Case No. D8/19

Profits tax – deduction of the sales including depreciation charged on assets owned by the Mainland Factories

Panel: Wong Kwai Huen Albert (chairman), Chan Yue Chow and Lee Tsung Wah Jonathan.

Dates of hearing: 22 February 2019 and 1 April 2019.
Date of decision: 30 July 2019.

The Appellant objected to the Additional Profits Tax Assessments and Profits Tax Assessment raised on it. The Appellant claims deduction of the total amount of costs of sales reported in its profit and loss accounts including depreciation charged on the factory structure, plant and machinery and moulds. The Appellants claimed that the Assets were legally owned by the Mainland Factories, which were entitled to charge the total cost of the Assets including depreciation which formed part of the manufacturing cost, to the Appellant. That being the case, the value of such claim should be deducted from the Appellant's profit for tax computation purpose.

Held:

1. The Board finds that the Appellant has failed to adduce sufficient evidence to support the argument that the Depreciation computed on the basis of the cost of the Assets should be chargeable to the Appellant. There was simply no evidence to prove that the Assets were owned by the Mainland Factories. The argument that the Appellant put the Mainland Factories in funds to purchase the Assets was also unsupported by evidence. It would be more likely that the Appellant did not treat the Mainland Factories as separate entities and the latter used the Assets free of any rent or charges. There was no case for the Mainland Factories to charge the Depreciation to the Appellant.

2. The Board finds that the Appellant has failed to discharge the onus of proving that the Additional Profits Tax Assessments and Profits Tax Assessment are incorrect or excessive.

Appeal dismissed and costs order in the amount of $20,000 imposed.

Chan Kam Ping and Liu Sing Piu Chris of Messrs Liu Leung Chan Certified Public Accountants (Practising), for the Appellant.
Chan Wai Lin and Cheng Po Fung, for the Commissioner of Inland Revenue.

Decision:

Background Facts

1. Company A ('the Appellant') has objected to the Additional Profits Tax Assessments for the years of assessment 2002/03 to 2006/07 and Profits Tax Assessment for the year of assessment 2007/08 raised on it. The Appellant claims that the assessments are excessive in that:

(a) It should be assessed on a 50:50 apportionment basis as part of its profits were derived from manufacturing operations in the Mainland of China ('the Mainland');

(b) It should be entitled to industrial building allowances ('IBA') in respect of the factory buildings located in the Mainland; and

(c) It should be entitled to depreciation allowances ('DA') and deduction of capital expenditure incurred on prescribed fixed assets under section 16G ('s16G Deduction') of the Inland Revenue Ordinance ('the IRO') in respect of certain fixed assets.

2. (a) The Appellant is a private company incorporated in Hong Kong in 1991 in name of Company A1. It changed its name to the present one in 1998.

(b) In its reports of directors for the years of assessment 2002/03 to 2007/08, the Appellant described its principal activities as 'production and sales of aluminium products'.

(c) At the relevant times, the Appellant maintained a place of business at Address B ('the HK Address'). The Appellant's directors were:

Mr C
Mr D
Ms E (resigned on 24 March 2003)
Mr F (appointed on 24 March 2003)
Mr G (appointed on 24 March 2003 and resigned on 10 May 2006)

(d) The Appellant suspended its business in production and sales of aluminium products in August 2008.

(e) The Appellant closed its accounts on 31 March annually.

3. (a) Company H was established as a wholly foreign-owned enterprise in the Mainland in 1994. The Appellant was the sole investor of Company H.

(b) According to the business registration certificates of Company H, its address was Address J, City K. Company H's scope of business was production of aluminium products and processing aluminium alloy door or window and all its products were for export. The initial registered capital of Company H was $1,480,000.

(c) According to the capital verification reports of Company H, its registered capital was increased several times to $12,000,000, which was to be contributed by the Appellant in the form of imported equipment. As at 30 September 2004, the actual paid up capital received by Company H from the Appellant was $9,447,651.56.

