

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D30/89

Salaries tax – assets betterment statement – onus of proof.

Panel: Robert Wei QC (chairman), Chiu Chun Bong and Gerald C Dobby.

Dates of hearing: 11, 12 and 14 April 1989.

Date of decision: 11 August 1989.

The taxpayer was employed by two companies owned and controlled by the taxpayer and his wife. As the result of an investigation into the tax affairs of the taxpayer, an assets betterment statement was prepared. The taxpayer did not agree the assets betterment statement which formed the basis of certain tax assessments against which the taxpayer appealed. At the hearing of the appeal, the taxpayer adduced evidence in support of certain deductions which he claimed should be made to the assets betterment statement. In the course of the hearing, the representative for the Commissioner agreed that there were certain discrepancies in the assets betterment statement.

Held:

The assets betterment statement procedure is a recognised method of assessing a taxpayer's income or profits. The onus is on the taxpayer to prove that the assessment is wrong and in the case of an assets betterment statement, this means that the taxpayer has to prove that the statement is excessive or wrong. In the present case, the taxpayer was not able to prove to the satisfaction of the Board that the amendments which he sought to have made to the assets betterment statement were justified save and accept for those which the Revenue agreed in the course of the hearing.

Appeal dismissed.

Cases referred to:

D4/72, IRBRD, vol 1, 84  
D14/83, IRBRD, vol 2, 47  
D28/88, IRBRD, vol 3, 312  
Hudson v Humbles 109 SJ 315

G J Laird for the Commissioner of Inland Revenue.  
Denis O'Dwyer of Spicer & Oppenheim for the taxpayer.

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### Decision:

1. This is an appeal by the Taxpayer against the salaries tax additional assessments (as revised) raised on him for the 1976/77 to 1981/82 years of assessment inclusive in respect of his income arising in or derived from Hong Kong from offices and employments.

2. The Taxpayer filed salaries tax returns for 1976/77 to 1981/82 disclosing the receipt of certain emoluments from two companies which will be referred to as A Company and B Company. At all relevant times, A Company and B Company carried on similar business as importers/exporters and commission agents and were owned and controlled by the Taxpayer and his wife, the Taxpayer being a director in both companies.

3. An investigation commenced in May 1983 into the Taxpayer's tax affairs for the years in question resulted in an assets betterment statement which after a revision formed the basis of the revised additional assessments under appeal.

4. An assets betterment statement (ABS) is a recognised method of assessing a Taxpayer's income or profits by showing his increases in assets and his expenses on the one hand and his returned income or profits on the other, and the excess, if any, of the former over the latter. The excess, or discrepancy as is commonly called, unless satisfactorily accounted for, is taken to be the Taxpayer's understated income or profits. On appeal, the onus is on the Taxpayer to prove that the assessment is excessive or wrong. This means that in the case of an assessment or additional assessment based on an ABS, the Taxpayer has to prove that the ABS is excessive or wrong. Over the years previous Boards have repeatedly explained the function and principles of an ABS: see D4/72, D14/83 and D28/88 and Hudson v Humbles 109 SJ 315.

5. In the present case, the Taxpayer's case is that certain items, which may be grouped into three categories, were wrongly included in the ABS.

(a) Fixed deposits with banks

These deposits were held in the name of the Taxpayer, in the joint names of the Taxpayer and third parties, in the joint names of the Taxpayer and his wife or in the name of the wife. The Taxpayer's evidence is that deposits held in his own name and in the joint names of himself and third parties represented monies remitted illegally by relatives and friends from Sri Lanka and held by the Taxpayer in trust for them whilst deposits held in his wife's name were monies remitted from Sri Lanka but belonging to him and his wife. The Taxpayer could produce no contemporaneous records to prove these remittances although he claimed that he had kept a file relating to these deposits but had lost

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it. He called two witnesses who stated that they were his relatives and had remitted monies from Sri Lanka to him to be held in trust for them. One of the witnesses was shown a list of fixed deposits and had his attention drawn to the particulars of two deposits which he identified as belonging to him. However, as his name appeared among the particulars, we do not regard the identification as satisfactory. Neither the Taxpayer nor the other witness made any identification of the deposits. The Taxpayer's wife, who also gave evidence, stated that the deposits in her name consisted of her own monies which her sister had remitted to her from Sri Lanka. She produced no documentary evidence of the deposits, nor did she identify any of them. Mr Laird for the Commissioner of Inland Revenue took the point, which was not disputed by Mr O'Dwyer for the Taxpayer, that before the hearing of this appeal the Taxpayer never claimed that any of the deposits was his or his wife's property.

(b) Payments for jewellery and expenses for third parties

This item concerns certain payments made by the Taxpayer's wife by cheques drawn on her bank account. The Taxpayer's case is that they were payments made on behalf of friends in respect of purchases of jewellery and expenses and that she was reimbursed in cash or by travellers' cheques. There was no documentary evidence as to the nature of the payments or the identity of the reimbursements. The Taxpayer's wife stated that she could not write and did not keep her cheque counterfoils. As for the 'reimbursements', which were 38 in number, with one minor exception none of them corresponded in amount with the payments.

(c) Unidentified withdrawals

(i) This concerns 5 withdrawals from the Taxpayer's bank accounts. There is no evidence as to the nature of these payments.

(ii) 2 April 1979 uplift of call deposit of \$1,268,776

The Taxpayer's answer to the Revenue's enquiry had been that the uplift was for the repayment of the deposit held in trust. The Commissioner's comment was that he could not understand the Taxpayer's explanation. At the hearing the Taxpayer stated that he only fully remembered what the call deposit was for during a discussion with his wife about three weeks before the hearing and that the money was in fact a deposit for a plot of land in Colombo which someone was seeking to purchase from the Taxpayer's brother and was later returned to this person because there was some problem over vacant possession. The Taxpayer's brother gave evidence to confirm the story, stating that the deal fell through because he could not get the sitting tenant to move out. He showed us a file relating to the plot of land containing among other things some court

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documents, but he could not point to any document to show a connection with the alleged sale or the payment of the deposit.

6. Having considered the evidence we are of the view that the Taxpayer has not proved that the items in question were wrongly included in the ABS. Therefore, subject to what is said in the following paragraph, this appeal is dismissed.

7. In the course of the hearing the parties agreed that the year end discrepancies shown in the ABS, having been revised as per the letter dated 18 September 1987 from the Commissioner to the Taxpayer, should be further revised to take into account the foreign exchange gains on the fixed deposits, the quantum of such gains to be agreed, if possible, between the parties. Mr Laird also informed the Board that he was able to trace some nine sums put forward as reimbursements in respect of the payments for jewellery and expenses and therefore that there should be a deduction of \$598,672 representing the total of the nine sums under that head. That being so, this case is remitted to the Commissioner for the additional assessments to be revised accordingly.