

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D39/91

Profits tax – error or omission – practice generally prevailing – section 70A of the Inland Revenue Ordinance.

Panel: Anthony F Neoh QC (chairman), Duncan A Graham and Anthony N C Griffiths.

Dates of hearing: 15 January; 17, 18, 19 and 20 April 1990.

Date of decision: 19 July 1991.

The taxpayer made an application under section 70A of the Inland Revenue Ordinance to the assessor to correct a number of assessments which it alleged were incorrect. The taxpayer claimed that the assessable profits had been calculated upon incorrect computations which were excessive because certain dishonoured bills had not been correctly treated in its accounts. The assessor refused the application by the taxpayer and the taxpayer ultimately referred the matter to the Board of Review.

Held:

The Board must decide whether the assessments had been made on the basis of or in accordance with the practice generally prevailing at the time when the returns or statements were made. If the answer to this question is positive then section 70A has no application. If the answer to this question is negative then the Board must decide whether or not there was in fact an error or omission in the returns or statements submitted. The accounts of the taxpayer had been audited and certified by its auditors as complying with the Companies Ordinance. In such circumstances section 70A of the Inland Revenue Ordinance could have no application. In the alternative even if section 70A of the Inland Revenue Ordinance could apply the question of provision for bad debts is a discretionary matter for directors and cannot be changed on the basis of hindsight.

Appeal dismissed.

Cases referred to:

Dinshaw v Bombay Commissioner of Income Tax [1934] 1 TLR 527
Anderton and Halstead Ltd v Birrell 16 TC 200
D14/88, IRBRD, vol 3, 206
D2/83, IRBRD, vol 2, 39

D J Gaskin for the Commissioner of Inland Revenue.

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Michael Liu instructed by K W Cheng & Co for the taxpayer.

Decision:

Background

The Taxpayer has objected to the assessor's notice of refusal to correct its profits tax assessments for the years of assessment 1981/82 and 1982/83 under section 70A of the Inland Revenue Ordinance ('the Ordinance').

2. Section 70A of the Ordinance reads as follows:

- '(1) Notwithstanding the provisions of section 70, if, upon application made within six years after the end of a year of assessment or within six months after the date on which the relative notice of assessment was served, whichever is the later, it is established to the satisfaction of an assessor that the tax charged for that year of assessment is excessive by reason of an error or omission in any return or statement submitted in respect thereof, or by reason of any arithmetical error or omission in the calculation of the amount of the assessable income or profits assessed or in the amount of the tax charged, the assessor shall correct such assessment:

Provided that under this section no correction shall be made to any assessment in respect of an error or omission in any return or statement submitted in respect thereof as to the basis on which the liability to tax ought to have been computed where the return or statement was in fact made on the basis of or in accordance with the practice generally prevailing at the time when the return or statement was made.

- (2) Where an assessor refuse to correct an assessment in accordance with an application under this section he shall give notice thereof in writing to the person who made such application and such person shall thereupon have the same rights of objection and appeal under this part as if such notice of refusal were a notice of assessment.'

3. The Taxpayer claims that losses in respect of certain dishonoured bills of exchange, which had been claimed in the years of assessment 1982/83 through to 1985/86 (inclusive), had been mistakenly claimed for these years, and should in fact have been claimed in the two years of assessment under appeal (namely, 1981/82 and 1982/83) when the bills in question were dishonoured. Thus the amounts of \$2,720,528 and \$12,070,651 should be reverted back to the profit and loss account for the years ended 30 June 1981 and 30 June 1982 which were the respective basis periods chosen by the Taxpayer with a consequent reduction of the taxable profits in the two years of assessment under appeal.

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4. Upon the assessor's refusal to correct the alleged mistake, the Taxpayer sought a determination by the Commissioner.
5. On 20 September 1989, the Commissioner issued a determination confirming the assessor's refusal to correct the alleged mistake.
6. The Taxpayer now appeals against the Commissioner's determination.

