

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D42/99

Profits Tax – deduction – sale and purchase of property – decoration expenses – fabricated evidence – costs – section 69 of the Inland Revenue Ordinance, Chapter 112.

Panel: Andrew Halkyard (chairman), Charles Chiu Chung Yee and William Tsui Hing Chuen.

Dates of hearing: 10 June and 27 July 1999.

Date of decision: 9 August 1999.

The taxpayers appealed against the Commissioner's determination of profits tax on the ground that a sum of \$211,200 allegedly paid by them to a decoration company should be deducted from the assessable profits derived by them from the purchase and sale of a flat.

The issue is whether the decoration works carried out in the flat and, if so, how much did the taxpayers pay for those works?

Held:

The Board found that, as a matter of evidence, no decoration costs have been incurred and the taxpayers' evidence was incredible:

1. The telephone number in the alleged quotation, dated 25 January 1994, for the decoration works commenced with the prefix '2'. The prefix was added to all existing telephone numbers in Hong Kong in January 1995. The change took place more than 11 months after the date given in the quotation document.
2. The utility expenses for the flat were virtually zero.
3. Since the evidence was clearly fabricated, the Board took the severe step of ordering costs under section 68(9) of the Inland Revenue Ordinance, Chapter 112 in the amount of \$1,000.

Appeal dismissed and a cost of \$1,000 charged.

Tam Tai Pang for the Commissioner of Inland Revenue.

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Taxpayer in person.

Decision:

1. The Taxpayers have appealed against the Commissioner's determination of profits tax for the year of assessment 1994/95. They claim that a sum of \$211,200 allegedly paid by them to a decoration company should be deducted from the assessable profits derived by them from the purchase and sale of a flat.

The issue in dispute

2. The issue before us and the sole ground of appeal relates to a simple question of fact, namely, were the decoration works carried out in the flat and, if so, how much did the Taxpayers pay for those works? To the extent that these matters can be proved, it is not in dispute that the Taxpayers are entitled to a deduction from the profits assessed.

The proceedings before us

3. On the date originally set down for hearing this appeal, the only piece of evidence presented by the Taxpayers was a quotation, dated 25 January 1994 and addressed to Mr A, from the decoration company that certain itemised decorations would be carried out in the flat in consideration for paying the sum of \$211,200. The document also set out the name, address and telephone number of the decoration company. The telephone number commenced with the prefix '2'. On its face, the document was not an invoice, nor was it a receipt. As stated above, it was a quotation only.

4. At the Board's initiative, we gave the Taxpayers, being unrepresented, the opportunity to present further evidence to us to prove their case. Acceptable evidence could have taken various forms, including bank records showing payment of the amount in dispute, or oral evidence from the decorator.

5. Upon resumption of the hearing, after an adjournment of six weeks, the Taxpayers could not produce any concrete evidence that the decoration works had been carried out, let alone paid for. The only course left for the Taxpayers was to give oral evidence before us.

6. Mr A, who represented both Taxpayers, stated on oath that the document dated 25 January 1994 (see above) was given to him (1) by the decoration company around that date and (2) after the claimed decoration works had been carried out.

7. In cross-examination the Commissioner's representative, Mr Tam Tai-pang, elicited that the prefix '2' was added to all existing telephone numbers in Hong Kong in January 1995. This change took place more than 11 months after the date given on the

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quotation document, which showed the telephone number with the prefix '2'. We reiterate that Mr A's evidence was that he was given this document around the end of January 1994 and at that time the decoration works had been completed. Mr A had no answer as to why the document was dated nearly one year before the change of the telephone number.

8. Mr A was then asked why, during the period in which the claimed decoration works were carried out, the utility expenses for the flat were virtually zero. Again Mr A had no answer.

9. We find that, after observing the cross-examination, Mr A's credibility was totally destroyed. In the event, we place no reliance on any of his oral evidence. We also disregard whatever evidentiary value the quotation document might otherwise possess.

10. In the circumstances, we have no hesitation in concluding that the Taxpayers have not satisfied us that the assessment appealed against was excessive or incorrect.

11. The appeal is hereby dismissed. Mr A's reliance upon evidence that was clearly fabricated has led us to take the severe step of ordering costs under section 68(9) in the amount of \$1,000. This amount will be added to the tax charged and recovered therewith.