

Case No. D8/17

Penalty tax – fail to comply with the requirements of a notice – sections 51(1), 59, 68, 80(2), 82(1) and 82A of the Inland Revenue Ordinance (‘the Ordinance’)

Costs – wasting public resources

Panel: Elaine Liu Yuk Ling (chairman), Cheng Wing Keung Raymond and Mo Lai Lan.

Date of hearing: 27 February 2017.

Date of decision: 19 June 2017.

The taxpayer was a private company incorporated in Hong Kong with ‘properties investment’ as its principal business activity. By virtue of section 51(1) of the Ordinance, the Assistant Commissioner of Inland Revenue issued a notice for filing Profits Tax return to the taxpayer. The taxpayer was late by 23 days in submitting its Profits Tax Return. The taxpayer had previously failed to submit its Profits Tax returns on three consecutive years of assessment. The Commissioner, having considered and taken into account the written representations and the taxpayer’s previous filing history, issued a notice of assessment and demand for additional tax by way of penalty under section 82A of the Ordinance in the amount of \$12,000 which represents 3.04% of the amount of tax undercharged. The grounds of appeal of the taxpayer was that the additional tax was excessive having regard to: (i) there was no undercharge of profits tax in consequence of the failure to comply with section 51(1) of the Ordinance; (ii) the delay was due to the fact that the first set of financial statements had gone astray in the mail; (iii) there was no deferment of tax assessment; and (iv) there was no intention to evade or delay tax payment as provisional tax which exceeded the actual tax payable had already been paid.

Held, dismissing the appeal with costs:

1. Not only when there was an actual undercharge of tax would a taxpayer be liable to be assessed an additional tax under section 82A(1) of the Ordinance, the failure to file a return at all or the failure to file a return on time would result in an undercharge of tax and the taxpayer may be subject to an additional tax assessed under section 82A(1) unless there is reasonable excuse.
2. The taxpayer has not submitted any documentary evidence to show when the alleged first set of financial statements was sent nor any proof of loss and the taxpayer chose not to give evidence despite clear directions. We do not accept the allegation of loss in postage. Further, it was the taxpayer’s own case that the audit was completed after the Extended Due Date for the

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

filing of the Return. It is frivolous for the taxpayer to allege that the loss of the financial statements (if any) caused the late filing. The board had repeatedly reminded taxpayers of their responsibility to regulate its own affairs, take heed of possible contingencies and take such steps to ensure compliance of the Ordinance. Even if the taxpayer's allegation is proved, it is not an excuse for the late filing.

3. No deferment of tax assessment is not a relevant factor. The Revenue proceeded to make an estimated assessment as required by law. This did not absolve the taxpayer from the liability under section 82A of the Ordinance. Section 59(3) of the Ordinance expressly stated that such assessment shall not affect the liability of the taxpayers to a penalty by reason of his failure or neglect to file a return.
4. The lack of intention to evade or delay the payment of tax is not a reasonable excuse for not filing the Return within the time limit. Although the provisional tax paid exceeded the actual tax payable by the taxpayer for the tax year in question, this is not an excuse for the delay in filing the Return.
5. Having considered the entire circumstances of the case, the Board does not consider the amount of additional tax charged at \$12,000 representing 3.04% of tax undercharged is excessive.
6. The appeal was without merits. The taxpayer had made some assertions but provided no evidence at all to substantiate the assertion. The entire appeal is a waste of public resources. The taxpayer is ordered to pay costs in the sum of \$5,000.

Appeal dismissed and costs order in the amount of \$5,000 imposed.

Cases referred to:

Dodge Knitting Co Ltd and Dodge Trading Ltd v Commissioner of Inland
Revenue 2 HKTC 597
D53/93, IRBRD, vol 8, 383
D40/94, IRBRD, vol 9, 269
D48/89, IRBRD, vol 4, 512
D49/08, (2008-09) IRBRD, vol 23, 934
D36/13, (2014-15) IRBRD, vol 29, 161
D118/02, IRBRD, vol 18, 90
D112/99, IRBRD, vol 14, 642
D64/94, IRBRD, vol 9, 361
D49/08, (2008-09) IRBRD, vol 23, 934
D3/16, (2016-17) IRBRD, vol 31, 81

S Y Leung of Messrs S Y Leung and Partners CPA, for the Appellant.
Chau Kin Wing and Choy Wing Yan, for the Commissioner of Inland Revenue.

