

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D34/85

Board of Review:

Charles A. Ching, *Chairman*; G. C. Docherty and K. W. Young, *Members*.

30 December 1985.

Profits tax—additional assessment—additional Profits Tax derived from the sale of stamps.

The Appellant was engaged in the garment business. He was interested in stamp collecting and had a collection of stamps. He purchased a stamp shop including the stock in trade. The stamp shop was subsequently closed down and the Appellant sold the stamps in his possession. Additional assessments to Profits Tax were raised on him for the years 1977/78 to 1982/83 and the Appellant appealed on the ground that part of the additional profits arose from the sale of the stamps, the collection of which was the Appellant's hobby.

Held:

The evidence of the Appellant was not acceptable and accordingly the Appellant had failed to discharge the onus of proof placed on him under Section 68(4) of the Inland Revenue Ordinance that the assessment appealed against was incorrect.

Appeal dismissed.

Chan Siu Yuen for the Commissioner of Inland Revenue.
Appellant in person.

Reasons:

The Assessor raised additional assessments against the taxpayer for the year 1977/78 to 1982/83 inclusive. The taxpayer lodged an objection with the Commissioner who determined it against him save for the making of substantial reductions. The taxpayer now appeals to us.

The sole ground of appeal urged before us was that part of the additional 'profits' were derived from the sale of stamps, the collection of which was the taxpayer's hobby. This appears to have been the way the matter was put before the Commissioner. The Commissioner rejected the argument for want of detail and evidence.

The taxpayer's evidence before us was as follows. He came to Hong Kong in 1962 and started to work in 1964 when he was only 14. He became interested in stamp collecting and by 1974 had a collection which he estimates was worth \$10,000 odd to \$20,000. In the same year two other things happened. First, he became engaged in the garment making trade. Secondly, his younger brother retired from his occupation of a seaman. There was a stamp

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shop for sale in the B Building and this was purchased including its furniture and fittings and the stock in trade. There was a lease which had six months to run and this was renewed at the appropriate time for another two years. The purchase price was \$100,000. The taxpayer contributed \$20,000 and his collection of stamps the value of which, for the purposes of this part of his evidence, he put at \$20,000. His brother contributed \$20,000. The total cash of \$40,000 was used as a downpayment and the balance of the purchase price was to be paid 6 months after the remaining stock and the taxpayer's collection had been sold. The younger brother looked after the shop but found the hours too long. The business was therefore closed down before the end of the two year renewed term. The remaining stamps were then distributed between the two brothers, 60% going to the taxpayer and 40% going to the younger brother. It was the proceeds of the sale of these stamps that the Commissioner wished to tax. The taxpayer sold the stamps in this way. A friend of his, also in the stamp trade, put about the word that the taxpayer had stamps for sale. The friend would then introduce purchasers to the taxpayer over a cup of tea. Purchases were made in cash which the taxpayer would not deposit into a bank account but would take home or to his garment factory to be used to defray some of his business expenses. The accounts of the factory show only a part of those expenses. In each of the years 1981, 1982 and 1983, he received about \$100,000 from the sale of the stamps.

The taxpayer's younger brother also gave evidence before us. He confirmed the opening of the stamp shop in 1974, that the purchase price was \$100,000 of which he contributed \$20,000 and his brother contributed \$20,000 and his stamp collection. He said that the value of the stock taken over was about \$250,000 to \$300,000. The vendor was an old man who was about to emigrate to Canada. He confirmed also that upon the shop closing down the taxpayer had been given 60% of the remaining stock while he himself had been given 40% which he valued at \$80,000. He was not present when the taxpayer sold his stamps. He assisted the taxpayer in making out lists of stamps which the taxpayer had bought and sold.

It was conceded that the burden of proof, on a balance of probability, was on the taxpayer under section 68(4) of the Inland Revenue Ordinance, Cap. 112. We find that we cannot accept the evidence of the taxpayer and his brother.

Section 51C of the Ordinance required the taxpayer to keep such sufficient records of his garment business to enable the assessable profits to be readily ascertained. The taxpayer claims that of the proceeds of the sale of stamps used for that business only some was recorded. He must accept that without proper records his claims will have to be proved by clear evidence.

We found the evidence as to the price paid for the stamp shop and the value of its stock incredible. An old man about to emigrate to Canada would have wanted as much as he could get. Quite apart from that, it does not make business sense to sell stock worth \$250,000 to \$300,000 for \$100,000, that price to include the furniture and fixtures as well. In addition, if the younger brother's 40% share of the remaining stock was worth \$80,000 then the taxpayer's must have been worth \$120,000. Yet he sold a few years later for a total

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of \$300,000. Even then the figures he gave in evidence did not accord with those given to the Commissioner.

Nor can we accept the evidence as to the manner of the sales. The taxpayer claimed to have a poor memory. Yet with the assistance of his brother who had witnessed none of the sales he was able to cause his brother to draw up a list of sales years later, identifying the stamps, giving the number of stamps and the unit prices at which they were sold. He claimed that the list was 80% correct. Meetings in tea shops for cash transactions in the tens of thousands of dollars are not credible.

It did not seem to us that the taxpayer was in need of the money, as he claimed. As pointed out by Mr. Chan Shiu-yuen, who appeared for the Commissioner with Mr. Au Shiu-bang, he had ample funds in the bank.

For these reasons we dismiss the appeal.