

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. BR 23/75

Board of Review :

L. J. D'Almada Remedios, *Chairman*, Ressel Fok, D. A. Graham & C. H. Wong, *Members*.

16th June 1976.

Profits tax—additional tax in certain cases—Inland Revenue Ordinance, section 82A—incorrect return of false information supplied effectively understating income or profits chargeable to tax—no strict rule by which Commissioner determines amount of additional tax—Board will not disturb the additional assessment unless it is excessive.

In respect of 6 consecutive years of assessment viz. 1969/70 to 1974/75, the taxpayer had submitted incorrect returns in connection with his business thereby understating his profits. He was assessed by the Commissioner to additional tax under section 82A of the Inland Revenue Ordinance in the sum of \$103,700.00 which the Commissioner (in accepting the taxpayer's claim that certain sums had been acquired by him as betting wins and payments on transactions outside Hong Kong and that these were "borderline cases") reduced to \$86,000.00.

Although there still remained substantial undisclosed profits for which no explanation was given, the taxpayer appealed against the Commissioner's assessment to additional tax on the ground that it was excessive having regard to the circumstances. On appeal.

Decision: Additional assessment to tax of \$86,000 confirmed.

J. D. Donnelly for the appellant.

Charles Lui for the Commissioner of Inland Revenue.

Reasons :

In this case we are concerned with the years of assessment 1969/70 to 1974/75 in respect of which incorrect returns were submitted by the Appellant in connection with the business carried on by him.

It is not disputed that in filing his returns for these years of assessment the Appellant understated his profits to the extent of \$968,943.00. The amount of tax undercharged was, as a consequence, \$146,393.00.

Under section 82A of the Inland Revenue Ordinance, the Appellant is liable to a penalty of double the amount of tax which has been undercharged. (This section has since been amended to increase the penalty to treble the amount but the amendment has no application to the case under review).

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As far as we know there is no hard and fast rule by which the Commissioner determines the penalty to be imposed. It is not uncommon to find cases in which a full penalty has been exacted. Clearly, if a taxpayer's willful omission is flagrant a maximum additional tax may be appropriate as a strong deterrent. The circumstances of each particular case must be examined at and if liability is established then any assessment by way of additional tax will not be disturbed unless in the opinion of the Board the additional assessment is excessive.

The amount of additional tax originally imposed was \$103,700.00 which includes compound interest on the tax lost to the Inland Revenue Department. This is less than 75% of the Appellant's maximum liability. This figure was subsequently reduced by the Commissioner to \$86,000.00. In making the reduction the Appellant was given benefit of the doubt on all the claims he has made in his letter the 3rd day of December 1975 relating to the receipt by him of certain sums (which he has labeled as "borderline cases") such as betting wins on horse races and payments to his on transactions outside the Colony.

The Commissioner's representative stresses that these claims have not been accepted; indeed, revised computations were agreed to by the Appellant resulting in accepted assessments which, in the absence of objections, became final and conclusive on the 28th of August 1975. Based on these assessments the additional tax was imposed. However, in a reconsideration of the penalty, the Commissioner gave effect to the Appellant's representations on the borderline cases and reduced the penalty from \$103,700 to \$86,000.

No serious attempt has been made to suggest that the representations made as to the "borderline cases" amount to reasonable excuse so as to justify the avoidance of liability. The amount of profits understated, as we have mentioned, amount to \$968,943. The "borderline cases" add up to a fraction of that sum. The balance of undisclosed profits remain substantial for which no explanation or excuse has been proffered.

We do not regard the additional tax imposed by the Commissioner to be excessive having regard to the circumstances of the case.

The Appellant has embarked on the reprehensible course of systematic tax evasion, year in year out, for a period of six years. The perpetuation of such conduct over the years is a feature that justifies a serious view and the imposition of a salutary penalty. However, when the Appellant's affairs came to be investigated by the Revenue, the Appellant's co-operation and the assistance he rendered in making full disclosure was, in our view, a consideration properly taken into account by the Commissioner in assessing the quantum of additional tax but for which an even higher penalty than that which was imposed could have been exacted. We think the additional tax imposed is reasonable and, accordingly, we confirm the assessment.