Decision:

The Appeal

1. This is an appeal against the imposition of an additional tax by way of penalty under Section 82A of the Inland Revenue Ordinance ('the Ordinance') for the Appellant's failure to comply with the requirement of a notice under section 51(1) of the Ordinance to furnish a Profits Tax return for the year of assessment 2014/15 ('the Return') within the prescribed time. The Appellant was represented by Ms Leung of Messrs S Y Leung & Partners who was also the tax representative of the Appellant for the filing of the Return ('the Representative').

2. Particulars of the assessment to additional tax by way of penalty are as follows:

- | | |
|---|-----------|
| (a) Year of assessment: | 2014/15 |
| (b) Amount of tax undercharged: | \$395,197 |
| (c) Amount of additional tax: | \$12,000 |
| (d) Percentage of additional tax on tax undercharged: | 3.04% |

3. By a letter dated 11 July 2016, the Appellant, through the Representative, lodged the present appeal.

Relevant Provisions of the Ordinance

4. There are clear provisions in the Ordinance governing the filing of the Return and the consequence of late filing.

5. Under section 51(1) of the Ordinance, an assessor may give notice in writing to any person requiring him within a reasonable time stated in such notice to furnish any return which may be specified by the Board of Inland Revenue for profits tax.

6. Section 59 of the Ordinance provides that:

'(1) Every person who is in the opinion of an assessor chargeable with tax under this Ordinance shall be assessed by him as soon as may be after the expiration of the time limited by the notice requiring him to furnish a return under section 51(1)...'

‘(3) Where a person has not furnished a return and the assessor is of the opinion that such person is chargeable with tax, he may estimate the sum in respect of which such person is chargeable to tax and make an assessment accordingly, but such assessment shall not affect the liability of such person to a penalty by reason of his failure or neglect to deliver a return.’

7. Pursuant to section 82A(1) of the Ordinance, a person, who without reasonable excuse fails to comply with the requirements of a notice given to him under section 51(1) shall be liable to be assessed to additional tax of an amount not exceeding treble the amount of the tax which would have been undercharged if the failure to comply with section 51(1) had not been detected.

8. The onus of proving that the assessment appealed against is excessive or incorrect is on the Appellant (section 68(4) of the Ordinance).

9. After hearing the appeal, the Board has the power to confirm, reduce, increase or annul the assessment or remit the case to the Commissioner. Where the Board does not reduce or annul such assessment, the Board may order the Appellant to pay as costs of the Board a sum not exceeding \$25,000, which shall be added to the tax charged and recovered therewith (section 68(8)(a), section 68(9) and Part 1 of Schedule 5 of the Ordinance).

Grounds of Appeal

10. The Appellant’s grounds of appeal as set out in the Notice of Appeal dated 11 July 2016 is that the additional tax of \$12,000 was excessive having regard to the following:

- (1) There was no undercharge of 2014/15 profits tax in consequence of the failure to comply with section 51(1) of the Ordinance. The Appellant relied on the payment of provisional tax for 2014/15 of \$585,484 in advance, which exceeds the sum of \$395,197 being the actual tax payment for the year.
- (2) The audit had already been completed on 30 November 2015. The first set of printed financial statements had gone astray due to the loss of mailing. The second set was re-mailed resulting in a delay of submission by 3 weeks.
- (3) The ‘pre-signed return’ was submitted on 8 December 2015 and the signed financial statements were submitted the following date.
- (4) There was ‘no defer (*sic*) of tax assessment’ made by the Inland Revenue Department as estimated assessment for the year of 2014/15 was issued on 7 December 2015 and valid objection was lodged on 11 December 2015.

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

- (5) There was no intention to evade or delay tax payment as provisional tax had already been paid beforehand.
- (6) There was no further tax due for the year 2014/15, instead there was an overpayment of \$190,284 by the payment of provisional tax.
- (7) Penalty assessment could only be made where tax had been undercharged as a result of failure to file the Return by the due date.

Agreed Facts

11. The parties agreed to the facts set out in Paragraph 12 below except for the period of delay for the filing of the Return set out in Paragraph 12(2) below. The Appellant considered that the date of receipt of the Return was 8 December 2015 and the period of delay was 22 days. The Inland Revenue Department ('the Revenue') considered that the delay should be 23 days as the date of receipt should be 9 December 2015, which was the date when the Revenue received both the Return and the audited financial statements together with the relevant tax computation. This difference, in the view of the Board, is not material to the determination of this appeal.

