

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D61/04

Profits tax – section 14 of the Inland Revenue Ordinance ('IRO') – whether carrying on the business of trading in listed shares in Hong Kong – question of fact in light of circumstances of case - whether losses arising from sale of shares deductible in computing income under personal assessment.

Panel: Anna Chow Suk Han (chairman), Vincent Mak Yee Chuen and David Yip Sai On.

Dates of hearing: 7 and 8 July 2004.

Date of decision: 6 December 2004.

The taxpayers, Mr A and Madam B, claimed that losses suffered from the sale of shares between 1992 and 1998 should be deducted in computing their total income for the purposes of personal assessment.

Mr A was a director of a number of companies, and he conducted his trading of shares in the premises of these companies.

Mr A claimed that he had conducted the sale of securities in a sophisticated and organized manner, and had spent substantial time on such activities, including engaging in vast research, preparation, and attending courses. In light of these matters, Mr A claimed that losses from these activities while carrying on a trade or business in Hong Kong, and were accordingly deductible from his assessable income for personal assessment.

The issue before the Board was whether Mr A was carrying on the business of trading in listed shares in Hong Kong within the meaning of section 14(1) of the IRO.

Held:

1. The following principles were relevant in deciding whether a private individual carries on a trade or business in securities or futures trading:
 - (a) The issue as to whether a person is carrying on a trade or business is a matter of fact and degree, to be decided on all the circumstances of each case. In order for a person to carry on a business in trading in securities or futures, there had to be a habitual and systematic course of dealing.

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- (b) The subject matter of the alleged trade or business is a factor to be considered. A private individual would rarely be considered as carrying on a business of trading in shares unless there are associated activities. Further, it would be difficult to claim that futures are held for long-term investment by virtue of their short lifespan.
 - (c) Pure speculation is a factor which weighs against the finding that a person is carrying on a trade.
 - (d) It would be significant, although not determinative, if the taxpayer takes out a business registration certificate before embarking upon the activities in question.
 - (e) Where a taxpayer does not have an office or staff, there must be other clear evidence of carrying on a business.
2. Though Mr A had an office, necessary equipment, and a secretary for share dealings, these amenities were not his own. He was able to use them because of his special relationship with his associated companies.
 3. Mr A also failed to adequately explain why a business registration certificate was not taken out by him until many years after he allegedly commenced business. In addition, on advice, he had not filed audited accounts in respect of his personal share dealings.
 4. On the evidence, the Board was not satisfied that Mr A was truly a trader. Amongst other things, his method of trading was unconventional of a true trader and lacked professionalism. His other activities, including attending courses and engaging in substantial research, are not uncommon, and similar to those carried out by keen and sophisticated investors.
 5. Accordingly, the Board concluded that the taxpayer had failed to discharge the burden of proof to demonstrate the assessment was excessive and incorrect.

Appeal dismissed.

Cases referred to:

Cooper v C & J Clark Limited [1982] STC 335
Lewis Emanuel & Sons v White 42 TC 369

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D55/87, IRBRD, vol 3, 1
D38/96, IRBRD, vol 11, 529
D132/98, IRBRD, vol 13, 613
Salt v Chamberlain 53 TC 143
Cooper v Stubbs 10 TC 29
D42/90, IRBRD, vol 5, 316
D111/97, IRBRD, vol 13, 20
D74/00, IRBRD, vol 15, 670
CIR v Dr Chang Liang Jen 1 HKTC 975
D20/90, IRBRD, vol 5, 164
D57/94, IRBRD, vol 9, 335
D42/98, IRBRD, vol 13, 280

Jennifer Tsui Counsel instructed by Department of Justice for the Commissioner of Inland Revenue.
Thomas Lee Kang Bor of Thomas Lee & Partners Limited for the taxpayers.

Decision:

A. The appeal

1. Mr A and Madam B ('Mrs A') ('the Taxpayers' collectively) appeal against the personal assessments for the years of assessment 1993/94 to 1997/98. They claim that the losses sustained by Mr A from certain securities and share transactions on his own account should be deducted in computing their total income under personal assessment.