Agreed Or Undisputed Facts

7. The following represent the agreed or undisputed facts put before the Board:
 - (1) The Taxpayer was incorporated in Hong Kong as a private company in 1979. At all material times, the Taxpayer was engaged in general trading. Before incorporation, it had been trading as a firm since 1976.
 - (2) On 30 November 1982 and on 26 May 1983, the tax representative of the Taxpayer submitted the Taxpayer's profits tax returns for the years of assessment 1981/82 and 1982/83 together with the Taxpayer's proposed tax computations and audited accounts for the years ended 30 June 1981 and 30 June 1982, these being the respective basis periods chosen by the Taxpayer. These audited accounts were signed by the directors of the Taxpayer on 29 November 1982 and 18 February 1983 respectively and were accompanied by certificates of auditors to the effect that they showed a true and fair view of the state of affairs of the Taxpayer for the periods covered by these accounts.
 - (3) The Taxpayer had not charged any 'dishonoured bills' in its audited accounts for the year ended 30 June 1981.
 - (4) In its audited accounts for the year ended 30 June 1982, the Taxpayer claimed as a deduction 'dishonoured bills' in the amount of \$4,389,900, a claim which was accepted by the assessor. [Note: As will be seen in paragraphs 12 and 13 below, such deduction was the result of a judgment reached at the time by the directors of the Taxpayer that the 'dishonoured bills' represented 'bad debts' of the Taxpayer for which provision should be made in the accounts.]
 - (5) On 24 December 1982 and 7 July 1983, the assessor raised the following profits tax assessments on the Taxpayer:

<u>Year of Assessment</u>	<u>1981/82</u>	<u>1982/83</u>
	\$	\$
Profits per tax computation	9,446,217	2,077,375

Add: Rebuilding allowance

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claimed	<u>\$9,446,217</u>	<u>38,110</u>
		\$2,115,485
<u>Less:</u> Rebuilding allowance granted	<u> </u>	<u>34,522</u>
Assessable profits	<u>\$9,446,217</u>	<u>\$2,080,963</u>
Tax payable thereon	<u>\$1,561,925</u>	<u>\$343,358</u>

[Note: If the present appeal is upheld, the Taxpayer's assessable profits for the year of assessment 1981/82 would be reduced by \$2,720,528 resulting in a consequent reduction of profits tax, and the assessable profits for the year of assessment 1982/83 will be reduced to nil, with the result that no profits tax is payable.]

- (6) The Taxpayer had not objected to the above assessments.
- (7) In the auditors' report on the Taxpayer's accounts for the year ended 30 June 1983, the auditors stated that:

‘In view of the recent political turmoil happened in [country's name cited], we are unable to express an opinion on the possibility of recovering the balance of bills receivable amounting to \$6,098,217 due from debtors in [country's name cited].’

- (8) The Taxpayer charged the following amounts of ‘dishonoured bills’ in its audited accounts covering the years ended 30 June 1983, 30 June 1984 and 30 June 1985:

<u>Year ended</u>	<u>Dishonoured Bills</u>	<u>Date the Audited Accounts were signed</u>
30 June 1983	\$10,644,749	7 February 1984
30 June 1984	\$8,079,877	7 March 1985
30 June 1985	\$8,331,039	15 April 1986

[Note: As will also be seen in paragraphs 12 and 13 below, these dishonoured bills represented provisions for bad debts made by the Taxpayer's directors at the time the accounts were compiled.]

- (9) No profits tax assessments for the years of assessment 1983/84 to 1985/86 have been raised on the Taxpayer because it had no assessable profits.

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- (10) By letter dated 16 July 1986, the tax representative on behalf of the Taxpayer lodged a claim under section 70A of the Inland Revenue Ordinance to correct the profits tax assessments for the years of assessment 1981/82 and 1982/83 in the following terms:

‘ according to your [IRD’s] principle and practice, [the Taxpayer] had made mistakes in their profits tax computation previously submitted for the five years ending 30 June 1985 because dishonoured bills incurred in the years ending 30 June 1981, 1982, 1983 had been wrongly deferred to the years ending 30 June 1983, 1984 and 1985. In this connection, we enclose a breakdown showing how the wrongly deferred dishonoured bills are to be reverted back to the relevant years in which they incurred. For your reference, we also enclose the revised profits tax computation for the years of assessment 1981/82, 1982/83, 1983/84 and 1985/86.’