4. (a) Company L was established as a wholly foreign-owned enterprise in the Mainland in 2000. The Appellant was the sole investor of the Company L.

(b) According to the business registration certificate of Company L, its address was Address M, City K. Company L's scope of business was production of aluminium products and 50% of its products were for export.

(c) According to the Capital Verification Report of Company L dated 22 June 2006, its initial registered capital was $3,500,000. The registered capital of Company L was subsequently increased to $11,000,000, which was to be contributed by the Appellant. As at 30 April 2006, the actual paid up capital received by Company L from the Appellant was $11,000,000.

5. By a rental agreement 租賃經營合同 dated 8 February 1999 ('the 1999 Feb Agreement'), Company H agreed to lease from Factory M the factory premises and manufacturing facilities and equipment located at City K for production and operation. The 1999 Feb Agreement contained, among other things, the following terms:

(a) The lease was for a term of 8 years.

(b) The detailed list of leased assets was at Appendix to the 1999 Feb Agreement. The lessor retained the ownership of all fixed assets leased to Company H.

(c) The lessor would be responsible for all existing debts and obligations and Company H would be responsible for all new debts and obligations.

(d) Company H would re-employ the existing employees of the lessor.

6. By a rental agreement 租賃經營合同 dated 29 December 1999 ('the 1999 Dec Agreement'), the Appellant agreed to lease from Company N the factory premises and manufacturing facilities and equipment located at City P for production and operation. The 1999 Dec Agreement contained, among other things, the following terms:

(a) The details of the leased assets were shown in the list of assets leased (租賃物清單).

(b) The lease was for a term of 20 years from 29 December 1999 to 28 December 2019.

(c) After entering into the 1999 Dec Agreement, the Appellant would register a new limited company to replace the Appellant as the leasee to the 1999 Dec Agreement.

(d) The 1999 Dec Agreement included the following Appendices:

(i) Detailed list of leased assets;

(ii) Detailed list of insured objects;

(iii) Agreements entered into by the lessor and its creditors in respect of the leasing;

(iv) Certificates of approval for land use, property ownership, utilities supply, fire safety and environmental protection etc; and

(v) Certificates of approval for sub-letting issued by the governing authorities of the lessor.

7. In its Profits Tax computation for the year of assessment 1998/99, the Appellant claimed that 50% of its profits for the year should be attributable to the manufacturing operations in the Mainland. The Appellant's claim was accepted by the Respondent.

8. (a) The Appellant furnished its Profits Tax Return for the year of assessment 2001/02 declaring an adjusted loss of $724,164. Subsequently, the Appellant submitted a revised Profits Tax computation for the year of assessment 2001/02 to reduce the adjusted loss to $688,748.

(b) In arriving at the revised adjusted loss of $688,748, the Appellant excluded/deducted, among other things, offshore loss of $688,748, s16G Deduction in respect of plant and machinery of $2,734,784 and

IBA of $219,657 in respect of factory buildings located in the Mainland.

9. The Appellant furnished its Profits Tax Returns for the years of assessment 2002/03 to 2007/08 together with its audited financial statements for the years ended 31 March 2003 to 2008 and Profits Tax computations.

(a) In its Profits Tax Returns, the Appellant declared the following assessable profits or adjusted loss for the years of assessment 2002/03 to 2007/08:

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
	$	$	$	$	$	$
Assessable Profits/(Adjusted Loss)	1,145,171	1,380,067	1,634,723	452,612	1,256,510	(1,302,466)

(b) In arriving at the above assessable profits or adjusted loss, the Appellant adjusted, among other things, the following items:

(i) Offshore profits/(loss) attributable to operations in the Mainland was excluded:

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
	$	$	$	$	$	$
Offshore profits/(loss)	1,145,171	1,380,067	1,634,723	457,612	1,256,511	(1,298,122)

(ii) Expenditure incurred on s16G Deduction, DA and IBA (collectively referred to as 'Capital Deductions') were deducted as follows:

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
	$	$	$	$	$	$
S16G Deduction						
Computer hardware & software	80,151	82,847	129,094	80,287	73,766	295,351
Plant and machinery	4,628,349	2,689,552	1,490,000	1,556,664	1,436,807	7,330,633
Moulds	758,128	776,037	764,599	703,808	812,461	1,460,336
	5,466,628	3,548,436	2,383,693	2,340,759	2,323,034	9,086,320
DA						
20% pool asset	170,147	871,039	304,298	267,060	251,145	278,313
30% pool asset	380,955	184,125	212,115	59,239	88,664	176,001
	551, 102	1,055,164	516,413	326,299	339,809	454,314
IBA	350,785	375,525	311,621	247,704	2,371,385	1,220,653

(c) The supporting schedules of the Profits Tax computations showed, among other things, the following particulars:

(i) Addition of assets to 20% and 30% pools:

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
	$	$	$	$	$	$
Additions to 20% Pool						
-Furniture & equipment	61,334	172,820	185,799	182,405	73,228	202,695
-Plant & machinery	103,559	1,024,342	82,002	41,368	139,872	62,312
Total	164,893	1,197,162	267,801	223,773	213,100	265,007
Additions to 30% Pool						
-Motor vehicles	512,106	243,079	212,480	-	78,051	269,390

(ii) The capital expenditures for the years of assessment 2002/03 to 2007/08, in respect of which IBA were claimed, were incurred on the factory buildings located in the Mainland.

(iii) According to the Respondent, the Appellant wrongly took the qualifying expenditure on building refurbishment incurred for the year of assessment 2004/05 as $140,000 instead of $17,000 in the 2005/06 Profits Tax computation. As a result, the Appellant over-stated expenditure on building refurbishment for the year of assessment 2005/06 by $24,600.

(d) The detailed profit and loss accounts for the years ended 31 March 2003 to 2008 showed the following particulars:

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
	$	$	$	$	$	$
Sales	63,026,849	74,741,991	80,127,288	76,043,411	93,584,594	96,407,954
Less: Cost of sales	47,224,022	57,942,740	65,223,415	63,175,117	76,311,355	79,859,417
Gross profit	15,802,827	16,799,251	14,903,873	12,868,294	17,273,239	16,548,537
Other revenue	99,694	170,656	227,347	442,256	13,813,970	2,744,408
	15,902,521	16,969,907	15,131,220	13,310,550	31,087,209	19,292,945
Less: Expenses						
Selling & distribution	1,163,912	1,157,313	1,242,761	1,060,581	1,082,562	1,444,007
Administrative	9,743,190	12,429,086	10,961,032	10,999,544	11,331,804	12,286,667
Finance costs	1,087,058	1,132,089	1,318,051	1,687,099	2,774,676	2,962,425
Profit before taxation	3,908,361	2,251,419	1,609,376	(436,674)	15,898,167	2,599,846

10. Based on the tax returns filed, the Respondent raised on the Appellant the following Profits Tax Assessments for the years of assessment 2002/03 to 2006/07:

	2002/03	2003/04	2004/05	2005/06	2006/07
	$	$	$	$	$
Reported profits	1,145,171	1,380,067	1,634,723	452,612	1,256,510
Add:					
s16G Deduction over-claimed ($24,600 x 50%)	-	-	-	12,300	-
Assessable Profits	1,145,171	1,380,067	1,634,723	464,912	1,256,510
Less: Loss set-off	(688,748)				

	2002/03	2003/04	2004/05	2005/06	2006/07
	$	$	$	$	$
Net Assessable Profits	456,423				
Tax Payable thereon	73,027	241,511	286,076	81,359	219,889

The Appellant did not object to the above assessments, which had become final and conclusive in terms of section 70 of the IRO.