B. The background

2. Mr A was a director of the following companies:
- (a) Company C, incorporated on 1 August 1962, carrying on the business of property investment;
 - (b) Company D incorporated on 1 June 1962, carrying on the business of property and share investment;
 - (c) Company E, incorporated on 7 March 1972, carrying on the business of property investment; and

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- (d) Company F, incorporated on 9 November 1993, carrying on the business of property development.
3. Mr A ceased to be a director of these four companies on 10 June 1998.
4. In his tax returns for the years of assessment 1993/94 to 1997/98, Mr A declared his salaries income from these four companies.
5. In her tax returns for the years of assessment 1993/94 to 1997/98, Mrs A declared her salaries income from Company G, Company H, Company I and Company J.
6. By a letter of 17 September 1998, Accounting Firm K on behalf of Mr A, requested for the issue of profits tax returns for Mr A's completion. Accounting Firm K claimed that Mr A engaged in trading of shares and securities listed in Hong Kong through his margin accounts since the year of assessment 1992/93 and that the share transactions constituted the carrying on of a share dealing business. Accounting Firm K stated that Mr A intended to apply for personal assessment for the years of assessment 1992/93 to 1997/98.
7. On 24 November 1998, Accounting Firm K on behalf of Mr A submitted profits tax returns for the year of assessment 1992/93 showing assessable profits of \$2,341,538, and describing Mr A's principal business activity as 'Trading of listed shares'; profits tax computations for the years of assessment 1992/93 to 1997/98; profit and loss accounts and balance sheets of each dealer for the same years.
8. The profits tax computations for the said years of assessment 1992/93 to 1997/98 were as follows:

Year of assessment	Assessable profits/(adjusted loss)
1992/93	\$2,314,005
1993/94	(6,550,232)
1994/95	(10,571,507)
1995/96	(222,314)
1996/97	(20,914,960)
1997/98	(17,253,137)

9. Accounting Firm K submitted revised profits tax computations for the year 1995/96 and 1997/98 showing adjusted loss of \$204,551 and \$13,485,728 respectively. The loss for 1995/96 was revised to reflect the loss of \$17,763 on disposal of non-Hong Kong stock. The loss for 1997/98 was revised to exclude the loss of \$3,767,409 from Mr A's jointly owned account with Mr L held with Company M. It was considered that such loss should be reported as loss of their partnership business instead of that of Mr A's own share dealing business.

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10. The assessor raised enquiries with Mr A on the alleged securities dealing business carried on by him. In reply, Accounting Firm K provided the assessor with information on the alleged securities dealing business of Mr A. However, the assessor was not satisfied with the information given and issued to Mr A and Mrs A personal assessments for the years of assessment 1993/94 to 1997/98 accordingly.

11. Accounting Firm K, on behalf of the Taxpayers, objected to the said personal assessments claiming that the loss from Mr A's share dealing business should be deducted from their total income. Further information has since been submitted to the assessor in support of this claim.

C. The issue

12. The issue under this appeal is whether or not during each of the years of assessment from 1993/94 to 1997/98, Mr A was carrying on the business of trading in listed shares in Hong Kong.

D. The law

13. The relevant sections of the Inland Revenue Ordinance ('IRO') are:

(a) Section 14(1):

'Subject to the provisions of this Ordinance, profits tax shall be charged for each year of assessment at the standard rate on every person carrying on a trade, profession or business in Hong Kong in respect of his assessable profits arising in or derived from Hong Kong for that year from such trade, profession or business (excluding profits arising from the sale of capital assets) as ascertained in accordance with this Part.'

(b) Section 2:

'“trade” includes every trade and manufacture, and every adventure and concern in the nature of trade.'

(c) Section 42(2):

'There shall be deducted from the total income of an individual for the year of assessment –

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(b) *the amount of the individual's loss or share of loss for that year of assessment computed in accordance with Part IV.'*

(d) Section 68(4):

'The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.'

14. The following authorities were produced by the Taxpayers:

- (a) Cooper v C & J Clark Limited [1982] STC 335
- (b) Lewis Emanuel & Sons v White 42 TC 369
- (c) D55/87, IRBRD, vol 3, 1
- (d) D38/96, IRBRD, vol 11, 529
- (e) D132/98, IRBRD, vol 13, 613

15. The following authorities were produced by the Revenue:

- (a) Salt v Chamberlain 53 TC 143
- (b) Cooper v Stubbs 10 TC 29
- (c) D42/90, IRBRD, vol 5, 316
- (d) D111/97, IRBRD, vol 13, 20
- (e) D74/00, IRBRD, vol 15, 670
- (f) CIR v Dr Chang Liang Jen 1 HKTC 975
- (g) D20/90, IRBRD, vol 5, 164
- (h) D57/94, IRBRD, vol 9, 335
- (i) D42/98, IRBRD, vol 13, 280

