

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D15/89

Penalty assessment - quantum of penalty - whether excessive - section 82A of Inland Revenue Ordinance.

Panel: Henry Litton QC (chairman), Geoffrey Hui and Robert Kwok Chin Kung.

Date of hearing: 28 April 1989.

Date of decision: 1 June 1989.

The taxpayer was a school teacher who when filling in her salaries tax return made an accidental error. When using her calculator, she entered \$8,800 instead of the correct figure which was \$88,000. The Commissioner under section 82A imposed a penalty assessment of \$900. The taxpayer appealed and argued that the quantum of \$900 was excessive.

Held:

The sum of \$900 was not excessive. The policy behind the law is that taxpayers should exercise care in filling in their tax returns. Errors even though not wilful lead to a waste of administrative time.

Appeal dismissed.

S K Ismail for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

1. This is an appeal against an assessment of additional tax made by the Commissioner under section 82A of the Inland Revenue Ordinance. The amount of tax undercharged in consequence of the Taxpayer's incorrect return for the year of assessment 1986/87 was \$9,562; the penalty imposed by the Commissioner under section 82A in consequence of the incorrect return was \$900. That is to say, a penalty amounting to less than 10% of the tax under-charged was imposed. The Taxpayer was nevertheless dissatisfied, and exercised her right of appeal to the Board of Review under section 82B.

2. The facts are straightforward. The Taxpayer is a teacher. For the year of assessment in question, she had two sources of income as follows:

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(a) A school on Hong Kong Island	\$88,000
(b) Hong Kong Examination Authority	<u>1,248</u>
	\$89,248
	=====

3. In her salaries tax return, the Taxpayer disclosed the two sources of income and put a composite figure of \$10,048 in the form, being the total of principal income received. The form was filled in by the Taxpayer herself and she made the usual declaration to the effect that the statements contained in the return were correct.

4. The Taxpayer's explanation for the error, first given to the Commissioner and subsequently to us, is that she had, in filling in the form, made a silly mistake: instead of adding \$88,000 to the figure of \$1,248 to yield the correct amount, she had mistakenly entered the figure of \$8,800 into her calculator. This gave the total of \$10,048 which she put in her form.

5. As can be readily seen, a moment's pause would have made the Taxpayer realise that she had seriously understated her total income. There is an enormous difference between an annual income of \$89,248 and the amount in her form: \$10,048. There cannot be many people in Hong Kong who exist on a bare income of \$10,048 annually.

6. Plainly, the Commissioner must have accepted the Taxpayer's explanation that the error was not wilful, otherwise he could not have taken such a lenient view of the matter and imposed a penalty of less than 10% of the tax undercharged. The maximum penalty permissible under section 82A is 300%.

7. The policy behind the law is that taxpayers should exercise care in filling in their tax returns. Errors, even though not wilful, lead to a waste of administrative time. Here, the Taxpayer has been dealt with under section 82A on the basis of great leniency. We see no grounds for saying that the penalty imposed by the Commissioner was 'excessive' and accordingly dismiss the appeal.