11. By a letter dated 7 September 2006, the Respondent raised enquiries on the Appellant concerning its claim for offshore profits and Capital Deductions. In the absence of a reply from the Appellant, the Respondent raised on the Appellant Additional Profits Tax assessments for the years of assessment 2002/03 and 2003/04 to disallow its claims for offshore profits, DA and s16G Deduction as follows:

	2002/03	2003/04
	$	$
Recorded profits	1,145,171	1,380,067
Add: Offshore profits	1,145,171	1,380,067
DA	594,928[1]	1,055,164
S16G Deduction	5,466,628	3,548,436
Assessable profits	8,351,898	7,363,734
Less: Profits already assessed	456,423	1,380,067
Additional Assessable Profits	7,895,475	5,983,667
Tax Payable thereon	1,263,276	1,047,142

12. The Appellant, through Messrs Liu Leung Chan, Certified Public Accountants (Practising) ('the Representatives'), objected to the Additional Profits Tax Assessments for the years of assessment 2002/03 and 2003/04 on the ground that the assessments were excessive.

13. In response to the Respondent's enquiries, the Representatives forwarded, among other things, the following contentions:

The Appellant's operation

(a) The Appellant's registered and business addresses were at the HK Address. The Hong Kong office of the Appellant comprised the departments of sales and marketing, engineering, accounting and administration. There were about twenty employees working in Hong Kong office, including those required to travel to and perform duties in the factories in the Mainland. There was no change in the mode of operation of the Appellant since 1998/99 up to 2007/08.

[1] The Respondent wrongly added back the amount of DA claimed in the original Profits Tax computation for the year of assessment 2002/03 instead of the revised amount of $551,102

(b) The Appellant's production and manufacturing plants were located at City K, the Mainland. The factories were operated by Company H and Company L (collectively referred to as 'the Mainland Factories') under the 1999 Feb Agreement and 1999 Dec Agreement respectively. The products manufactured by the Mainland Factories were aluminium alloy products, such as heat sinks, product parts, audio components, toys, architectural products, tubes and pipes.

(c) No processing fees were paid by the Appellant to the Mainland Factories. The production costs incurred by the Mainland Factories were incorporated into the Appellant's accounts without mark-up.

The Appellant's purchases and sales

(d) The Appellant's business started with accepting the customers' purchase orders with specification of products required by the sales department. A director, Mr Q, was responsible for supervision of the sales team and would approve all the quotations prepared by the salesmen.

(e) After the customers accepted the quotations and confirmed their orders, the purchasing department would source the raw materials required for production. Usually, a purchase contract would be prepared for the purchase of the raw materials. The purchase contract would be approved and signed by the directors or the assistant to directors when the directors were not in Hong Kong. At the same time, the salesmen would notify the engineering department to issue final drawings of the products and would complete the production orders. The production orders together with other relevant documents would be faxed to Company H and Company L for manufacturing process.

(f) The directors and engineers would travel frequently to the Mainland for inputs of technical knowhow, management and production skills and training and supervision to the manufacturing bases.

(g) Most of the customers settled their accounts by telegraphic transfers and the Appellant settled its account with the suppliers by letters of credit.

The Appellant's fixed assets

(h) The plant and machinery and the factory structure of which the Appellant claimed Capital Deductions were located in the Mainland Factories.

14. To support the Appellant's claims, the Representatives provided, among other things, copies of the following documents:

(a) Two organisation charts of the Appellant, one showing the names of the departments while the other the names of the Appellant's staff.

(b) A summary of job duties of the Appellant's staff.

(c) A list of the Appellant's staff rendering services in the Mainland.

(d) A list of the Appellant's major suppliers for the years of assessment 2000/01 to 2004/05. According to the list, the Appellant's largest suppliers for the year of assessment 2000/01 and for the years of assessment 2001/02 to 2004/05 were Company R and Company S respectively. Both of them were located in Hong Kong.

(e) A list of the Appellant's major customers for the years of assessment 2000/01 to 2004/05, which showed that most of the Appellant's major customers were located in Hong Kong.