12. The Board found the following as the facts of this case:

- (1) The Appellant has appealed against the imposition of additional tax by way of penalty assessed upon it on 23 June 2016 under section 82A of the Ordinance for the failure to comply with the requirement of a notice under section 51(1) of the Ordinance to furnish the Returns within the prescribed time allowed.
- (2) Particulars of the Appellant's delay in filing the Return and the additional tax by way of penalty are as follows:

(a) Year of assessment:	2014/15
(b) Date of issue of the Return:	1 April 2015
(c) Extended due date for filing the Return:	16 November 2015
(d) Date of signing auditor's report and financial statements:	30 November 2015
(e) Date of receipt of the Return by Inland Revenue Department:	9 December 2015
(f) Period of delay in filing the Return:	23 days
(g) Tax undercharged:	\$395,197
(h) Additional tax by way of penalty:	\$12,000
(i) Percentage of additional tax on tax undercharged:	3.04%

- (3) The Appellant is a private company incorporated in Hong Kong in February 1987. It closes its accounts annually on 31 March.

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

- (4) The Appellant's principal business activity as reported in the Return is 'Properties Investment'.
- (5) At all relevant times, the Appellant's directors were Ms B, Mr C, Ms D, Mr E, Mr F. The Appellant's auditors were Messrs S Y Leung & Partners Certified Public Accountants, which was also its tax representative.
- (6) On 1 April 2015, the Assistant Commissioner of Inland Revenue ('the Assistant Commissioner') issued a notice for filing Profits Tax return for the year of assessment 2014/15 to the Appellant. By virtue of section 51(1) of the Ordinance, the Appellant was required to complete and submit the Return within one month from 1 April 2015.
- (7) Under the block extension scheme for lodgement of 2014/15 tax returns, which applied to the Appellant, the due date for filing the Return was extended to 16 November 2015 ('the Extended Due Date'). The Appellant did not submit the Return by the Extended Due Date.
- (8) On 7 December 2015, the Assessor raised on the Appellant an estimated Profits Tax assessment for the year of assessment 2014/15 pursuant to section 59(3) of the Ordinance as follows:

	2014/15 (Final)	2015/16 (Provisional)	Total tax payable
Estimated Assessable Profits	<u>\$3,730,000</u>	<u>\$3,730,000</u>	
Tax thereon	\$595,450	\$615,450	
<u>Less: Net provisional tax 2014/15 charged</u>	<u>\$585,481</u>		
Tax payable	<u>\$9,969</u>	<u>\$615,450</u>	<u>\$625,419</u>

- (9) On 8 December 2015, the Appellant submitted the Return reporting assessable profits of \$2,516,346. The Return was signed by Ms D, one of the Appellant's directors, and the Return was dated 8 December 2015.
- (10) On 9 December 2015, the Appellant, through the Representative, submitted the audited financial statements and tax computation for the year ended 31 March 2015 to validate the Return. The Auditor's Report was dated 30 November 2015. The financial statements were approved and authorized for issue by the Appellant's board of directors on the same day (i.e. on 30 November 2015).
- (11) On 11 December 2015, the Appellant, through the Representative, objected to the estimated Profits Tax Assessment set out in subparagraph (8) above.

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

- (12) On 6 January 2016, the Assessor accepted the Appellant’s objection and issued a revised Profits Tax Assessment for the year of assessment 2014/15 as follows:

	2014/15 (Final)	2015/16 (Provisional)	Total tax payable
Revised Assessable Profits	<u>\$2,516,346</u>	<u>\$2,516,346</u>	
Tax thereon	\$395,197	\$415,197	
Less: Net provisional tax 2014/15 charged (Tax repayable)/Tax payable	<u>(\$190,284)</u>	<u>\$415,197</u>	<u>\$224,913</u>

- (13) No prosecution under section 80(2) or section 82(1) of the Ordinance has been instituted against the Appellant in respect of the same facts.

- (14) On 5 May 2016, the Commissioner of Inland Revenue (‘the Commissioner’) issued a notice of intention to assess additional tax under section 82A(4) of the Ordinance against the Appellant in respect of its failure to submit the Return within the prescribed time allowed. If the Revenue had not detected the failure, tax amounting to \$395,197 would have been undercharged. The notice stated that additional tax by way of penalty up to three times the amount of tax that would have been undercharged might be imposed. The Appellant was invited to submit written representations to the Commissioner.

