

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D115/02

Personal assessment – deduction of salary of father ‘employee’ – loss sustained in the course of share dealing – sections 16, 17, 68(4) and 87 of the Inland Revenue Ordinance (‘IRO’).

Panel: Patrick Fung Pak Tung SC (chairman), Melville Thomas Charles Boase and Mitzi Leung Leung Mee Chee.

Dates of hearing: 19 March, 8 May and 11 December 2001.

Date of decision: 21 January 2003.

The taxpayer objected to the personal assessments for the years of assessment 1997/98 and 1998/99 raised on him on the ground that the assessor had incorrectly computed the losses sustained from his business which should have been arrived at after deduction of salaries paid to his father (‘the Father’). He also claimed, after the filing of the notice of appeal, losses suffered in the course of share trading. The taxpayer worked as a senior accountant in Company D earning a salaried income during the years ended 31 March 1998 and 1999 respectively.

In 1996, the taxpayer applied for registration of a business under the name of Company B (‘the Firm’). The nature of business carried on by the Firm was ‘Trading and Investment’. At all relevant times, the Firm declared its business at Address C which was also the residential address of the taxpayer and the Father. The Firm sustained business losses during the years ended 31 March 1998 and 1999 respectively which were arrived at after deducting, among other things, salary expenses of \$130,000 in each of the years of assessment in question.

The taxpayer claimed that salary of \$130,000 was paid in cash to the Father who was employed in the capacity of sales and purchase manager. In support of his claim, the taxpayer submitted, among other things, an employment agreement allegedly entered into with the Father on 1 January 1997, a document purported to be an acknowledgement receipt by the Father in respect of the salary payments made to him and five invoices issued by Factory F in China to the Firm.

The taxpayer asserted that due to his negligence, he had not taken out any employee’s compensation insurance policy for the Father. The Firm has not filed any employer’s return of remuneration and pensions for the years of assessment in question. According to the records of the Immigration Department, the Father was not present in Hong Kong on 1 January 1997.

Held:

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1. If the Father was really employed by the taxpayer, the latter would be under a statutory obligation to file an employer's return of remuneration and pensions in respect of the Father with the Inland Revenue Department ('IRD'). He must be aware of such an obligation because he was a qualified accountant and worked as a senior accountant in Company D. Yet none was filed.
2. The invoices produced by the taxpayer in support of the alleged trading of power cords in China are unsatisfactory.
3. The Board does not accept his evidence on the alleged share trading activities. The fact that the claim regarding the share trading activities was raised only at the last minute and after the filing of the notice of appeal throws doubt on the allegation of share trading in his business by the taxpayer. As a qualified accountant, the taxpayer could not have failed to appreciate that he could make a claim for tax purposes when he was actually doing the alleged share trading. If he had genuinely thought that it was a valid claim, he would have made it much sooner.

Appeal dismissed.

Ngan Man Kuen for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

1. This is an appeal by the Appellant ('the Taxpayer') against Personal Assessments for the years of assessment 1997/98 and 1998/99 raised on him. An objection was lodged by the Taxpayer against both assessments. By his letter dated 28 November 2000, the Respondent ('the Commissioner') made a determination ('the Determination') on such objection. In respect of the Personal Assessment for the year of assessment 1997/98 showing Net Chargeable Income of \$247,856 with Tax Payable thereon of \$34,893, he increased it to Net Chargeable Income of \$261,840 with Tax Payable thereon of \$37,411. In respect of the Personal Assessment for the year of assessment 1998/99 showing Net Chargeable Income of \$257,116 with Tax Payable thereon of \$33,209, he increased it to Net Chargeable Income of \$266,344 with Tax Payable thereon of \$34,778.
2. The Taxpayer now appeals against the Determination by the Commissioner.

The relevant facts

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3. By his notice of appeal dated 26 December 2000, the Taxpayer stated as follows: 'Except fact (13), I agree all the facts stated by the Commissioner of IRD.'