- (11) The Taxpayer’s section 70A claim in connection with the dishonoured bills was (and is) as summarised below:

<u>Year of Assessment</u>	<u>1981/82</u> \$	<u>1982/83</u> \$	<u>1983/84</u> \$	<u>1984/85</u> \$	<u>1985/86</u> \$
Dishonoured bills per audited account (A)	<u>-</u>	<u>4,389,900</u>	<u>10,644,749</u>	<u>8,079,877</u>	<u>8,311,039</u>
<u>Add:</u>					
Amount reverted from years of assessment:					
1982/83	2,628,456	-	-	-	-
1983/84	-	7,876,647	-	-	-
1984/85	92,072	2,056,839	6,410,279	-	-
1985/86	<u>-</u>	<u>375,721</u>	<u>4,528,325</u>	<u>-</u>	<u>-</u>
(B)	<u>2,720,528</u>	<u>10,309,207</u>	<u>10,938,604</u>	<u>-</u>	<u>-</u>

Less:

Amount

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reverted to
years of
assessment:

1981/82	-	2,628,456	-	92,072	-
1982/83	-	-	7,876,647	2,056,839	375,721
1983/84	-	-	-	6,410,279	4,528,325
1984/85	-	-	-	-	-
(C)	-	<u>2,628,456</u>	<u>7,876,647</u>	<u>8,559,190</u>	<u>4,904,046</u>

Revised amount of dishonoured bills
[(A) + (B) – (C)]

<u>2,720,528</u>	<u>12,070,651</u>	<u>13,706,706</u>	<u>(479,313)</u>	<u>3,406,993</u>
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(12) Having considered the Taxpayer's application, the assessor, on 1 September 1987 formally notified the Taxpayer of his refusal to correct the assessments.

(13) On 29 September 1987, the tax representative, on behalf of the Taxpayer, objected to the assessor's notice of refusal to correct the assessments in the following terms:

‘The grounds of objections are that there were mistakes made in the respective profits tax computations previously submitted by our clients and that the assessable profits, which were calculated upon the incorrect computations submitted, were excessively assessed to the extent that dishonoured bills had not been correctly and timely accrued to the relevant years of assessment. Summaries of the dishonoured bills and their respective dates of dishonouring are enclosed for your reference.’

(14) By letter dated 30 September 1987, the tax representative advanced further explanation as follows:

‘Claimed dates of dishonouring of bills

Previously, our clients accounted for the dishonoured bills only when every effort for their recovery proved unsuccessful. Accordingly, such dishonoured bills were usually taken up into our clients' accounts some times behind the actual date of dishonouring happened. The basis that our clients have adopted for the revision of these fundamental errors is to accrue for the dishonoured bills as and when they received notifications of dishonouring from the banks concerned.’

(15) Having examined the documents furnished by the tax representative, the assessor was of the opinion that the summaries of the dishonoured bills

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prepared by the tax representative were not prepared on the basis that the bills were considered dishonoured 'as and when they received notifications of dishonouring from the banks concerned'. By letter dated 27 October 1988, the assessor asked the tax representative to submit, inter alia, revised schedules of the dishonoured bills.

- (16) By letter dated 29 March 1989, the assessor again asked the tax representative to prepare and submit a revised schedule of dishonoured bills.
- (17) The tax representative gave his reply to the assessor on 18 May 1989 in the following terms:

'We wish to advise that our client has mislaid some of the bank correspondence related to the bills. Thus we can only base on the available information to prepare the schedules in the format as stipulated in your letter. Please find enclosed schedules 1 and 2 outlining the particulars of the dishonoured bills reverted back to the years of assessment 1981/82 and 1982/83 respectively. Copies of the related bank correspondence are also enclosed for your perusal.'

The Taxpayer's Evidence

8. Mr X, a director of the Taxpayer, was called to give evidence on behalf of the Taxpayer.

9. In evidence, Mr X stated that he started to trade with [the country cited in the quotation of paragraph 7(7) above] in 1977, and in 1979, the Taxpayer was incorporated to take over such trading business. He did not receive education beyond Form three and had to learn much of his English by himself. Furthermore, he had no accounting qualification and indeed, did not know much about accounting.

10. According to Mr X, business with [the country's] buyers was conducted on credit terms by way of bills of exchange drawn on the buyers. The credit period was mostly in the region of thirty to forty days but would not be more than ninety days in any event. The bill accepted by the Taxpayer's buyers were discounted with the Taxpayer's bankers who had full recourse against the Taxpayer. Potential non-payment on the discounted bills therefore counted as a contingent liability of the Taxpayer.

11 In early 1981, the Taxpayer began to experience delay in payment of the bills, resulting in their dishonour. The Taxpayer had a representative (in fact Mr X's nephew) in [the country] to deal with its buyers. By 1982, the situation had worsened with the worsening economic situation in [the country]. Nonetheless, the Taxpayer persevered in its debt collection efforts both by its in situ representative and by a firm of 'barristers and solicitors' in [the country]. The Board was shown copies of debt collection correspondence directed to and emanated from this law firm in the years 1983 and 1984.

