

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D22/02

Penalty tax – taxpayers are obliged to submit in their returns all income they received from their employments – obligation to report one’s earnings is personal to the taxpayer – delegation of such obligation is at the risk of the taxpayer – attempt to conceal earnings from the purview of the Revenue – submission of incorrect tax returns without reasonable excuse – imposition of additional tax assessments at the average rate between 66% and 74% – a norm of 100% of the tax underpaid – section 82A(4) of the Inland Revenue Ordinance (‘IRO’)

Panel: Ronny Wong Fook Hum SC (chairman), James Kwan Yuk Choi and George Lo Kwan Wong.

Date of hearing: 28 February 2002.

Date of decision: 18 June 2002.

The appellant was a car salesman employed by Company A. Apart from receiving earnings from Company A, he also received commission from Company B for introducing clients regarding car purchase finance facilities. With the authorization of the appellant, Company B would credit all commission payable to him into the account of Company C with Bank D.

The appellant submitted his returns for the relevant years of assessment 1993/94, 1994/95 and 1995/96 in which he omitted to report to the Revenue his commission from Company B.

As a result, the Revenue raised additional and revised assessments against the appellant for the said three years of assessment and also imposed additional tax on the appellant by way of penalty under section 82A of the IRO on the ground of incorrect tax returns.

On average, the percentage of additional tax assessed over undercharged tax was between 66% and 74%.

The appellant appealed under section 82B of the IRO against these additional or penalty tax assessments on the grounds stated in his notice dated 7 November 2001 to the Revenue, that is:

- (a) Company B told him that he would be exempt from tax liability if his commission be paid into the account of a company. He relied on this intimation and directed that his commission be credited into Company C’s account.

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- (b) He was not entitled in full to the commission so credited in favour of Company C. Company C kept two thirds of the commission received. Company C promised to submit returns in respect of the commission received.

The facts appear sufficiently in the following judgment.

Held:

1. The Board was of the view that the submissions of the appellant did not constitute reasonable excuse for his incorrect returns.
2. The Board was concerned with short return of the admitted earnings of the appellant. At no time did the appellant submit any evidence to the Revenue or to this Board to support the contention that the payments by Company B to Company C were in fact earnings of Company C.
3. Given the fact that the payments to Company C were in truth earnings of the appellant, one had to bear in mind the repeated reminders from the Revenue to all taxpayers of their obligations to submit in their returns all income they received from their employments.
4. The alleged suggestion from Company B was opened to two interpretations. Standing on its own, the suggestion was no more than an attempt to conceal such earnings (through the medium of Company C) from the purview of the Revenue. It was wholly unreasonable for the appellant to rely on such suggestion.
5. The alternative interpretation was to link the alleged suggestion of Company B with the promise of Company C to report the appellant's earnings to the Revenue. The Board had repeatedly made clear that the obligation to report one's earnings was personal to the taxpayer. A taxpayer delegates such obligation at his own risk. In this case the appellant made no attempt to verify the due discharge by Company C of his own obligation.
6. The amount of additional tax levied by the Commissioner was between 66% and 74% of the amount of tax undercharged. This was well below the 100% norm endorsed by the Board for transgressions of this nature. The Board had no doubt that the Commissioner had given the appellant heavy discounts in view of his co-operation. The Board saw no reason to interfere with the amounts which he imposed.

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Appeal dismissed.

Mui Ying for the Commissioner of Inland Revenue.
Taxpayer in absentia.

Decision:

Background

1. The Appellant commenced employment as sales representative of Company A in about September 1989. In the course of his employment with Company A, he introduced customers purchasing Company A's motor cars to Company B for finance facilities in respect of such purchase. The Appellant was entitled to commission arising from such introduction.
2. By an authorization dated 2 April 1991, the Appellant authorised Company B to credit all commission payable to him into the account of Company C with Bank D.
3. The Appellant submitted his returns for the years of assessment 1993/94, 1994/95 and 1995/96 on 29 May 1994, 31 May 1995 and 12 June 1996 respectively. He reported to the Revenue his earnings from Company A and (for the year of assessment 1995/96) his earnings from Company A and Company E. He omitted to report to the Revenue his commission from Company B.
4. The Appellant emigrated to Country F with his family in June 1999.
5. In the first quarter of 2000, the Revenue commenced investigation into the Appellant's tax affairs. In order to assist in such investigation, the Appellant returned to Hong Kong and attended two interviews with the assessors held on 11 and 27 July 2000. Agreement was reached between the Appellant and the Revenue as to the amounts of his assessable income for the three years of assessment in question as follows:

Year of assessment	Net assessable income	Net assessable income already reported/assessed	Additional net income not reported/assessed previously
	\$	\$	\$
1993/94	269,405	146,281	123,124
1994/95	192,188	136,508	55,680
1995/96	123,615	111,840	11,775

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6. Consequential upon this agreement between the parties, the Revenue raised additional and revised assessments against the Appellant for the three years of assessment in question on 4 August and 30 November 2000.

7. By notice dated 20 June 2001, the Commissioner of Inland Revenue notified the Appellant of his intention to exercise his powers under section 82A(4) of the IRO. The Commissioner is of the opinion that the Appellant has, without reasonable excuse, made incorrect returns for the three years of assessment in question.

8. By notices dated 15 October 2001, the Commissioner made the following additional tax assessment against the Appellant:

Year of assessment	Net assessable income	Net assessable income already reported/assessed	Additional net income not reported/assessed previously	Amount of tax undercharged	Additional tax levied	Relationship between additional tax and the net income not reported/assessed previously
	\$	\$	\$	\$	\$	%
1993/94	269,405	146,281	123,124	29,640	22,200	74.89
1994/95	192,188	136,508	55,680	10,671	8,000	74.96
1995/96	<u>123,615</u>	<u>111,840</u>	<u>11,775</u>	<u>1,060</u>	<u>700</u>	66.03
	<u><u>585,208</u></u>	<u><u>394,629</u></u>	<u><u>190,579</u></u>	<u><u>41,371</u></u>	<u><u>30,900</u></u>	74.69

9. The Appellant did not attend the hearing before us held on 28 February 2002. By letters dated 7 December 2001 and 24 January 2002, he invited this Board to consider his appeal in his absence. He indicated to this Board that he relies on the grounds as outlined in his notice dated 7 November 2001.

10. By his notice dated 7 November 2001, the Appellant explained that:

- (a) Company B was an associated company of Company A. Company B told him that he would be exempt from tax liability if his commission be paid into the account of a company. He relied on this intimation and directed that his commission be credited into Company C's account.
- (b) He was not entitled in full to the commission so credited in favour of Company C. Company C kept two thirds of the commission received. Company C promised to submit returns in respect of the commission received.

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11. We are of the view that these submissions of the Appellant do not constitute reasonable excuse for his incorrect returns. We are concerned with short return of the admitted earnings of the Appellant. At no time did the Appellant submit any evidence to the Revenue or to this Board to support the contention that the payments by Company B to Company C were in fact earnings of Company C.

12. Given the fact that the payments to Company C were in truth earnings of the Appellant, one has to bear in mind the repeated reminders from the Revenue to all taxpayers of their obligations to submit in their returns all income they received from their employments. The alleged suggestion from Company B is opened to two interpretations. Standing on its own, the suggestion was no more than an attempt to conceal such earnings (through the medium of Company C) from the purview of the Revenue. It was wholly unreasonable for the Appellant to rely on such suggestion. The alternative interpretation is to link the alleged suggestion of Company B with the promise of Company C to report the Appellant's earnings to the Revenue. This Board has repeatedly made clear that the obligation to report one's earnings is personal to the taxpayer. A taxpayer delegates such obligation at his own risk. In this case the Appellant made no attempt to verify the due discharge by Company C of his own obligation.

13. The amount of additional tax levied by the Commissioner is between 66% and 74% of the amount of tax undercharged. This is well below the 100% norm endorsed by this Board for transgressions of this nature. We have no doubt that the Commissioner had given the Appellant heavy discounts in view of his co-operation. We see no reason to interfere with the amounts which he imposed.

14. For these reasons, we dismiss the appeal.