

**Case No. BR 7/75***Board of Review :*

Chan Ying-hung, *Chairman*, R. Beynon, W. F. Houstoun, & D. A. L. Wright, *Members*.

**12th October 1976.**

Profits tax—business commenced within year of assessment 1972/73—assessable profits to be computed on profits derived during period beginning on date of commencement of business and ending on the last day of the year of assessment—Inland Revenue Ordinance, section 18(3).

The taxpayer commenced a share-broking business on the 14th April 1972. For the year of assessment 1972/73 the taxpayer submitted a profit tax return showing a loss of \$165,699.00 which was arrived at by apportioning the loss of \$226,177.00 incurred during the period from the 14th April 1972 to 1st August 1973, i.e. 460 days and the basis period of 337 days calculated from 29/4/72 (the date of the first sale) to the 31/3/73. The trading account submitted with the return had 2 schedules, one showing a profit of \$87,350.00 for the period 14/4/72 to 31/3/73 and the other a loss of \$313,527.00 for the period 1/4/73 to 1/8/73. A third schedule was subsequently submitted by the taxpayer which showed a profit of \$276,410.00 in respect of sales of new issues of shares allowed to it for the period 13/9/72 to 31/3/73.

For the year of assessment 1972/73 the assessable profits of the taxpayer were assessed under section 18(3) of the Inland Revenue Ordinance as \$363,760.00 (\$87,350.00 + \$276,410.00) being the profits derived during the period from the date it commenced business i.e. 14/4/72 to the 31/3/73.

The taxpayer objected to the assessment contending that the provisions of section 18(7) which were repealed in 1975 (the provisions of section 18(7) have been re-enacted as section 18E(3)) should apply to allow apportionment of the profits and loss in respect of the two periods in the computation of the assessable profits. On appeal.

**Decision:** Appeal dismissed. Assessment as determined by the Commissioner confirmed.

Lam Hoi-ham for the appellant.

Chan Kam-cheong for the Commissioner of Inland Revenue.

*Reasons :*

The Appellant commenced a share broking business in April 1972. A Profit Tax Return for the year of assessment 1972/73 was submitted supported by a Trading Account in respect of quoted shares showing a loss of \$226,177.00 for the period from 29th April 1972 (the date of the first sale) to the 1st August 1973, a period of 460 days. Submitted with the Trading Account were two schedules showing details of transactions in quoted shares for two periods, one from 14th April 1972 (the date of the first

purchase) to 31st March 1973 and the other from 1st April 1973 to 1st August 1973. These schedules show a profit of \$87,350.00 for the first period and a loss of \$313,527.00 for the second period, the difference between these two amounts being \$226,177.00 the loss shown in the Trading Account. The Profit Tax Return submitted disclosed a loss of \$165,699.00 which was arrived at by apportioning the loss of \$226,177.00 during the entire period for which the Trading Account was drawn up i.e. 460 days and the basis period of 337 days from the date of the first sale (i.e. 29th April 1972) to 31st March 1973. It should be noted that, following the usual practice, all the figures have been rounded off to the nearest dollar.

As a result of inquiries made by the Assessor, a third schedule was submitted by the Appellant showing a profit of \$276,410.00 from dealings in new issues allotted to the Appellant during the period from 13th September 1972 to 31st March 1973.

The Assessor assessed the Appellant to Profit Tax under section 18(3) of the Inland Revenue Ordinance from the date it commenced business i.e. 14th April 1972 when the first purchase was made to 31st March 1973, the amount of profits assessed being \$363,760.00 made up as follows:—

Profit on sale of new issues .....	\$276,410.00
Profit on dealings in quoted shares .....	87,350.00
	<u>\$363,760.00</u>

This means that the Assessor refused to take into account the loss of \$313,527.00 incurred during the period from 1st April 1973 to 1st August 1973 obviously on the ground that it falls within the next year of assessment.

The Appellant's complaint is that his tax liability should have been determined in accordance with the provisions of sec. 18(7) of the Ordinance which before its repeal in 1975 read as follows:—

“Where in the case of any trade, profession or business it is necessary in order to arrive at the assessable profits or the losses for any year of assessment to divide and apportion to specific periods the profits and losses for any period for which accounts have been made up, or to aggregate any such profits or losses or any apportioned parts thereof, it shall be lawful to make such a division and apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days or months in the respective periods unless the Commissioner, having regard to any special circumstances, otherwise directs”.

Mr. H. H. Lam of Messrs. Kwan & Co., chartered accountants and tax-representatives of the Appellant, submits that if the provisions of section 18(7) were applied, as he contends they should be, the tax liability of the Appellant would be as follows:—

Loss from sale of quoted shares during the period from 29th April 1972 to 1st August 1973 (i.e. 460 days) .....	(\$226,177.00)
Profit from Sales of new issues .....	<u>276,410.00</u>
Net Profit—	<u><u>\$ 50,233.00</u></u>

Assessable Profit for the period from 29th April 1972  
to 31st March 1973 (337 days) apportioned under  
section 18(7):—

$$\$50,233.00 \times \frac{337}{460} = \underline{\underline{\$36,801.00}}$$

In our opinion, the provisions of section 18(3) of the Ordinance under which the Appellant was assessed are mandatory and as the Appellant commenced to carry on a business on a day within the year of assessment 1972/73, tax must be computed on profits derived during the period beginning on the date of commencement (which in this case is unquestionably 14th April 1972) and ending on the last day of the year of assessment i.e. 31st March 1973.

If such profits could not be ascertained from the accounts submitted by the Appellant, then a different situation would arise, but here two of the schedules submitted have been prepared in such a way that the profit or loss of each transaction during the year of assessment can be readily ascertained. More importantly, they show the trading results on 31st March 1973, as well as the closing stock on that date so that it is not necessary to resort to any division and apportionment in order to arrive at the profits or losses of the Appellant during the year of assessment as provided by section 18(7). We emphasize the use of the word “necessary” in that section. It shows clearly that the section is inapplicable to the circumstances of this case.

Once we come to this conclusion, the question whether or not the Appellant has been fairly or equitably assessed does not arise, as contrary to the submission of the Appellant, equity really has no room to play in the interpretation or administration of a taxing statute.

For these reasons, the appeal is dismissed and the assessment as determined by the Commissioner is confirmed.