4. In the circumstances, it is convenient for us to quote the facts as set out in the Determination:

‘ 1. FACTS UPON WHICH THE DETERMINATION WAS ARRIVED AT

- (1) [Mr A] [“the Taxpayer”] has objected to the Personal Assessments for the years of assessment 1997/98 and 1998/99 raised on him. The Taxpayer claims that the assessments are excessive as the Assessor has incorrectly computed the losses sustained from his business which should have been arrived at after deduction of salaries paid to his father.
- (2) On 14 December 1996, the Taxpayer applied for registration of a business under the name of [Company B] [“the Firm”]. The nature of business carried on by the Firm was “Trading and Investment”. The date of commencement of business was stated as 15 November 1996. At all relevant times, the Firm has declared its business address at [Address C].
- (3) In his Tax Return - Individuals for the year of assessment 1997/98, the Taxpayer declared, among other things, the following particulars:
 - (a) He worked as a Senior Accountant in [Company D] earning a salaried income of \$361,840 during the year ended 31 March 1998.
 - (b) The Firm sustained a business loss of \$143,984 during the year ended 31 March 1998, which was arrived at after deducting, among other things, salary expenses of \$130,000.

Copies of the 1997/98 tax return and the Firm’s accounts for the year ended 31 March 1998 are attached at Appendices A and A1.

- (4) In his Tax Return - Individuals for the year of assessment 1998/99, the Taxpayer declared, among other things, the following particulars:
 - (a) His residential address was at [Address C].

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- (b) He worked as a Senior Accountant in [Company D] earning a salaried income of \$375,485 during the year ended 31 March 1999.
- (c) The Firm sustained a business loss of \$139,228 during the year ended 31 March 1999, which was arrived at after deducting, among other things, salary expenses of \$130,000.

Copies of the 1998/99 tax return and the Firm's accounts for the year ended 31 March 1999 are attached at Appendices B and B1.

- (5) At the Assessor's request, the Taxpayer stated the following details in respect of the salary payments allegedly made during the year of assessment 1997/98:
 - (a) Salary of \$130,000 was paid to his father ["the Father"], whose address was at [Address C].
 - (b) The Father was employed in the capacity of Sales and Purchase Manager. His duties and responsibilities were:
 - “
 - i) Sourcing & purchase goods on HK and PRC
 - ii) Promoting and soliciting sales on HK and PRC
 - iii) Receiving goods purchased
 - iv) Carrying market survey and collecting market information
 - v) Arranging delivery of goods to customer
 - vi) Collecting payment from customer
 - vii) Investigating customer's credit
 - viii) Follow up sales order
 - ix) Doing administration work”
 - (c) The Father was employed on a full time basis from 9:00 a.m. to 6:00 p.m. His place of work was “Report duty on HK but require frequent travel to PRC”.

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- (d) The Father's education level was "Secondary School".
- (e) The Father's remuneration package was "HK\$10,000.00 per month and accommodation expense on PRC and oversea will not be reimbursed".
- (f) Salary was paid to the Father by cash at the end of each month.

In support of his claim, the Taxpayer produced a document purported to be an acknowledgement receipt by the Father in respect of the salary payments made to him. The document is attached at Appendix C.

- (6) The Assessor was not satisfied that the Firm had incurred salary expenses as claimed and issued to the Taxpayer the following loss computation and Personal Assessment for the year of assessment 1997/98:

Loss Computation

Loss per return		\$143,984
<u>Less: Salary paid to the Father</u>		<u>130,000</u>
Assessed Loss transferred to Personal Assessment		<u><u>\$13,984</u></u>

Personal Assessment

Income from:		
wholly owned properties		\$82,188
salaries		<u>361,840</u>
Total Income		444,028
<u>Less: Interest payable</u>	\$82,188	
Loss from business	<u>13,984</u>	<u>96,172</u>
Reduced Total Income		347,856
<u>Less: Personal Allowance</u>		<u>100,000</u>
Net Chargeable Income		<u><u>\$247,856</u></u>
Tax Payable thereon		* <u><u>\$38,771</u></u>

* To give effect to the Tax Exemption (1997 Tax Year) Order made by the Chief Executive in Council under section 87 of the Inland Revenue

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Ordinance, the Tax Payable for the year of assessment 1997/98 was later revised from \$38,771 to \$34,893.

- (7) The Taxpayer objected to the above assessment on the ground that the salary payments should be deductible in computing the business loss sustained by the Firm. In amplification of the ground of objection, the Taxpayer alleged in the following terms:

“ i)... salary expense was actually incurred and paid for the production of chargeable profit during the basis period of 97/98. It's not domestic and private expense. According to s.16, it is allowable deduction.