- (15) By a letter dated 13 June 2016, the Appellant, through the Representative, submitted written representations to the Commissioner.

- (16) (a) The Appellant had previously failed to submit its Profits Tax returns for the years of assessment 2011/12 to 2013/14 within the time stipulated and details are as follows:

Year of assessment	Date of issue of the return	Extended due date for filing the return	Date of signing auditor’s report and financial statements	Date of signing the return	Date of receipt of the return by Inland Revenue Department	Period of delay in filing the return	Tax undercharged
2011/12	02-04-2012	15-11-2012	15-11-2012	23-11-2012	23-11-2012	8 days	\$351,966
2012/13	02-04-2013	15-11-2013	12-11-2013	21-11-2013	21-11-2013	6 days	\$509,413
2013/14	01-04-2014	17-11-2014	04-12-2014	15-12-2014	15-12-2014	28 days	\$575,481

- (b) No penalty action was taken in respect of the Appellant’s failure to file Profits Tax returns within the prescribed time allowed for the years of assessment 2011/12 and 2012/13.

- (c) In relation to the late filing of the Appellant’s Profits Tax return for the year of assessment 2013/14, the Commissioner issued a

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

notice of intention to assess additional tax under section 82A(4) of the Ordinance to the Appellant. Having considered the Appellant's written representations submitted through the Representative, the Commissioner decided not to take penalty action against the Appellant on that occasion and a letter was issued to the Appellant on 18 June 2015 informing the Appellant that any further offence of this nature would not be treated so leniently.

- (17) On 23 June 2016, the Commissioner, having considered and taken into account the written representations and the Appellant's previous filing history mentioned in sub-paragraph (16) above, issued a notice of assessment and demand for additional tax by way of penalty under section 82A of the Ordinance for the year of assessment 2014/15 in the amount \$12,000 ('the Additional Tax').
- (18) By a letter dated 4 July 2016, the Representative wrote to the Assistant Commissioner on behalf of the Appellant in respect of the imposition of the Additional Tax.
- (19) By a letter dated 8 July 2016, the Assessor advised the Representative to lodge an appeal directly to the Board of Review in accordance with section 82B of the Ordinance. The Assessor also expressed her views in respect of the Representative's reasons for disagreement on the imposition of the Additional Tax.
- (20) By a letter dated 11 July 2016, the Appellant, through the Representative, gave a notice of appeal to the Clerk to the Board of Review against the assessment of the Additional Tax.

Decision

13. It can be discerned from the Notice of Appeal that there are the following issues in this appeal:

- (1) Whether there was an undercharge of tax which triggered section 82A(1) of the Ordinance.
- (2) Whether the following allegations of the Appellant are proved, and if so, whether they constitute reasonable excuse contemplated in section 82A(1) of the Ordinance:
 - (a) The first set of financial statements had gone astray due to the loss of mailing. The second set was re-mailed resulting in a delay of submission by 3 weeks. The Return was submitted on 8 December 2015, and the financial statements were submitted on 9 December 2015.

- (b) There was no deferment of tax assessment as estimated assessment was issued and objection was lodge.
 - (c) There was no intention to evade or delay tax payment as provisional tax had already been paid. There was no tax due for 2014/15, instead there was an overpayment of \$190,284.
- (3) Whether the amount of Additional Tax imposed was excessive.

Undercharge of tax

14. The Appellant, through its Representative, contended that there was no undercharge of tax in consequence of the late filing of the Return because the provisional tax paid for the year 2014/15 exceeded the actual final tax payable for the same period.

15. This contention of the Representative is misconceived.

16. Section 82A(1) of the Ordinance applies not only to the situation where there was an actual undercharge of tax as a result of the failure to comply with section 51. It also applies to situation where tax ‘would have undercharged if such failure had not been detected’.

17. In the case of Dodge Knitting Co Ltd and Dodge Trading Ltd v CIR 2 HKTC 597, Liu J had held as follows:

‘Sub-paragraph (ii) [of section 82A(1)]... divides ... into two limbs: the first deals with an actual undercharge in the case of a detected failure under section 51(1)...; the second limb deals with a hypothetical undercharge if such failure “had not been detected” in a case where failure was in fact detected. The two limbs are again mutually exclusive for the diagonally opposite occurrences but devised to provide the same sanction for both eventualities.’