16. The following relevant legal principles can be deduced from the authorities produced to us:

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- (a) The issue as to whether a person is carrying on a trade or business is a matter of fact and degree, to be decided on all the circumstances of each case. For trading in securities or futures, there has to be a habitual and systematic course of dealing.
- (b) The subject matter of the alleged trade or business is a factor to be considered. A private individual would rarely be considered as carrying on a business of trading in shares unless there are other associated activities. In relation to futures, by virtue of its short lifespan it would be difficult to claim that they are held as long term investment.
- (c) Clear evidence is necessary to show that a person who does not habitually carry on a business or trade and who is a pure speculator is carrying on a trade or business. Pure speculation is a factor which weighs against the finding that a person is carrying on a trade.
- (d) The presence or absence of a business registration certificate is not determinative of whether or not a person is carrying on a trade or business but it would have been significant if the taxpayer had taken out a business registration certificate before he embarked upon the activities in question.
- (e) Though it is not essential that a person who is carrying on a trade or business must have an office and staff and organization, where none of these attributes exists, there must be other clear evidence of carrying on a trade or business.

E. The evidence

17. Mr L gave evidence as below on behalf of the Taxpayers. He basically corroborated the stance taken by Mr A. Although Mr A's style of dealings in shares was totally different from his own, in that Mr A preferred second to third tiered stocks to blue chips and Mr A did not usually stop losses even in a falling market, in his opinion Mr A was still a professional trader in stock and shares. He held this opinion because Mr A always carried out research on the share before a purchase and since Mr A had the financial resources to wait for the market to rebound he did not need to cut losses in a falling market as other traders would. As to his own style of trading, he himself always stopped losses and took profits when the shares reached a targeted price and the holding period should be as short as possible. Both Mr A and himself sustained heavy losses in the stock market in 1998 due to the market crash and the financial crisis in 1997. Mr A's family bailed Mr A out on the condition that he would totally retreat from securities related business.

18. Mr N, the brother of Mr A also gave evidence on behalf of the Taxpayers. He told us that Mr A was looking after the accounting matters of the family companies and was also trading in

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listed shares. Mr A was also permitted to use a family property for this purpose. In 1998, when Mr A was in financial difficulties because of the market crash, the family agreed to assist him on the condition that he would retreat from all securities related business. The condition was put to him so that he would cool down and regain his senses. Mr A also ceased to be directors of the family companies.

19. Miss O, the secretary to Mr A, gave evidence that since the end of 1993, she was employed by Company I as the personal assistant and secretary to Mr A, handling company secretarial matters of the companies owned by Mr A and taking care of the data processing of the share trading transactions of Mr A and Company I. The transactions of Mr A and Company I were separately recorded and classified by the securities firms. In the course of cross-examination, Miss O later claimed that she worked for Company I up to 1998 and since 1998 she worked for Company C, one of the family companies. Upon being pressed for the identity of her employer over the years when she worked for Mr A, she finally admitted that she had always been employed by Company C when she performed duties on behalf of Mr A. She had always been on the payroll of Company C but at the same time Company I gave her an allowance. As to the proportion of her allowance bore to the salary from Company C, she said her allowance from Company I represented about thirty per cent which was gradually increased to sixty odd per cent of her income from Company C over the years of her employment until 1998 when Mr A ceased his share dealing activities. As to the reason why she did not include the allowance in her tax returns, she claimed that she did not do so because Mr A did not file the tax returns for her in this respect. Upon being questioned as to whether Mrs A worked for Company I, she told us that Mrs A never worked for Company I nor attended the office.

20. Mr A gave evidence to the following effect. In early 1990 he started trading in his personal name with several securities firms. At about the same time, he also used Company I to carry out some share trading transactions. Company I was incorporated in 1989 and through a BVI company Mr A owned Company I totally. There was no difference between his tradings under his personal name or the name of Company I. However, the share volumes and the account margins under the name of Company I were much lower than those of his own because Company I had a limited paid-up capital while some of the family's long term investments were pledged to secure his personal margin accounts. There were cross-guarantee arrangements between his personal accounts and those of Company I. In about 1995 he started dealings in Hang Seng Index Futures and Index warrants for profits and hedging purpose. His trading business included sub-sub-underwriting of rights of new issues. He was a trader because he engaged in all kinds of activities of a true trader. Before choosing a stock, he would gather and study financial news and data from various sources; review research reports; hold discussion with dealers; and carry out analysis of the economic climate and stock market trend. After choosing a stock, he would then study the background of the stock, such as its management, products, profitability, and the current and historical trading data. Also he would from time to time attend seminars on stock trading techniques organized by securities firms. He monitored his portfolio and kept records of transactions at the real-time tracking system provided by the Stock Market Channel. Every

