

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D50/94

Penalty tax – incorrect salaries tax return – quantum of penalty.

Panel: Howard F G Hobson (chairman), Benjamin Kwok Chi Bun and Vincent Liang Wan Sang.

Date of hearing: 25 October 1994.

Date of decision: 21 November 1994

The taxpayer filed an incorrect tax return omitting to state part of her emoluments from another employer. The Commissioner imposed a penalty tax assessment of approximately 15% of the amount of tax involved. The taxpayer appealed against the penalty.

Held:

The penalty was not excessive. When the taxpayer filed her salaries tax return she knew that the quantum was incorrect. She intended to correct the same at a later date but failed to do so. The taxpayer had deliberately underdeclared her income and had failed to inform the Commissioner of this fact.

Appeal dismissed.

Au Ting Yuk for the Commissioner of Inland Revenue.

Taxpayer represented by her husband.

Decision:

In August 1992 the Taxpayer transferred her employment from Organisation A to Organisation B. On 17 May 1993 she completed her salaries tax return showing a total income of \$114,205,48 for the period 1 April 1992 to 31 March 1993. Apart from failing to insert the name of any employer in the appropriate box, the returned income (actually received from Organisation A for the period 1 April 1992 to 31 July 1992) fell short to the extent of \$176,054 being the total of emoluments she received from Organisation B for the period 1 August 1992 to 31 March 1993. On 6 April 1993 – that is before the Taxpayer filed her return – both Organisation A and Organisation B had filed employer's returns with the Revenue in the amounts mentioned above. On 6 August 1993 an assessment was raised based upon those returns (totalling \$290,259), not upon the Taxpayer's return. The

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Taxpayer took no objection and paid the tax. The Commissioner then gave formal notice of intention to invoke section 82A and after receiving written explanations from the Taxpayer he imposed an additional tax of \$4,100: it is that assessment which is the subject of this decision.

On the facts as related, there are only two grounds of appeal open to the Taxpayer, namely to convince us either that there was a reasonable excuse for the omission, or, failing success on that ground, that the \$4,100 is excessive having regard to the circumstances.

From the explanations given by the Taxpayer, it is clear that she knew that she was underdeclaring her total income but the reason she gives for doing so is that at the time she filed the return she still had not received the pay slips from Organisation B and could not therefore be sure of the exact amount of her emoluments. Nevertheless she intended to follow up with details when the slips were received. She said that when they were eventually received she unfortunately forgot to follow up.

We do not consider the reason given for the deliberate omission is a reasonable excuse. It was open to the Taxpayer to mark the return or enclose a letter to the effect that she had received income from Organisation B but was not sure of the precise amount. Mr X, who represented the Taxpayer (his wife, who could not attend at the hearing as she is in the seventh month of pregnancy), acknowledged that the Taxpayer's salary from Organisation B was paid by autopay into her bank account and that she could have checked her account.

The Taxpayer denied any deliberate intention to evade her tax liability and we accept that the Commissioner has made no such suggestion. Other submissions made by the Taxpayer's representative contain criticism of events following the filing of the return (that is the Revenue should have drawn her attention to the omission so she could correct it) which certainly cannot exonerate the deliberate omission nor have any bearing on the amount of the penalty. Naturally, the duty is upon the Taxpayer to complete returns (or at least explain the absence of any details) and it would add expensively to the work of the Revenue to attempt to examine every return to see if there are 'mistakes'. There is a suggestion by the representative that in cases of this kind the first mistake should be excused or an administrative charge imposed instead of a penalty. Both criticisms turn on the Taxpayer having made a 'mistake'. It is clear that the omission from the return was not a mistake or accidental, it was deliberate. The real 'mistake' was the failure to explain in the return or a covering letter the reason for leaving out income or to follow up the omission when the pay slips from Organisation B were received.

As to the quantum of the penalty, it is only about 15% of the tax that would not have been collected if an assessment had been made on the basis of the Taxpayer's return accordingly we can see no reason whatever to interfere with it.

This appeal is therefore dismissed.