

proceed. It is an expense antecedent to the construction of the new building and unrelated to expenditure incurred on it and is not therefore expenditure "incurred on the construction" within the meaning of section 36. Whilst the wording of the Australian Statute on which the case of **Broken Hill Proprietary Co. Ltd. v. Federal Commissioner of Taxation**² quoted in argument to us is based is not identical to that being considered here the reasoning of the judgment in that case was of considerable assistance to us in our determination.

This case is therefore remitted to the Commissioner for him to revise the assessment accordingly.

Case No. D 7/79

Board of Review:

L. J. D'Almada Remedios, *Chairman*, Pauline Chan, K. H. A. Gordon & H. F. G. Hobson, *Members*.

10 December 1979.

Additional tax—taxpayer understated income—assessment to penal additional tax—plea of "reasonable excuse" rejected—duty to make a true return—re-opening of past assessments refused—Inland Revenue Ordinance, ss. 70 and 82A.

The taxpayer understated his income in his tax return for the year of assessment 1977/78 which, if accepted as correct, the tax undercharged would have been \$8,104.00. On appeal against the additional tax imposed as a penalty under section 82A of the Inland Revenue Ordinance, the taxpayer admitted, and claimed "reasonable excuse" for, the understatement. His excuse was that as the Assessor had his employer's return, any figure he inserted would have no bearing on the assessment against him. The Board did not find his excuse to be a reasonable one and held that he had a duty to make a true return. The Board refused the taxpayer permission to re-open past assessments, being final and conclusive under section 70; he had sought to do so in support of his contention that accurate returns submitted in the past had not been accepted.

Decision: Appeal dismissed.

Appellant in person.
William Lee Chan-ning for the Commissioner of Inland Revenue.

² (1967) 10 A. & N.Z. Income Tax Reports 481.

Reasons:

This is a section 82A case. The facts are simple. The Appellant is a school teacher. For the year of assessment 1977/78, he derived income from employment in the sum of \$79,560.00. In his tax return he understated his income and declared it to be \$46,825.00. Had his return been accepted as correct the amount of tax undercharged would have been \$8,104.00. Under section 82A he could be liable to a penalty assessment of three times that amount but the Commissioner imposed a penalty assessment of \$500.00.

The Appellant does not deny that he understated his income but contends that he had "reasonable excuse" for so doing.

His case is that since the Assessor has his employer's return relating to his income, the Appellant can put in any figure he pleases on the return because any figure he declares will have no bearing on the assessment against him.

We do not find this to be a reasonable excuse. It is not for the Appellant to decide whether his declaration will or will not have a bearing on the assessment. It is his duty to make a true return. He has not done so. He has not attempted to offer any explanation for his incorrect return. Indeed, he admits having received a copy of his employer's return regarding his salary before he put in his own return. It is no excuse for a taxpayer to declare any random figure at his whim simply because he thinks that in any event the Assessor, on investigation, will discover that his return is incorrect. Such an argument finds no place in logical thinking and is wholly untenable.

We have not permitted the Appellant to re-open past assessments or deal with them which he has sought to do for the purpose of showing that although in previous years he had submitted accurate returns they have not been accepted. Previous assessments have, by virtue of section 70, become final and conclusive and unless appealed against their validity is not open to question; nor would such assessments have any relevance or bearing on the matter at hand. It is hardly necessary to say that a taxpayer is not entitled to put in a false return because he feels that in the past the Revenue has not been fair to him or because his returns have not been accepted.

This appeal must therefore be dismissed. We would only add that the Appellant should consider himself fortunate that the Commissioner has dealt so leniently with him in regard to the quantum of penalty that has been imposed.