‘...A failure to deliver a return in compliance with the notice under 51(1)..., would have,..., the effect of the making of a nil return in principle and on fact. It is an irresistible factual inference and sound in taxation principle. Any assessment made by the assessor subsequent to such a failure would have the consequence that tax has been undercharged.’

‘...Whilst limb one deals with an actual undercharge, limb two deals with an hypothetical undercharge - a hypothetical situation in a case where the failure was in fact detected - thus enabling the same penalty to be computed on a hypothetical sum of what would have been undercharged if such failure had not been detected...’

18. It was held in D53/93, IRBRD, vol 8, 383 that:

‘The contention that there was no profits tax undercharged was misconceived. The amount of tax undercharged for the purposes of section 82A(1) is the full amount of tax payable on the assessable profits or income for the relevant year which crystallises as soon as the taxpayer makes a default in filing his tax return ...’

19. The board in D40/94, IRBRD, vol 9, 269, had explained that:

‘... The IRO had set up a theoretical situation for the calculation of penalty tax. The legislature has provided a simple and expedient way of calculating the maximum amount which the Commissioner can impose. The legislature has chosen to adopt a theoretical situation of what would be the case if the failure to do something had never been found out. Obviously the failure has been found out but that is not material. If the Taxpayer had never filed its tax return then theoretically it would never have paid any tax. That being the case it must follow logically that the amount of tax which would have been undercharged would have been the full amount of the tax which was eventually assessed...’

20. It is thus clear from these authorities that not only when there was an actual undercharge of tax would a taxpayer be liable to be assessed an additional tax under section 82A(1) of the Ordinance, the failure to file a return at all or the failure to file a return on time would result in an undercharge of tax and the taxpayer may be subject to an additional tax assessed under section 82A(1) unless there are reasonable excuse.

The Appellant’s first set of financial statements had gone astray due to loss in mailing, and the loss caused the 3 weeks’ delay in filing of the Return

21. The Board shall first determine whether the Appellant’s allegation is proved, and if so, whether it constitutes a ‘reasonable excuse’ under section 82A of the Ordinance.

22. The Appellant has not submitted any documentary evidence to show when the alleged first set of financial statements was sent nor any proof of loss.

23. Furthermore, despite clear directions before the hearing and confirmation with the Appellant’s Representative at the beginning of the hearing, the Appellant chose not to give evidence. There was no oral evidence on the allegation either.

24. The Appellant chose to offer no evidence at all to support this allegation. We do not accept the allegation of loss in postage.

25. On the Appellant’s own case, the audit was completed on 30 November 2015 (See paragraph 2 of the Appellant’s Notice of Appeal). The Extended Due Date for the filing of the Return was 16 November 2015. It was the Appellant’s own case that the audit was completed after the Extended Due Date for the filing of the Return. It is

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

frivolous for the Appellant to allege that the loss of the printed set of financial statements (if any) caused the late filing.

26. Even if the first set of financial statements of the Appellant was lost in mailing and caused a delay of 3 weeks (which we do not find so), there was no reason why the Appellant, who had an obligation to file the Return on time, did not contact the Representative before the due date. There was equally no reason why the Representative did not contact the Appellant to follow up with the finalization of the financial statements before the due date.

27. The board had repeatedly reminded taxpayers of their responsibility to regulate its own affairs, take heed of possible contingencies and take such steps to ensure compliance of the Ordinance (See: D48/89, IRBRD, vol 4, 512; D49/08, (2008-09) IRBRD, vol 23, 934) The Appellant's business is simple and its accounts should not be complicated. The Appellant had 7.5 months to prepare and finalise the accounts and the Return. It should be more than sufficient.

28. Even if the Appellant's allegation is proved, it is not an excuse for the late filing.

No deferment of tax assessment as estimated assessment was issued and objection was lodged

29. The Appellant next claimed that an additional tax should not be imposed as there was no deferment of tax assessment. This is not a relevant factor. (See Dodge, *supra*, at page 608; D36/13, (2014-15) IRBRD, vol 29, 161)

30. The Revenue proceeded to make an estimated assessment as required by law. This did not absolve the Appellant from the liability under section 82A of the Ordinance. Section 59(3) of the Ordinance expressly stated that such assessment shall not affect the liability of the taxpayers to a penalty by reason of his failure or neglect to file a return.