15. The Representatives provided copies of the transaction documents in respect of two selected sales, one related to the sale of heat sinks to Company T on 29 December 2000 ('Transaction 1') and the other to the sale of heat sinks and other products to Company U on 4 November 2004 ('Transaction 2').

16. The Representative gave the following elaborations in relation to the two selected sale transactions:

(a) The business started with receiving orders from Company T and Company U. After Company T and Company U had confirmed the Appellant's quotations and drawings, the Appellant accepted their orders.

(b) The Appellant then acquired raw materials and made them ready for production in City K. The Appellant's designers and engineers gave instructions and specifications to the Mainland Factories in order to ensure the finished goods were up to customers' requirements and standard.

(c) The final products were delivered to customers according to their instructions and sales invoices were issued at the same time.

17. The Respondent observed the following from the documents of Transaction 1 and Transaction 2:

(a) The purchase orders of Company T/ Company U were issued to the Appellant at the Hong Kong Address.

(b) The raw materials (i.e. the aluminium ingots) were imported by the Mainland Factories under an import processing arrangement.

(c) The Appellant sold the raw materials (i.e. the aluminium ingots, etc) to Company H and then purchased the finished goods (i.e. the heat sink, etc) from Company H.

18. The Respondent maintained the views that the Appellant's profits should be fully chargeable to Profits Tax and that it should not be allowed Capital Deductions in respect of certain fixed assets. He therefore raised on the Appellant Additional Profits Tax Assessments for the years of assessment 2004/05 to 2006/07 and Profits Tax Assessment for the year of assessment 2007/08 to adjust the items as follows:

	2004/05	2005/06	2006/07	2007/08
	$	$	$	$
Reported profits/(loss)	1,634,723	452,612	1,256,510	(1,302,466)
Add: Offshore profits/(loss)	1,634,723	457,612	1,256,511	(1,298,122)
DA	516,413	326,299	339,809	454,314
S16G Deduction	2,383,693	2,340,759	2,323,034	9,086,320
IBA	311,621	247,704	2,371,385	1,220,653
Building refurbishment expenditure over-claimed	-	24,600	-	-
	6,481,173	3,849,586	7,547,249	8,160,699
Less: Donation previously excluded	-	-	-	30,000
Assessable Profits	6,481,173	3,849,586	7,547,249	8,130,699
Less: Profits already assessed	1,634,723	464,912	1,256,510	
Additional Assessable Profits	4,846,450	3,384,674	6,290,739	
Tax Payable thereon	848,129	592,318	1,100,879	1,397,872

19. The Appellant, through the Representatives, objected to the Additional Profits Tax Assessments for the years of assessment 2004/05 to 2006/07 and Profits Tax Assessment for the year of assessment 2007/08 on the ground that the assessable profits were excessive.

20. To further elaborate the Appellant's grounds of objections, the Representatives advanced the following contentions:

(a) As the manufacturing base of the Appellant was not located in Hong Kong, part of the functional activities had to be performed in the Mainland. Therefore, part of the income earned by the Appellant was attributable to the activities carried out by Company H and Company L and was arising outside Hong Kong. All the manufacturing and trading costs had been properly booked in the accounts for the years under concern without any mark-up in order to match with the reported sales income so generated.

(b) The treatment of 50% apportionment as agreed by the Inland Revenue Department should continue to apply for all the years, same as the

year of assessment 1998/99, and the offshore and DA claims had been allowed in the original assessments.

(c) The different tax treatments arising from a change in assessment practice as stated in the Departmental Interpretation and Practice Notes No. 21 ('DIPN 21') in respect of locality of profits caused an unexpected tax burden to the Appellant.

21. By a letter dated 29 May 2018, the Respondent requested the Appellant to provide, among other things, the following information:

(a) Whether the Appellant itself got a business registration certificate 營業執照 in respect of any business activities carried out in the Mainland.