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12. The accounts which accompanied the tax returns for the years of assessment 1981/82 and 1982/83, showed the following picture regarding dishonoured bills considered by the Taxpayer to be 'bad debts' and for which provision was made on the one hand, and the other, outstanding discounted bills for which no provision had been made and were considered contingent liabilities of the Taxpayer:

<u>Period ended</u>	<u>Dishonoured bills</u>		<u>Contingent liabilities</u>	
	<u>HK\$</u>	<u>US\$</u>	<u>US\$</u>	<u>HK\$</u>
30 June 1981	-	505,726.8		12,313,471.61
30 June 1982	4,389,900	701,259		16,711,958

13. The accounts for the period ended 30 June 1983 which accompanied the tax returns for the year of assessment 1983/84 made a provision of \$10,644,749 for uncollectable bills and noted contingent liabilities of \$28,726,329 in respect of discounted bills. However, the auditors entered a reservation in the terms set out in paragraph 7(7) above in the light of the worsening economic situation in [the country]. This was the first time that such reservation was made, indicating that prior to this accounting period, the situation in [the country] was such that the auditors were content with the provisions made by the Taxpayer.

14. Mr X admitted in cross-examination that in evidence before a previous Board he had stated as follows:

' [Mr X] (that is, the director of [the Taxpayer]) explained that, if any of the bills which [the Taxpayer] had "discounted" with the bank should be dishonoured, [the Taxpayer] would be liable to the bank; hence the "contingent liabilities" referred to in the accounts. He said that there were bills awaiting to be paid (or to be "retired") by [the Taxpayer's] customers in [the country], but that in June 1981 he had confidence that the money would "be received very soon"; that it was not until towards the end of 1982 the first encountered difficulties in getting payment from [the country's] customers and that [the Taxpayer's] financial standing was "very sound" although the money was "blocked up" by the bank because the time deposits were pledged. He said he went to the bank asking it to release some of the moneys deposited so that the Taxpayer could pay him the bonus but the bank refused because there were still outstanding bills.'

15. Further, in cross-examination, he admitted that the first time that the question of an error in the returns for the years of assessment 1981/82 and 1982/83 was raised was on 22 November 1985 when the Taxpayer's tax representative wrote in connection with additional assessments raised on the Taxpayer in relation to directors' bonus. In the same letter, the tax representative stated as follows:

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‘ If you could confirm to us that the principle which you have adopted for raising the additional assessment for the above years of assessment is correct, you are now requested to reverse [the Taxpayer’s] sales amounting to more than \$28,000,000 which have also been accrued in [the Taxpayer’s] sales for the said years of assessment. Now, our clients would like to confirm to you that such sales included in the years of assessment 1981/82 and 1982/83 have up to now never been received.’

16. He further admitted, also in cross-examination, that the first time a formal request for correction of the tax returns was made on 16 July 1986, when the Taxpayer’s tax representative wrote in the terms set out in paragraph 7(10) above.

17. Mr X was unable to assist the Board, when asked by one of its members, whether or not a letter of representation (which was, and is, usual auditing practice) was sent to the auditors or if one was sent, whether it included any representation as to bad debts relating to discounted bills. Unfortunately, the auditors were not called and the Board is thus left to make such inferences as it properly could from the evidence before it.

Conclusions Of The Board

18. The Board has to decide on the following matters:

- (a) Whether the returns or statements submitted in respect thereof for the years of assessment 1981/82 and 1982/83 were made on the basis of or in accordance with the practice generally prevailing at the time when the returns or statements were made;
- (b) If the answer to (a) is ‘yes’, then the proviso to section 70A(1) of the Ordinance will apply, and no correction can be made;
- (c) If the answer to (a) is ‘no’, then the Board will have to decide whether or not, there was in fact an error or omission in the returns or statements submitted in respect thereof, for the years of assessment 1981/82 and 1982/83.

19. The accounts of the Taxpayer submitted with the profits tax returns for the years of assessment 1981/82 and 1982/83 contained an auditor’s report to the effect that subject to certain reservations (which are not relevant for our present purposes), the accounts comply with the provisions of the Companies Ordinance and give a true and fair view of the state of affairs of the Taxpayer at 30 June 1981 and 30 June 1982 respectively.