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morning he checked the statements prepared by his secretary against the Stock Market Channel. He had an office to conduct his share dealings, using two direct lines to dealers, having access to various electronic data suppliers and computer terminals to obtain most up-to-date market news, prices and trading data. He engaged a secretary to assist him in keeping records of the share transactions, and preparing annual returns, monthly and yearly profits and loss account. He adopted certain trading strategies in his share dealings.

21. In respect of Company P, he borrowed \$30,000,000 from his family to start Company P. He was in partnership with Mr L, on the basis of 67% to him and 33% to Mr L. The arrangement between them was that he would provide the finance while Mr L who was a trader with professional qualification and experience, would be responsible for the operation and management of the business. His interest in Company P was sold to Mr L in 1998 after he was bailed out by his family in his financial crisis. He also opened a securities account jointly with Mr L in Company P on a 50:50 basis. This account was handled by Mr L. In the 1997 financial crisis and 1998 market crash, because he did not cut losses, he found himself in deep financial trouble. On the condition of his total retreat from the stock market, his family provided him with financial support. As a result, he sold all his shares and also his interest in Company P to Mr L and resigned as directors from all the family companies.

22. In the course of cross-examination, Mr A was questioned by the Revenue's counsel on Company I. Consequently, Mr A told us that he treated the share dealings of Company I and those of his own as one and the same. Company I was never mentioned in the course of the investigation because the assessor had never asked him about it. Since Company I had a modest paid-up capital of \$100,000 he therefore had to trade also in his own name. His credit limit was better than that of Company I and thus, his own share portfolio was bigger than that of Company I. As required by the dealers, there were cross-guarantees given by him and Company I in favour of the margin accounts of each party. Audited accounts were prepared for Company I's share dealings and not for those of his own, because he was advised by his then accountants that preparation of audited accounts for his personal share dealings was not necessary and also claims of losses in those share dealings could not be made for tax purposes. He trusted his accountants in their advice in this regard. He was questioned as to why diminution of value in shares was taken into account in the accounts of Company D and Company I and not in his personal portfolio if the shares were acquired by him for trading purposes. He told us that it was so because he was so advised by his accountants. As to his non-inclusion of Company I's share dealings in his personal assessment he relied again on his accountant's advice that losses in share dealings in personal name were not deductible for tax purposes. At that time the accountant who advised him on his personal assessment was Mr Q. In 1998, he was advised by Accounting Firm K on the business assessment. Accounting Firm K knew about Company I. Mr A did not understand why Company I was not mentioned to the Revenue in the course of investigation.

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23. Upon being questioned on the income of his secretary, Miss O, he explained that he paid her an allowance for transport and meals. No explanation was given as to why no tax returns was filed in respect of those allowances.

24. As to the salaries paid to Mrs A by Company I, he explained that she was paid a salary because Mrs A as a director had to occasionally attend the office to sign documents.

25. When he was questioned on the strategy he adopted in his personal share dealings, he explained that he had about 18 accounts at any one time and a limit had been set on each margin account. He had a stop-loss limit but he was unable to give us an actual figure of such limit. Finally he said it was about one-quarter of his wealth. His choice of shares would depend on the market focus at the time. There was no predetermined percentage or a spread of the portfolio. He took a flexible approach. There were no hard and fast rules in his strategies. As opposed to his statement in the examination in chief, in cross-examination he denied that his family imposed a condition on him in bailing him out of his financial trouble.

26. Mr A was challenged by the Revenue on his assertion that his transactions on Hang Seng Future Index were used for the purpose of hedging. It was pointed out to Mr A that if those accounts were used for hedging, there should be equal number of transactions in the accounts for Future Index and the accounts for stock and securities but this was not the case with Mr A's accounts. Mr A maintained that there ought to be more transactions in the accounts for Future Index and in any event, he only started taking hedging position in 1995. The Revenue asserted that in Mr A's case the transactions in Future Index were speculations and not for hedging purpose.