(b) The location of 'computer hardware and software' in respect of which s16G Deduction was claimed and 'furniture and equipment' and 'motor vehicles' in respect of which DA under 20% and 30% pools were claimed.

(c) Whether the moulds in respect of which s16G Deduction was claimed were used by Company H and/or Company L.

22. The Respondent had not received any reply from the Representatives or the Appellant to date.

23. (a) The Respondent maintained the view that the Appellant's claims for offshore profits, IBA, s16G Deduction and DA could not be accepted.

(b) The Respondent held the view that the adjusted loss of $688,748 for the year of assessment 2001/02 should be revised to nil after disallowing the Appellant's offshore claim and deduction claims of s16G Deduction of $2,734,784 and IBA of $219,657. It followed that no loss was available for setting off against the assessable profits for the subsequent years of assessment 2002/03.

(c) The Respondent was prepared to revise the Additional Profits Tax Assessments for the years of assessment 2002/03 and 2003/04 as follows:

		2002/03	2003/04
		$	$
Profits		1,145,171	1,380,067
Add:	Offshore profits	1,145,171	1,380,067
	DA	551,102	1,055,164
	S16G Deduction	5,466,628	3,548,436

	2002/03	2003/04
	$	$
IBA	350,785	375,525
Total Assessable Profits	8,658,857	7,739,259
Less: Profits previously assessed	456,423	1,380,067
Additional Assessable Profits	8,202,434	6,359,192
Tax Payable thereon	1,312,390	1,112,859

24. In its Determination dated 6 September 2018, the Respondent rejected the objections of the Appellant and determined that:

(1) Additional Profits Tax Assessment for the year of assessment 2002/03 under Charge Number X-XXXXXXX-XX-X, dated 30 March 2009, showing Additional Assessable Profits of $7,895,475 with Tax Payable thereon of $1,263,276 was increased to Additional Assessable Profits of $8,202,434 with Tax Payable thereon of $1,312,390.

(2) Additional Profits Tax Assessment for the year of assessment 2003/04 under Charge Number X-XXXXXXX-XX-X, dated 12 February 2010, showing Additional Assessable Profits of $5,983,667 with Tax Payable thereon of $1,047,142 was increased to additional Assessable Profits of $6,359,192 with Tax Payable thereon of $1,112,859.

(3) Additional Profits Tax Assessment for the year of assessment 2004/05 under Charge Number X-XXXXXXX-XX-X, dated 11 March 2011, showing Additional Assessable Profits of $4,846,450 with Tax Payable thereon of $848,129 was confirmed.

(4) Additional Profits Tax Assessment for the year of assessment 2005/06 under Charge Number X-XXXXXXX-XX-X, dated 13 March 2012, showing Additional Assessable Profits of $3,384,674 with Tax Payable thereon of $592,318 was confirmed.

(5) Additional Profits Tax Assessment for the year of assessment 2006/07 under Charge Number X-XXXXXXX-XX-X, dated 13 March 2012, showing Additional Assessable Profits of $6,290,739 with Tax Payable thereon of $1,100,879 was confirmed.

(6) Profits Tax Assessment for the year of assessment 2007/08 under Charge Number X-XXXXXXX-XX-X, dated 13 March 2012, showing Assessable Profits of $8,130,699 with Tax Payable thereon of $1,397,872 was confirmed.

25. The Respondent stated the grounds for its Determination as:

(i) the Appellant should not be entitled to be assessed on a 50:50 appointment basis on the ground that its profit was attributable to the manufacturing operations in the Mainland; and

(ii) the Appellant should not be entitled to IBA, s16G Deduction and DA.

26. The Appellant appealed to this Board.

The Issues

27. At the first day of the hearing of this appeal, the Appellant put forward lengthy arguments including the 50:50 apportionment of profit claims under DIPN 21. Then they shifted their arguments toward another direction i.e. the way they prepared the financial statements was on the basis of a 50:50 split basis which they claimed to understand to be acceptable to the Respondent. Now that the Respondent refused to accept the 50:50 apportionment claims, the Appellant argued that their financial statements would have been presented in a different format.