20. The question thus is whether the accounts were prepared under the ‘practice generally prevailing at the time the returns or statements were made’ in the terms of the proviso to section 70A(1).

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21. In the Board's view the phrase 'practice generally prevailing' in the context of the Taxpayer's accounts must include compliance with the Companies Ordinance and the application of accounting and auditing standards generally used by auditors in Hong Kong. Thus, insofar as the Companies Ordinance does not make explicit provision for accounting principles relating to bad debts, we must assume (and we so find), that in the absence of any evidence to the contrary (and the auditors were not called to give evidence), the directors and the auditors (to whom the directors entrusted the compilation of these accounts) would use accounting and auditing standards generally in use in Hong Kong before they came to their opinion that the accounts of the Taxpayer showed a true and fair view of the affairs of the Taxpayer.

22. In the circumstances, the Board concludes that the proviso to section 70A(1) must apply and no correction can be made to the returns. This should therefore determine the appeal.

23. However, if the Board should be wrong, it would still have concluded that in this case no mistake or error has been made out.

24. What amounts to a 'bad debt' is necessarily the result of a Judgment made on the basis of the factual situation at the time. As the Judicial Committee of the Privy Council has observed in Dinshaw v Bombay Commissioner of Income Tax [1934] 1 TLR 527, at page 528:

'Whether a debt is wholly or partly and to what extent bad or irrevocable is in every case (and whether the debtor is a human being or a joint stock company or other entity) a question of fact to be decided by the appropriate tribunal upon a consideration of the relevant facts of that case ...'

25. When the directors signed the accounts of the Taxpayer, they and they alone, were in a position to judge which of the dishonoured bills were collectable and which were not, and accordingly, they were in the best position to judge as to what level of provision for 'bad debts' should be made. They obviously came to a judgment for each of the two accounting periods in question and the assessor had in fact accepted that judgment.

26. The question is, whether the directors of the Taxpayer, having made a judgment (which the assessor accepted) in their provision for bad debts arising from dishonoured bills can now turn round, and say: 'We have made a mistake in our judgment!'

27. A 'bad debt' incurred in any trade, business or profession, proved to the satisfaction of the assessor to have become bad during the basis period for the year of assessment, and 'doubtful debts' to the extent that they have been estimated to the assessor's satisfaction to have become bad during the same basis period count as an allowable deduction for profits tax purposes for the relevant period (section 16(1)(d) of the Ordinance). The assessor, in accepting the accounts for the relevant year of assessment, must have also accepted the directors' judgment in making the appropriate provisions for bad debts arising from dishonoured bills.

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28. A judgment can always turn out in hindsight to have been in error, but the nature of a judgment in relation to a bad debt amounts to no more than estimate based on the facts and probabilities of collection at the time the estimate was made. As Rowlatt, J observed in Anderton and Halstead Ltd v Birrell 16 TC 200, in the context of rule 3 in schedule D of the Income Tax Act 1918:

‘Rule 3 is as follows: “In computing the amount of the profits or gains to be charged, no sum shall be deducted in respect of”, and then after a list, “(i) Any debts, except bad debts proved to be such to the satisfaction of the Commissioners and doubtful debts to the extent that they are respectively estimated to be bad.” What the statute requires, therefore, is an estimate to what extent a debt is bad, and this is for the purpose of a profit and loss account. Such an estimate is not a prophecy to be judged as to its truth by after events, but a valuation of an asset de praesenti upon an uncertain future to be judged as to its soundness as an estimate upon the then facts and probabilities. It is not overthrown as an estimate upon the then facts and probabilities. It is not overthrown as an estimate in 1923 and 1924 by coming to the conclusion, as the Commissioners have done, that in 1930 it had not been proved that the debts were to any extent bad.’

29. This Board has found as a fact that the accounts of the Taxpayer for the two years of assessment under appeal were prepared in accordance with the requirements of the Companies Ordinance and accounting standards generally prevailing in Hong Kong at the time. These accounts were also certified to present a true and fair view of the affairs of the Taxpayer at the relevant time. The judgment made by the directors as to the provision needed for bad debts must therefore represent a ‘true and fair’ estimate of the collectability of these debts. Hindsight cannot in these circumstances avail the directors.