F Taxpayers' case

27. It is the Taxpayers' case that Company I was initially incorporated to invest in a company in Country R and to provide management consultancy services and was not formed for the purpose of trading in stocks and shares. The company was only subsequently used by Mr A for share trading purpose. Mr A also traded shares in his personal name because the share dealers granted him greater limits in his personal margin accounts. Mr A beneficially owned the entire issued shares in Company I and thus he treated his own share dealings and those of Company I as one and the same. Mr A did not register his share trading business promptly because he was not aware that a sole proprietary business required business registration. In any event, the absence of a business registration certificate is not a determinative factor as to whether Mr A was trading or not. Mr A was not a speculator in his shares and futures dealing activities. His business in share trading was supported by the following factors:

1. He operated from a stand-alone office, which served as both the office of Company I and his personal share trading business.

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2. He had a personal assistant cum secretary to help him to keep proper books of accounts.
3. He operated a number of securities and margin accounts with several broker firms.
4. He spent full time on his own share trading activities and those of the family companies during the relevant times.
5. He did a lot of preparation work and study, discussed with dealing directors, read news on listed companies and also used the stock market channel to track his stock portfolio.
6. He had direct telephone lines to dealer rooms of two securities firms.
7. He was a majority owner of a securities broking firm during 1997 and 1998 and participated in the management decisions of the firm at that time.
8. He had the necessary equipments to assist him in his business.
9. He attended courses to learn new skills and improve old ones.
10. His transactions were frequent, large in amount and lots. The total amount of his transactions for each year was very large.
11. He monitored his share portfolio closely.
12. He participated in index futures trading, sub-sub-underwriting of share offers, and short-selling.

G The Revenue's case

28. It is the Revenue's case that although Mr A claims to be a trader trading under this own name, he was acting not differently from a serious speculator. In support of its case, Counsel for the Revenue asserted that Mr A's daily transactions were not significant; Mr A's keeping of records of his own share transactions was only incidental to the keeping of records of those of his family companies and Company I; his secretary Miss O was employed by Company C; his office, equipments and stock channels were those of Company I; Mr A's sub-underwriting contracts were no more than those of a valued customer being given an opportunity by his dealer to subscribe for some new shares with no intention to distribute them to other buyers; Mr A's share dealings were more controlled in the early years but became more speculative in later years when he started transactions in the Hang Seng Index Futures; Mr A was not disciplined in his share dealing activities

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and did not cut losses as a true trader would; his family was only prepared to assist him financially on the condition that he totally retired from the securities market so as to regain his senses. Mr A was a speculator and not a trader in his shares and future index dealing activities.

H Our decision

29. The legal principles in this type of case are well established. Those relevant to this case are summarized above.

30. Whether a person is carrying on a trade or business is a matter of fact and degree to be decided on all the circumstances of the case.

31. We have fully considered the factors mentioned in paragraph 27 above which the Taxpayers' representative urged upon us in support of the claim that Mr A was trading in shares and future index. However, on the evidence before us we are unable to come to the conclusion that Mr A was in fact carrying on a business in his share dealing activities. By virtue of section 68(4) of the IRO, the onus of proof rests on the Taxpayers. We find that the Taxpayers have failed to discharge this onus rested on them.

32. Firstly, Mr A gave evidence on his own behalf. We do not find him a very truthful witness. He was evasive and on many occasions was unwilling to give a direct answer to the question put to him. He also changed his evidence when he claimed that no condition was imposed on him by his family in bailing him out of his financial crisis. In his statement in chief, he said that on the condition he retreated totally from the share related business, his family gave him financial support in the crisis. In cross-examination, he denied that such condition was imposed on him. Also, we find Miss O who gave evidence on behalf of Mr A, not a honest witness. She told us that she was employed by Company I but in fact she had always been employed by Company C. Upon being cross-examined, she admitted that Mr A paid her an allowance for doing the additional work for him and Company I. She also did not file a tax return for the allowance given to her. She claimed that she did not do so because Mr A did not file it for her.

33. We are also not satisfied with the explanations given in relation to the following matters.

34. Mr A claims that he treated the share dealings of Company I and those of his as one and the same. Yet Company I was never mentioned to the Revenue during the course of the investigation. Had the claim been genuine, we should think that when Mr A's claim of share trading was objected to by the Revenue, Mr A would have taken the first possible opportunity to disclose to the Revenue the existence of Company I and its share trading activities. We do not accept Mr A's explanation that Company I was not disclosed earlier because the Revenue did not asked about it. The burden is on Mr A to prove his claim. The duty is not on the Revenue to find means to substantiate a taxpayer's claim. Besides, the Revenue would not have known that Company I

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was connected with Mr A in this regard. Also, we cannot agree to the claim made by the Taxpayers' representative that Company I's connection with Mr A was disclosed to the Revenue in the investigation stage in one of the letters from the Taxpayers' representative to the Revenue. We can hardly accept that the mention of Company I as one of the companies of which Mr A was a shareholder can be construed as a disclosure of his share trading business in Company I in support of his tax claim.