28. The Appellant claimed that they would have put in the 'total costs of sale' i.e. all the investments the Appellant had injected into the Mainland operations including the depreciation value of structure, plant and machinery.

29. As this argument had not been raised to the Respondent before, the Respondent argued that it constituted a new ground of appeal. The Board adjourned the hearing to allow both parties to consider this point further.

30. At the resumed hearing, the Appellant confirmed that they were not pursuing the 50:50 apportionment claims in respect of its profits for the years of assessment 2002/03 to 2007/08.

31. The Appellant further confirmed that it would not make any claim for IBA, DA or s16G Deduction.

32. Instead, the Appellant now claims deduction of the total amount of cost of sales reported in its profit and loss accounts for the years of assessment 2002/03 to 2007/08 including depreciation charged therein ('the Depreciation') on the factory structure, plant and machinery and moulds ('the Assets'). The amounts of the Depreciation were:

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08
	$	$	$	$	$	$
Depreciation						
Factory structures	150,383	186,756	206,416	212,147	580,974	688,121
Plant and machinery	3,777,836	4,384,675	3,563,372	2,890,737	2,638,503	3,170,710
Moulds	250,722	328,326	404,786	475,167	556,413	691,046
Total:	4,178,941	4,899,757	4,174,574	3,578,051	3,775,890	4,549,877

The Appellant claimed that the Assets were owned by the Mainland Factories, namely Company H and Company L. As such, the Appellant had to compensate all manufacturing costs incurred by the Mainland Factories, including the Depreciation. Otherwise, the Mainland Factories would not sell the goods to the Appellant and the Appellant could not generate its trading profits.

33. The Board had experienced some difficulties in following the arguments of the Appellant. Doing our best to understand the Appellant's case, it seemed that the Appellant built its claims upon the following premises:

(1) The Assets included in the Appellant's audited financial statements for the years of assessment 2002/03 to 2007/08 were assets of the Mainland Factories. An extract copy of a Fixed Assets Evaluation Form 固定資產評估表 ('the Form') as at 31 December 2015 in respect of Company L was provided to support such claim.

(2) The Appellant had remitted/advanced funds of $80 million to Company L as investment. Company L used the funds to acquire the Assets in the Mainland. The funds remitted/advanced to Company L were reflected in the Appellant's audited financial statements as the Assets.

34. In a very convoluted way, the Appellant seemed to argue that it had at one point included the Depreciation in its financial statements but later decided to take it out. In the Profit and Loss Account under the item 'Cost of Sales', there was an amount representing the value of the Depreciation. However, in the Profits Tax computation, under the item 'Profit per accounts', the Depreciation was added back. The Appellant did so because it was under the misbelief that its profit would be split 50:50 between the Appellant and the Mainland Factories and any depreciation would not be allowed.

35. As already mentioned above, now that the Appellant had abandoned the 50:50 apportionment claims, its case became that the Assets were legally owned by the Mainland Factories, which were entitled to charge the total cost of the Assets including depreciation which formed part of the manufacturing cost, to the Appellant. That being the case, the value of such claim should be deducted from the Appellant's profit for tax computation purpose.

The Finding

36. To begin, the Board must mention that this Appeal had been poorly handled by the Appellant due to lack of preparation. The Board had decided to allow the Appellant to raise a new ground of appeal. The Appellant chose not to call any witness to give evidence at the hearing whilst the documents in support of the Appellant's case were grossly insufficient and very poorly put together. There is no excuse that the Appellant was not given sufficient notice or it was caught by surprise. As the Respondent pointed out, such documentary evidence had been requested long before the appeal. Most importantly, it was

the Appellant which chose to introduce the new ground of appeal.

