

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D174/98

Profits Tax – asset betterment statements – method of estimating income – taxpayer to prove it excessive.

Panel: Ronny Wong Fook Hum SC (chairman), Gidget Lun Kit Chi and Yeung Kwok Chor.

Date of hearing: 22 February 1999.

Date of decision: 17 March 1999.

The taxpayer returned the profits for the years of assessment 1985/86 to 1991/92 to the Revenue. The Revenue conducted an investigation into the practice of the taxpayer. Three asset betterment statements dated 19 August 1997; 21 November 1997 and 16 February 1998 were compiled by the Revenue. In each of those asset betterment statements, the Revenue compared the asset position of the taxpayer as at 1 April 1985 and 31 March 1992. The taxpayer protested against the very high figures adopted by the Revenue in the betterment statements of 19 August and 21 November 1997.

The taxpayer raised 3 contentions:

- (a) The sum of \$786,794 was wrongly deducted in compiling the assets as at 31 March 1992.
- (b) He borrowed a sum of \$761,257.14 from a Mr B for the purpose of effecting a remittance on 7 March 1991. The debt of \$761,257.14 due in favour of Mr B should be deducted from the assets as at 31 March 1992.
- (c) The Revenue put forward various figures on the basis of the assets betterment statements as the amount of profits earned by the taxpayer from his practice. The taxpayer estimates the figures of the Revenue are well in excess of his gross receipts for some those years.

Held:

The Board considered whether the taxpayer's contentions are supported by evidence. (D28/88 followed)

The Board found the evidence adduced by the taxpayer lends no support to contention (a). As to contention (b), the Board is satisfied that US\$21,716.3 and HK\$574,320 (HK\$514,320 + HK\$60,000) came from Mr B and should be

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excluded from the betterment statement. The Board rejected contention (c) as it is not supported by evidence.

Appeal allowed in part.

Case referred to:

D28/88, IRBRD, vol 3, 312

Tang Ngan Ling for the Commissioner of Inland Revenue.
Chan Hing Ka of H K Chan & Co for the taxpayer.

Decision:

Background

1. The Taxpayer is a graduate from a university in China. He came to Hong Kong in 1978. He became professionally qualified in Hong Kong in July 1979. He started his own clinic in about May 1985.
2. For the years of assessment 1985/86 to 1991/92, the Taxpayer returned the following profits to the Revenue:

Year of Assessment	Profits Reported
1985/86	\$101,380
1986/87	\$162,260
1987/88	\$199,682
1988/89	\$248,566
1989/90	\$331,285
1990/91	\$385,841
1991/92	\$921,992

3. The Revenue conducted an investigation into the practice of the Taxpayer. Three asset betterment statements dated respectively 19 August 1997; 21 November 1997 and 16 February 1998 were compiled by the Revenue. In each of those asset betterment statements, the Revenue compared the asset position of the Taxpayer as at 1 April 1985 and 31 March 1992. The position as at 1 April 1985 is summarised in Appendix I and the position as at 31 March 1992 is summarised in Appendix II.
4. The Taxpayer protested against the very high figures adopted by the Revenue in the asset betterment statements of 19 August and 21 November 1997. As far as the issues before us are concerned, the Taxpayer raised 3 points:

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(a) **Proper treatment of repayment by Ms A**

- (i) It will be seen from Appendix II that the Revenue deducted the sum of \$786,794 in compiling the assets as at 31 March 1992.
- (ii) The Taxpayer contends that the figure of \$786,794 should be included as part of his assets as at 1 April 1985.

(b) **Remittance as at 7 March 1991**

The Taxpayer contends that he borrowed a sum of \$761,257.14 from a Mr B for the purpose of effecting a remittance on 7 March 1991. The debt of \$761,257.14 due in favour of Mr B should be deducted from the assets as at 31 March 1992.

(c) **The gross receipts**

- (i) The Revenue put forward various figures on the basis of the assets betterment statements as the amount of profits earned by the Taxpayer from his practice.
- (ii) The Taxpayer contends that on his best estimates those figures of the Revenue are well in excess of his gross receipts for some those years.

Year of assessment	Profits originally reported by the Taxpayer	Gross receipts contended by the Taxpayer	Amount of profits
1985/86	\$101,380	\$297,350	\$428,815
1986/87	\$162,260	\$359,950	\$530,403
1987/88	\$199,682	\$725,625	\$820,745
1988/89	\$248,566	\$999,750	\$982,468
1989/90	\$331,285		\$1,060,517
1990/91	\$385,841		\$1,175,685
1991/92	\$921,992		\$1,011,794

5. The status of asset betterment statement has been described by this Board in D28/88, IRBRD, vol 3, 312 in these terms:

'The assets betterment statement method of estimating the income of a taxpayer provides the taxpayer with the opportunity, if he is aggrieved by the assessment raised on that basis, of satisfying the Board that the increase in his wealth did not arise from his business activities. If at the end of the Board hearing there is no acceptable evidence or insufficient evidence to warrant a conclusion that the assessment are excessive, then the same must stand.'