No intention to evade or delay tax payment as provisional tax had already been paid, no tax was due

31. The Appellant further claimed that it did not have any intention to evade or delay tax payment as provisional tax was paid. In the absence of any evidence, we cannot find one way or the other. In any event, the lack of intention to evade or delay the payment of tax is not a reasonable excuse for not filing the Return within the time limit. (See: D36/13, (2014-15) IRBRD, vol 29, 161)

32. Although the provisional tax paid exceeded the actual tax payable by the Appellant for the year 2014/15, this is not an excuse for the delay in filing the Return.

The amount of the penalty imposed is not excessive

33. The Appellant claimed that the amount of additional tax is too heavy.

34. The Revenue submitted that they have had regard to the following factors listed in D118/02, IRBRD, vol 18, 90, when they determined the amount of penalty:

(1) The length and nature of the delay:

There is a delay of 23 days with no reasonable excuse for the lateness in submission.

(2) The amount of tax involved:

\$395,197

(3) The absence of an intention to evade tax:

There is no evidence or suggestion of an intention to evade tax.

(4) Any loss of revenue:

There was no significant loss of revenue resulted by the delay.

(5) The track record of the taxpayer:

This is the fourth late filing within the past 5 years. Five months before the commission of this offence, the Appellant was reminded by letter of its obligation to submit the Return on time.

(6) The acceptance of the tax return eventually submitted without further investigation by the assessor:

The Revenue had accepted the Return submitted without further investigation.

(7) The lack of education on the part of the taxpayer:

The Appellant is a limited company, tax representative was appointed to handle the matter.

(8) The steps taken to put the taxpayer's house in order:

No information was provided by the Appellant in this respect.

(9) The provision of management account:

(2018-19) VOLUME 33 INLAND REVENUE BOARD OF REVIEW DECISIONS

No management account was provided to the Assessor on or before the filing due date.

35. The above are valid considerations taken by the Revenue in determining the amount of the Additional Tax.

36. A review of the following previous decisions of the board also indicate that the amount of Additional Tax assessed in the present case is not excessive:

- (a) In D112/99, IRBRD, vol 14, 642, a starting point of 10% of the tax that would have been undercharged was adopted in the assessment of penalty for late filing of the return where the taxpayer is a first offender, the delay is unintentional and the Revenue has suffered no loss. The board held that an additional tax representing 8.69% of the tax undercharge was not excessive.
- (b) In D64/94, IRBRD, vol 9, 361, the return was late by 21 days notwithstanding the granting of an extended filing deadline. The taxpayer claimed that the delay was due to late finalization of the audited accounts by the auditors. The board considered that the Revenue's assessment of additional tax of \$50,000, being 6% of the tax undercharged, was not excessive.
- (c) In D49/08, (2008-09) IRBRD, vol 23, 934, the return was late for more than 2 months. An additional tax of \$30,000 being 4.5% of the tax undercharged was held to be not excessive.
- (d) In D36/13, (2014-15) IRBRD, vol 29, 161, the return was late by 78 days. The taxpayer had two prior failures in filing profits tax return in the past 5 years. It was claimed that there was a change of accountant and all the directors were busy at the moment. The Board considered that the Revenue's assessment of additional tax of \$9,000, being 2.98% of tax undercharged, was not excessive.
- (e) In D3/16, (2016-17) IRBRD, vol 31, 81, the taxpayer had a record of late filing of its returns for the past 4 consecutive years. The subject return was late by 27 days notwithstanding the granting of an extended filing deadline. The taxpayer claimed that the delay was caused by the change of its auditor, and the longer time required for the new auditor to carry out the audit work. The Board considered that the Revenue's assessment of additional tax of \$40,000 being 3.28% of the tax undercharged, was not excessive.

37. Having considered the entire circumstances of the case, we do not consider the amount of additional tax charged at \$12,000 representing 3.04% of tax undercharged is excessive.

Disposal of the appeal and costs

38. The Appellant failed in all the grounds of appeal. We dismissed the appeal and confirmed the imposition of the Additional Tax.

39. This appeal was without merits. The Appellant had made some assertions, for example, the loss of financial statements, but provided no evidence at all to substantiate the assertion. There are clear authorities showing that the grounds of appeal put forward by the Appellant through Representative are without merits. The entire appeal is a waste of public resources. We order the Appellant to pay costs in the sum of \$5,000, which sum should be added to the additional tax and recovered therewith.