35. Mr A's explanation as to why a business registration certificate was not taken out by him in respect of his alleged business of share dealings until many years after its commencement is unconvincing. Mr A is well educated. He received a degree in commerce, had training for a number of years in an audit firm and also took care of a substantial part of his family business. Saying that he did not realize that a sole proprietary business required a business registration as in the case of an incorporation is far from being credible. We believe the taking out of a business registration was an after-thought of Mr A after he sustained heavy losses in the market in 1997 and 1998. We say this because as claimed by Mr A in his supplemental written statement that up to September 1997, he made a net gain of about \$15,000,000 after deducting all the losses in the previous years and the heavy losses only began to occur as from October 1997, the start of the Asia Financial Crisis. A claim for deduction of losses was not intended before 1998 and thus the business registration was not taken out before then.

36. Furthermore, Mr A said that it was on the advice of his then tax representative that audited accounts were not filed in respect of his personal share dealings activities. It appears that such advice was proper and correct in the context that Mr A was not carrying on a business in his personal share dealing activities. Again, the advice of his then tax representative that the losses in his share dealings were not deductible in his personal assessment was also correct in the same context that Mr A was not carrying on a business when he was dealing in shares and securities in his own name.

37. We do not accept the reasons advanced by Mr A for not solely using Company I to trade in shares because his share dealers were only prepared to grant greater credit limits to his personal accounts and not to Company I. This claim is unreliable since Company I was totally owned by Mr A and the share dealers accepted cross guarantees by both Company I and Mr A for their share dealings activities. Thus, there could not be reasons why Company I should not be able to operate on the same basis and enjoy the same credit limits as Mr A.

38. Mr A used the same office, secretary, office equipments, computers, telephone lines, and stock channels as Company I in his share dealing activities. Company I was the party to bear all the necessary expenses for tax purposes. Although Miss O assisted Company I and Mr A in their share dealing activities, over the years of assessment she was not paid a salary by Mr A or Company I but only an allowance which represented from about 30% to 60% of Miss O's income from Company C and yet Mrs A was paid a salary, a handsome one too if compared with the allowance given to Miss O, for only attending the office occasionally to sign documents. This

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inevitably draws us the picture that Company I was also a vehicle used by Mr A to bear expenses for tax purposes. It is claimed that the modes of operation of the share dealing activities of both Company I and Mr A were the same. Mr A's involvement with Company I was not disclosed until Company I's share dealings and the losses arising thereof had been confirmed and accepted by the Revenue. We believe it was then the time when Mr A saw fit to claim that his share dealings and those of Company I were one and the same.

39. We have also carefully considered each and every factor urged upon us by the Taxpayers' tax representative which were supposed to be able to support Mr A's claim of share trading activities. Though Mr A had an office and the necessary equipments and facilities for share dealings, and a secretary to keep those records and accounts, these amenities enjoyed by him were not those of his own. He was able to use them because of his special relationship with Company I and Company C. Further, Mr A's shares and future index portfolio was perhaps substantial in monetary term, but he fails to convince us that he was truly a trader. We are not impressed by the strategy he claimed to adopt for the purpose of trade. His strategy of not cutting loss and not setting a cap on his stake lacks professionalism and is unconventional to a true trader. As to his sub-underwriting activities, according to his own explanation as to how they were carried out, they were no more than activities undertaken by a valued customer when he was given the first right to subscribe for new shares by his share dealers. As to Mr A's claim of attending share related courses, reading massive materials, engaging in vast preparation work for the purpose of his share dealings, these activities are not uncommon to and no more than those carried out by, some keen and sophisticated investors of this day.

40. Having fully and carefully considered all the documentary and oral evidence, the arguments of both parties and the applicable legal principles in this appeal, we are not persuaded by the claim that Mr A was carrying on the business of share trading in his securities and futures index activities. We find that the Taxpayers have failed to discharge the burden on them to prove that the assessment was excessive and incorrect. Thus, we hereby dismiss the appeal.