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We have to consider whether there is any acceptable evidence on each of the 3 issues raised.

6. The Taxpayer elected not to give sworn evidence but sought to place before us various documents coupled with his own explanations.

7. **Proper treatment of repayment by Ms A**

(a) The Taxpayer produced the following:

- (i) A borrowing note dated 9 January 1988 with Ms A as borrower and the Taxpayer as lender for a loan of \$260,000. The note provided for repayment on 31 October 1988.
- (ii) A letter from Messrs Chow, Griffiths & Chan dated 22 July 1988 reporting to the Taxpayer the institution of a court action.
- (iii) A further letter from Messrs Chow, Griffiths and Chan dated 12 July 1995 to the Taxpayer informing him that a sum of \$786,794 was remitted into his account with Bank C on 25 August 1988 in respect of his action against a travel agency and Ms A in 1988.

(b) These 3 heads of evidence lend no support to the Taxpayer's contention that the advance to Ms A should be regarded as part of his assets as at 1 April 1985.

8. **Remittance as at 7 March 1991**

(a) A certificate of balance issued by Bank C certifying the following deposits were placed in the name of Mr B in a time deposit account ('Account 1') on 23 October 1990:

- (i) NZ\$123,702.7.
- (ii) HK\$372,456.62.
- (iii) US\$6,489.71.

(b) A certificate of balance issued by Bank C certifying the following deposits were placed in the name of Ms D in a time deposit account ('Account 2') on 23 October 1990:

- (i) Can\$91,227.68.
- (ii) HK\$632,348.56.

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- (iii) HK\$650,096.5.
- (c) 3 savings account withdrawal slips all signed by Ms D making the following withdrawals from Bank C:
 - (i) \$50,000 from the Taxpayer's account ('Account 3').
 - (ii) \$60,000 from Mr B's account ('Account 4') and
 - (iii) \$60,000 from the Taxpayer's account ('Account 5').
- (d) A confirmation of uplift of deposit from Account 1 dated 7 March 1991 issued by Bank C to Mr B in respect of \$1,405,530.5 by way of principal and \$3,008.3 by way of interest totalling \$1,408,538.8. \$514,320 was paid in cash and \$894,218.8 was paid by transfer. Payments were acknowledged by Ms D.
- (e) A customer's receipt issued by Bank C in respect of a remittance of US\$111,716.3 to Mr E's account in Country F. For the purpose of such remittance, Bank C acknowledged receipt from the Taxpayer.
 - (i) US\$21,716.3 from Account 1. At rate of 7.79, this would amount to HK\$169,169.97.
 - (ii) HK\$701,870. At rate of 7.79, this would amount to US\$90,000.
- (f) It would appear that the Taxpayer's case is that the sum of HK\$701,870 for the purchase of US\$90,000 forming part of the remittance of US\$111,716.3 to Mr E was financed as follows:
 - (i) HK\$50,000 and HK\$60,000 totalling HK\$110,000 from the 2 withdrawals from his personal account.
 - (ii) HK\$60,000 from Account 4 of Mr B.
 - (iii) HK\$514,320 from the cash withdrawn on uplift of Account 1.

This explanation would still leave HK\$17,550 unaccounted for.
- (g) The Revenue submitted that:
 - (i) The Taxpayer maintained joint account(s) with Ms D for the management of the Taxpayer's assets.
 - (ii) Mr B is the son of Ms D. Mr B had no personal asset.

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- (iii) There were numerous transfers from the joint account(s) of the Taxpayer and Ms D for use of Mr B and Ms D.
- (iv) The Taxpayer submitted no proof of repayment to Mr B.
- (h) Apart from these submissions, the Revenue placed little evidence before us in support of their assertions. In the absence of such evidence, we are faced with the bank documents produced by the Taxpayer and we feel we should give effect to the prima facie inference derived from those documents. We are satisfied that US\$21,716.3 and HK\$574,320 (HK\$514,320 + HK\$60,000) came from Mr B and should be excluded from the asset betterment statement.

9. **The gross receipts**

- (a) The taxpayer simply gave us his best estimates. He adduced no evidence pertaining to his expenses. He made no attempt to reconcile his estimates with the amount of profits that he initially reported to the Revenue.
- (b) We have no hesitation in rejecting the argument of the Taxpayer.

10. For these reasons, we allow the appeal in part. The assessor will revise the amount of profit for the years in question in the light of our ruling.

11. We would like to point out that the Taxpayer has brought these proceedings upon himself by failing to seek proper legal advice as to his fiscal position. He should take heed from this episode.