30. Furthermore, the Taxpayer’s evidence before a previous Board was that in June 1981, the Taxpayer’s directors had confidence that the money arising from dishonoured bills would ‘be received very soon’ and that it was not until towards the end of 1982 (that is, after 30 June 1982, the date of the financial statements submitted to the Revenue to support the tax computations for the year of assessment ended March 1983), that the Taxpayer encountered difficulties in getting payment from its customers of [the country]. This Board can therefore come to no other conclusion (and it so concludes) that the fact that no provision was made in the accounting year ended 30 June 1981 and that a provision of only \$4,389,900 was made in the accounting year ended 30 June 1982, was the result of the directors’ assessment of the facts and probabilities of collection at the relevant time. Since the accounts were certified to represent a true and fair view of the affairs of the Taxpayer, and the auditors were not called, there is no evidence to suggest (and indeed the Taxpayer does not suggest) that the accounts were prepared other than in accordance with judgment bona fide come to by the directors.

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31. The making of a provision for bad debts is not a matter of exactitude but a matter of discretionary decision making by the directors at the time when the annual accounts are finalised. As a previous Board has observed in D14/88, and we agree:

‘Whilst figures which appear in accounts are finite and must balance with total precision, accountancy and the manner in which business transactions are reflected in the accounts of a business enterprise are not a matter of science but rather a matter of art. Many decisions are taken which are optional or discretionary. Perhaps the greatest area of optional decision-making is in deciding what profits or losses should be brought to account in any particular year. In this case we are dealing with interest, but the same principles apply to many transactions in diverse types of business. In the cases cited before us there is reference to discounting of bills, contracts for the sale and storage of whisky, fees and progress payments earned by professional partnerships and many others. At the end of any accounting period, the management of business must sit down and decide what profits and losses should properly be brought to account during the accounting period in question. Indeed this is why professional accountancy bodies throughout the world have published accounting standards. For obvious reasons, businessmen are often optimistic and auditors tend to be more conservative. The directors of a company must carefully study the business which they conduct and decide what profits or losses should be brought to account in the period in question. Where there is any doubt, it is customary to make provision or to carry items in suspense accounts.’

32. The provision for bad debts was therefore the view that the directors had taken as to the collectability of the Taxpayer’s debts. The fact that a different view is taken at a later date on the basis of hindsight, does not mean that the original view was a ‘mistake’ or an ‘error’, it merely means that a different view could have been taken. In the light of the fact that provision for bad debts is inherently judgmental, it is not possible for any taxpayer to argue that a mistake had been made purely on the basis that a different judgment could have been come to on the basis of hindsight. A fortiori, where (as in this case), the accounts had been compiled in compliance with the Companies Ordinance and provisions made in accordance with generally accepted accounting standards, there is no room for re-opening the accounts when estimates which had been bona fide made at the time did not materialise as a result of subsequent developments. If that were possible, there will be no certainty in the application of sound accounting principles.

33. In this case, the ‘error’ complained of was that the Taxpayer should have made provision for all dishonoured bills at the time of dishonour and not wait (as it did) until a judgment was made as to their collectability. As a matter of commercial reality, not all dishonoured bills turn out to be uncollectable and therefore a judgment has to be made, each time the annual accounts are made up, as to the appropriate level of provision for ‘bad debts’ in the accounts. Clearly, the Taxpayer had consciously undergone this process in the annual accounts in question. It cannot possibly now complain of having made a mistake,

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merely because it now wants to adopt another criterion for characterising dishonoured bills as bad debts.

34. In the circumstances, we have no hesitation in dismissing this appeal which, in our view, should never have been brought.

35. We note that the Board has the power to order costs up to \$1,000 against the taxpayer which costs 'shall be added to the tax charged and recovered therewith' (section 68(9)).

36. We further note that the Board had only on rare occasions made orders as to costs (refer to D2/83) and only where it was thought that the appeal was so devoid of merit that it should never have been brought. We believe that generally, the Board should be prepared to express its censure in the form of an order as to costs if the appeal is so patently unmeritorious that the taxpayer or its advisers (if the taxpayer is represented) should have known that the appeal should never have been brought. However, we do not in this case believe that this appeal, whilst unmeritorious, falls within the general rule we have adumbrated and we would not therefore make an order of costs in this appeal.

37. Finally, the Board wishes to thank Mr Gaskin for his careful arguments and the many useful cases he cited for our reference. The Board would also like to thank Mr Michael Liu, of Counsel, who, despite having a difficult case to present, nonetheless ably assisted us.