

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D 10/81

*Board of Review:*

L. J. D'Almada Remedios, J.P. *Chairman*; T. J. Bedford; Patrick W. C. Chan; D. Evans, *Members*.

**27 October 1981.**

Inland Revenue Ordinance, s. 82A – assessment to additional tax – Assets Betterment Statement – finality of assessments – s. 70.

As a result of Revenue investigations revealing undisclosed sums of money deposited and withdrawn from his bank account the appellant, a runner for an illegal bookmaker, was assessed additionally to tax based on a revised Assets Betterment Statement. He paid the tax on the additional assessments. Penalty assessments in respect of previous incorrect returns were raised under s. 82A of the Inland Revenue Ordinance.

**Held:** In agreeing to assessment and paying tax founded on as Assets Betterment Statement the appellant must be taken to admit that he has that liability. S. 70 of the Inland Revenue Ordinance makes the assessment final. A taxpayer cannot defend an incorrect return by contending that he is not liable to the tax later assessed when he is actually paying or has paid that tax since the validity of the assessment is conclusively presumed against him.

Additional tax confirmed.

S. K. Chiu for the Commissioner of Inland Revenue.  
Appellant in person.

*Reasons:*

The Appellant was at material times employed as a runner for an illegal bookmaker. Investigation by the officers of the Inland Revenue Department showed that large sums of money were deposited to and withdrawn from his current account with the Hang Seng Bank Limited. He was asked to explain. Presumably, his explanations were not satisfactory. He was, therefore, asked to submit returns for profits and salaries tax for the years 1972/73 to 1977/78 inclusive. The Appellant in his letters to the Assessor claimed that it was the Revenue's obligation to indicate to him what his business activities were before he could be called upon to submit returns. It appears that the Appellant must have later realized or was

## INLAND REVENUE BOARD OF REVIEW DECISIONS

advised that such a contention is unsustainable as returns for those years of assessment were subsequently submitted by him. The returns were, however, unacceptable to the Assessor and as a consequence, an Assets Betterment Statement was prepared. Eventually, the Appellant agreed to additional assessments based on a Revised Assets Betterment Statement. He is now paying the tax on the additional assessments by instalments.

As the incorrect returns filed by the Appellant understated his income, penalty assessments were raised by the Commissioner under Section 82A of the Inland Revenue Ordinance.

In appealing against the penalty assessments, the Appellant's contention is that full disclosure of his income had been made by him as reflected in the returns for which reason he says he is not liable to any penalties. This contention does not hold water. The Appellant cannot approbate and reprobate. If a taxpayer agrees to an assessment for tax founded on an Assets Betterment Statement (whether original or revised) and he pays or is paying the tax as assessed, he must be taken to admit that it relates to a liability for which he is chargeable to tax. His liability under the assessment cannot be re-opened. It has become final and conclusive: Section 70. In a situation such as in the present case, the Appellant cannot, in contesting a claim that he has filed an incorrect return without reasonable excuse, be heard to say that he is not chargeable for the tax on which he has been assessed and which he is paying since the validity of the assessment is conclusively presumed against him.

In the circumstances, as the Appellant's incorrect returns were filed without any reasonable excuse, and as we are of the view that the penalty is not excessive the additional tax imposed under Section 82A is hereby confirmed.