

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D21/94

Salaries tax - omission to include amount received - penalty of 5% - appeal frivolous - costs awarded of \$1,000.

Panel: Robert Wei Wen Nam QC (chairman), Philip Fu Yuen Ko and Andrew Wang Wei Hung.

Date of hearing: 8 April 1994.

Date of decision: 23 June 1994.

The taxpayer completed and filed a salaries tax return but completely omitted to provide any information regarding his assessable income. In due course the Commissioner imposed a penalty of approximately 5% of the tax involved under section 82A of the Inland Revenue Ordinance. The taxpayer appealed to the Board of Review against the assessment to penalty tax.

Held:

The appeal was frivolous and should be dismissed with costs of \$1,000.

Appeal dismissed with \$1,000 being costs of the Board awarded.

Chan Kam Tat for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. This is an appeal by an individual (the Taxpayer) against the additional tax assessment raised on him by way of penalty under section 82A of the Inland Revenue Ordinance (the IRO) for the year of assessment 1991/92 for the making of an incorrect salaries tax return for that year.

2. The salaries tax return was signed by the Taxpayer and properly filled in by him in all the relevant sections except section B, the section for income, which was left completely blank. This is extraordinary because it is common ground that during the year in question he had received from his employer a salary of \$342,760. He was therefore assessed to salaries tax in the sum of \$51,204 in respect of that salary and he has paid the tax on time.

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3. On 22 October 1993, having considered the representations made by the Taxpayer, the Deputy Commissioner issued a notice of assessment of additional tax under section 82A of the IRO in the sum of \$2,500.

4. On 12 November 1993, the Taxpayer gave notice of appeal to the Board against the additional tax assessment on the grounds: (a) that he had not made any mistakes relating to his income tax for the past 20 years and had a 'clean record'; (b) that the mistake in question was caused by carelessness in filling in the return form; and (c) that he had no intention of cheating the government.

5. At the hearing of this appeal, the Taxpayer stated that he could not recall why he was so careless when completing the form, that he was not saying that the Revenue were being unfair, but that he was not dishonest.

6. From the fact that the salaries tax return was properly completed except the section for income which was the central section of the return, it seems to us that the omission was selective and deliberate, even assuming that he could no longer remember why he made the omission. He pleaded honesty and absence of any intention to cheat the Revenue. But the so-called honest mistake does not in our view amount to a reasonable excuse or a mitigating factor: the omission was not due to inadvertence; when completing the form, he chose to leave section B out.

7. The additional tax or penalty of \$2,500 is equivalent to just under 5% of the sum of \$51,204, the tax which would have been undercharged if the return had been accepted as correct. In our view, it is clearly not excessive.

8. This appeal is therefore dismissed and the additional tax assessment in question is hereby confirmed. Furthermore, in view of the completely frivolous nature of the appeal, we consider it appropriate to, and we hereby do, order the Taxpayer to pay the sum of \$1,000 as costs of the Board under section 68(9) of the IRO.