

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D34/89

Penalty assessment – unsophisticated individual running small business – quantum of penalty for filing incorrect tax return – section 82A of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Terence Tai Chun To and Ronny Wong Fook Hum.

Date of hearing: 11 July 1989.

Date of decision: 18 August 1989.

The taxpayer carried on a cottage type of business and had no one to prepare his account for him. He admitted that his accounts were not correct and that he had inadvertently omitted some invoices. The tax undercharged was \$290,591 and the penalty imposed was \$17,000. The taxpayer submitted that this was excessive.

Held:

It is necessary to try to equate the facts of one case with another when deciding the quantity of penalty tax assessments. The fact that the taxpayer was not a sophisticated individual running a large business and had few management skills must be weighed against the obligations imposed upon everyone under the Inland Revenue Ordinance. Ignorance of the law and of accounting is no excuse. It is the duty of anyone engaging in business to maintain adequate accounts and to file true and correct tax returns. In all of the circumstances the penalty imposed was not excessive.

Appeal dismissed.

Chung Sik Keung for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

This is an appeal by a taxpayer against an additional tax assessment imposed upon him under section 82A of the Inland Revenue Ordinance for the year of assessment 1985/86.

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The facts of this case appear in a statement of relevant events which was prepared on behalf of the Commissioner and agreed by the Taxpayer.

At the hearing of the appeal the Taxpayer appeared on behalf of himself and explained that he did not know that the accounts which he filed were incorrect. He said that the Inland Revenue Department informed him that there had been an omission. He said that his business was a cottage type of business and that he had no one to prepare his accounts for him and that he just went to a 'street accountant'. He admitted that his accounts were in a mess and that he had made an omission by inadvertently omitting some invoices.

It is quite clear that the Taxpayer had failed in his obligations under the Inland Revenue Ordinance and that the Deputy Commissioner was empowered under section 82A of the Inland Revenue Ordinance to impose a penalty by way of additional tax. The question which the Board must decide is whether or not the amount of the penalty is excessive.

Though the facts of every case are different it is necessary to try to equate one case with another when deciding whether or not the quantum of a penalty is excessive. In this case we have considerable sympathy for the Taxpayer. He is not a sophisticated individual running a large business. He is a small individual with a small family type business and few of the management skills which are necessary to maintain good and correct accounts. On the other hand everyone who takes it upon himself to engage in business has many obligations which must be fulfilled. These obligations include the obligations imposed by the Inland Revenue Ordinance. It has frequently been stated by previous Boards of Review that ignorance of the law and ignorance of accounting is no excuse. It is the duty of a person who engages in business to ensure that he maintains adequate accounts and files true and correct tax returns.

In this case the amount of the tax undercharged was \$29,591 and the amount of the penalty imposed is only \$17,000. This is substantially less than the 'norm' of one times of the amount of tax undercharged. Clearly the Deputy Commissioner has taken into account the factors which we have mentioned and has had considerable sympathy for the Taxpayer.

Accordingly in all of the circumstances of this case we are not able to say that the amount of the penalty is excessive and accordingly dismiss the appeal.