37. Unduly lengthy submissions were made by the Appellant's representatives which were nothing more than repeated assertions revolving around the same point i.e. the Assets were owned by the Mainland Factories which were entitled to charge depreciation costs on the Appellant. When asked by the Board how the total sum of the Depreciation 'incurred by the China factories' and hence chargeable to the Appellant was worked out, the Appellant did not have a clear answer at hand. Nor did the Appellant elaborate on the contractual basis of the Depreciation chargeable to the Appellant. The best the Appellant could submit was that a sum of $4.17 million for the year 2002/03 should be added back as 'the cost for sales'.

38. The Board accepted the Respondent's submission that in order for the Appellant to succeed in its claims, it must first establish that the Assets were legally owned by the Mainland Factories. However, the Form as mentioned in paragraph 33(1) could not be accepted as proof of ownership because it was just an internal document of Company L showing the valuation of plant and machinery used by the Appellant as at 31 December 2015. The Form could not substantiate that Company L or Company H had acquired the legal titles of the Assets. The Appellant could not advance any further proof in respect of this point. In any event, the Respondent was unable to reconcile the value of the plant and machinery in the Form with the costs of the Assets in the Appellant's financial statements. The documents referred to different accounting periods and the Appellant failed to elaborate how the Depreciation for the years of assessment 2002/03 to 2007/08 was computed from the value of the plant and machinery as at 31 December 2015.

39. Regarding the argument that the Assets were investment funds or cash advance injected into Company L by the Appellant, the Respondent submitted that apart from bare assertions, no evidence such as bank statements or remittance advices for the years of assessment 2002/03 to 2007/08 was produced to support the claim of investment funds. On the other hand, the Assets were reported as fixed assets in the balance sheets as at 31 March 2003 to 2005 and as property, plant and equipment as at 31 March 2006 to 2008. The notes to the financial statements showed that the costs of the Assets and the Depreciation with other fixed assets (leasehold improvement, furniture and fixtures and motor vehicles) were held by the Appellant. The Appellant's financial statements for the years of assessment 2002/03 to 2007/08 were audited by certified public accountants. The Appellant's auditors were of the opinion that the financial statements for the years concerned were prepared in accordance with generally accepted accounting principles and that they represented a true and fair view of the Appellant's affairs. The Appellant could not simply overturn its audited financial statements and rewrite the Assets as remittances or advances of funds as it purported to do by its letter dated 27 March 2019.

40. The Board accepts this submission entirely. It is disingenuous for the Representatives of the Appellant to seek to overturn their previous audited financial statements in order to pursue a claim of the client's.

41. The Appellant's only counter-argument was that they made a mistake at the time by deducting the Depreciation from the cost of sale as they were anticipating that the

50:50 apportionment claim would be accepted by the Respondent. The Board finds that this is merely an afterthought on the part of the Appellant's representatives and not a good reason to overturn one's audited financial statements.

Conclusion

42. The Board finds that the Appellant has failed to adduce sufficient evidence to support the argument that the Depreciation computed on the basis of the cost of the Assets should be chargeable to the Appellant. There was simply no evidence to prove that the Assets were owned by the Mainland Factories. The argument that the Appellant put the Mainland Factories in funds to purchase the Assets was also unsupported by evidence. It would be more likely that the Appellant did not treat the Mainland Factories as separate entities and the latter used the Assets free of any rent or charges. There was no case for the Mainland Factories to charge the Depreciation to the Appellant.

43. The Board cannot accept the Appellant's argument that there was a mistake in its treatment of the Depreciation and the relevant audited financial statements should be overturned.

44. For the reasons mentioned above, the Board finds that the Appellant has failed to discharge the onus of proving that the Additional Profits Tax Assessments for the years of assessment 2002/03 to 2006/07 and the Profits Tax Assessment for the year of assessment 2007/08 in the Determination are incorrect or excessive. The appeal is dismissed.

45. Pursuant to section 68(9) of the IRO, the Appellant is ordered to pay as cost of the Board in the sum of $20,000.