of \$3,200.
5. This is the Appellant's appeal against the additional tax so imposed.
6. In her notice of appeal dated 14 December 2002, the Appellant admitted that her omission 'is completely due to [her] mistaken reliance on [her] tax representative and to [her] oversight of the tax return prepared by [her] tax representative'. She further pointed out that this is her first omission. She assured this Board that she would not commit similar mistake in future.
7. There is little doubt that the Appellant does not have any reasonable excuse for her omission. As pointed out by this Board in D46/01, IRBRD, vol 16, 412, a taxpayer may not shelter behind the fact that she entrusted professionals to discharge her legal duties on her behalf. To the credit of the Appellant, she fully accepts her responsibility in this respect.
8. The issue before us relates to the quantum of additional tax. The Appellant blandly asserted that the sum of \$3,200 is too high. She did not undertake any legal research nor did she submit any authority to support her contention.
9. The Revenue submits that the starting point for this type of cases is 10% of the tax undercharged. The additional tax of \$3,200 is 7.47% of \$42,811 which is the amount of tax which

## INLAND REVENUE BOARD OF REVIEW DECISIONS

would have been undercharged had the Appellant's return been accepted as correct. The Revenue says that it has made due allowance for the mitigating circumstances in this case in departing from the 10% starting point.

10. This is the first transgression by the Appellant. The omission is however a glaring one. She completely omitted one source of her income. Her income from Firm X amounted to 45.3% of her total income. The Appellant is a solicitor. She should be well familiar with her fiscal responsibilities. We are of the view that the Commissioner had given her due allowance in assessing additional tax at 7.47% of the amount of tax involved. The Appellant has not persuaded us that we should interfere in any way.

11. For these reasons, we dismiss the appeal and confirm the assessment.