

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D28/85

Board of Review:

H. F. G. Hobson, *Chairman*, Patrick W. C. Chan, David A. Morris, *Members*.

31 October 1985.

Profits Tax—additional assessment—appellant dispensed with the filing of Annual Profits Tax Returns—Assets Betterment Statement—onus of proving assessment wrong.

The Appellant was the proprietor of a laboratory from 1974 to 1982. In 1975 he was informed by the Assessor in writing that he was thereafter not required to make annual Profits Tax Returns. Following an investigation by the Revenue of his affairs in 1981, an additional profits tax assessment for the year 1976/77 was raised on him. On objection, the Deputy Commissioner reduced the additional assessment to an amount based on the Assets Betterment Statement. The Appellant appealed, contending that he was exempt from declaring his profits and the Revenue had no evidence of his derivation of profits as shown by the Assets Betterment Statement.

Held:

- (1) The letter issued by the Assessor in 1975 had no bearing on the appellant's liability to tax.
- (2) The Assets Betterment Statement disclosed a prima facie case for the betterment. The Appellant had not discharged by corroborative evidence the onus placed on him of establishing that the assessment was wrong.

Appeal dismissed.

Hui Wing Kuen for the Commissioner of Inland Revenue.
Appellant in person.

Reasons:

This case came before us on appeal from a Determination of the Acting Deputy Commissioner (“ADC”) of Inland Revenue in connection with an Additional Profits Tax Assessment for 1976/77. The Taxpayer however sought before us to extend the appeal to the successive four years. Mr. HUI Wing-kuen, Chief Assessor, for the Revenue pointed out that the Taxpayer failed to file a written objection in respect to those four years within the one month period referred to in section 64. The Taxpayer claimed that he had objected but produced no evidence of having done so. We therefore propose to confine this decision to the 1976/77 year of assessment (the “Relevant Year”). The Taxpayer agreed with the Facts contained in the ADC's Determination which are summarized below.

In 1974 the Taxpayer set up business as a laboratory proprietor in Hong Kong but closed that business in 1982. He maintained no financial or commercial records. In 1981 the

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Revenue began an investigation of his affairs and in consequence raised an additional profits tax assessment for his business—namely \$250,000 for the Relevant Year. The Taxpayer objected, whereupon discussions and correspondence took place with the Revenue which led the latter to prepare an Assets Betterment Statement (“ABS”) for the Relevant Year (\$192,012) and the succeeding four years. This was sent to the Taxpayer but he made no written representations by way of challenging the ABS. Consequently the Assessor raised new additional profits tax assessments, the figure for the Relevant Year being \$208,065 that is to say less than the original additional profits tax assessments but greater than the figures shown in the ABS for that year. The Taxpayer then objected to the Relevant Year’s figure of \$208,065 to the ADC: it is clear from his Determination that he had received no written objection to the assessment for the four following years. The ADC reduced the Relevant Year’s additional profits tax assessment to \$192,012, in line with the ABS. His ground for upholding the ABS was mainly because though the Taxpayer alleged he had brought money from Macau (the amount whereof was not specified to the ADC) no supporting evidence was presented to the ADC: the ADC treated the ABS as acceptable.

Before the Board of Review the Taxpayer expressed his grounds of appeal as follows:—

1. He was told by an Assessor back in 1975 that he was thereafter exempt from declaring his profits;
2. The IRD have no evidence that he had derived a profit from his business; and
3. The ABS did not conform to the facts.

There was a fourth ground of appeal concerning the four successive years but that is irrelevant to this Decision.

As regards the first ground of appeal, in our view it is not a ground of appeal with which the Board of Review can deal, though it is one which could be put before the Commissioner; the reason being that it has no bearing on whether or not as a matter of law the Taxpayer is liable to profits tax for the Relevant Year. Nonetheless the point was ventilated and in response Mr. Hui produced the standard form letter (IR 165) dated the 22 May 1975 which had been sent to the Taxpayer. It is clear that though the form letter stated that the Assessor would not be asking the Taxpayer to make annual profits tax returns each year in the future nonetheless the Taxpayer was warned that he must inform the Revenue if there were any changes in various circumstances including in particular if his business profits were to exceed \$27,000 in any year, and that he must retain records for at least seven years. We accordingly reject this ground both as being unacceptable in law and as indicating that the Taxpayer would thereafter not be liable to tax.

As to the second ground, in the first place section 68(4) places the onus upon the Taxpayer to show the Board why the ADC’s Determination is excessive or incorrect (see also *Mills-Owen J in Mok Tsze Fung v CIR*, HKTC 179). Provided the ABS discloses a *prima facie* case for the Betterment (see *Hudson v Humbles* 1965 TC p. 387 first paragraph),

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it is up to the Taxpayer to produce convincing evidence in rebuttal. We therefore reject this second ground of appeal.

Finally regarding the third ground, the Taxpayer, who gave evidence on oath, maintained that over a number of years prior to the Relevant Year he had been bringing money in from Macau quite regularly where he had a medical practice, he having a medical qualification from a Shanghai university which was recognized by the Macau authorities. That practice was successful but due to pressure brought upon him in Macau he chose to start up a medical laboratory business in Hong Kong, though he did visit old patients in Macau if advance appointments were made. The Taxpayer said the sums of money he brought were in cash, the largest amounts being between \$10,000 and \$20,000 and he estimated that they totally about \$300,000. He told us that he had placed these sums into accounts with several banks but he was unable to remember which banks.

The Taxpayer did however remark that the best source for determining his business's activities would be through the receipts of another laboratory with which he had dealings and which kept records of those dealings. However he admitted that none of these had been tendered to the Revenue nor were they produced before us. The Taxpayer attempted to convince us, by means of negative argument, that the ABS was too high arguing that the earnings shown in the ABS presupposed a daily in-take of \$600 to \$700 and that since his laboratory's sold business was carrying out urine tests at \$10 each and as he was the only person employed, the extent of the figure was quite unrealistic. Again we only have the Taxpayer's word both as to the limitation of his business and the fees he charged.

The Taxpayer having failed to produce to us any form of extrinsic corroborative evidence and after studying the ABS which does disclose a prima facie case of betterment we have no choice but to reject this third ground.

In the circumstances we find that the Taxpayer has failed to make his case and his appeal is therefore dismissed.