... The proprietor's relationship with the payee (father and son) is not sufficient to deny HK\$130,000 salary expense being actually incurred and paid. In fact, the proprietor and the payee is two separate persons. To support the HK\$130,000 salary being actually paid and incurred, the signed receipts for it has been sent to you. Once the payee acknowledge receiving HK\$130,000 salary, the payee bear the legal obligation to pay salary tax, thus the receipts are valid supporting for the salary payment.

- ii) S.17(2) disallow only those salary paid to the spouse rather than the father of proprietor.
- iii) As the above-said salary is sourced in Hong Kong, the payee of the salary is subject to salary tax on one hand, and the salary expense in profit tax is not allowed on the other hand. Is it fair?
- iv) The relationship between the payee and the proprietor only imply a transaction with a closely related party and is not a determinant factor to deny the salary expense being allowable. The test should be whether the expense is reasonable and factors considered including the market price of the related job with same level of responsibility and nature, and the education level of the payee.
- v) In view of payee's job, especially the requirement of frequent and long stationed in PRC, the salary of HK\$10,000.00 per month, in fact, was under-paid. In order to explore the China market, on average the payee go to and station in China for more than 15 days on each month. If required, the track record of the payee to PRC can be submitted to you for your further examination. In H.K. job

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market, the market price for a general clerk is around HK\$8,000.00 per month. For manager with **important duty** (soliciting sales order, developing business relationship in PRC & HK) and **special requirement** (frequent travel to PRC; non-reimbursement for accommodation expense in PRC; with well knowledge to PRC business environment), salary of HK\$10,000.00 per month is unreasonable but it is unreasonably low.

- vi) The size of income in relation to expense is insufficient to deny the reasonableness of expense. As a well known fact, China is a market with strong potential, but the time and cost spent for developing it is large. My business ran for only one year and it is not practical to expect a large income and profit in the first year.

Accordingly, the above-said salary of HK\$130,000.00 is a reasonable expense actually paid and incurred in the year of assessment of 97/98 ...”

- (8) In response to the Assessor’s further enquiries, the Taxpayer asserted the following:
 - (a) Due to his negligence, he had not taken out any Employee’s Compensation Insurance policy for his father.
 - (b) “[He] paid [the Father] salary by cash and mainly draw it from [his] [Bank E] (A/C [xxx-x-xxxxxx-x]) due to the cash of the company is always inadequate and unstable.”
 - (c) “[The Father] stayed in low cost hostel when he was working in China for 97/98, but had not keep the receipts for them because he knew that his accommodation expense would not be reimbursed by the company.”
 - (d) Before joining the Firm, the Father worked as a “sales agent for daily necessities”.
- (9) In support of his claim, the Taxpayer submitted the following documents:
 - (a) An employment agreement (Appendix D) allegedly entered into with the Father on 1 January 1997.

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- (b) Four pages of a bank passbook (Appendix E), with the following transactions highlighted as representing the withdrawal of cash for payment of salaries to the Father:

Remark written by the side of the transaction	Particulars shown on the bank passbook		
	Date/No Book Date	Withdrawal Amount (\$)	Transaction Code
April	01.05.1997	4,000.00	ACW
	01.05.1997	4,000.00	ACW
	01.05.1997	2,000.00	ACW
May	02.06.1997	9,000.00	ATW
	02.06.1997	4,000.00	ACW
Jun	07.07.1997	26,000.00	CW
	05.08.1997	10,000.00	ATW
Jul	01.09.1997	28,000.00	ATW
Aug	06.10.1997	5,000.00	ACW
	07.10.1997	1,000.00	ACW
	07.10.1997	4,000.00	ACW
Oct	31.10.1997	18,600.00	CW
Nov	29.11.1997	10,000.00	ACW
Dec	01.01.1998	10,000.00	ACW
DB	06.01.1998	10,000.00	ACW
Jan	17.01.1998	26,000.00	CW
Feb	26.01.1998	26,000.00	CW
Mar	02.03.1998	10,000.00	ACW

Where “CW” stands for Cash Withdrawal; “ACW” stands for ATM Cash Withdrawal and “ATW” stands for ATM Transfer Withdrawal.

- (c) A copy of the Father’s travel document (Appendix F). The date of birth of the Father was 19 December 1936.
- (d) 5 invoices (Appendix G) issued by [Factory F] at [Address G in China] to the Firm. The invoices contain the following particulars:

Date	Description	Quantity	Unit Price	Amount (RMB)
21.06.1997	6” SPT2 # 16/2C 105C 黑色電源綫	20,000	2.4	48,000

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09.07.1997	6" SPT2 # 16/2C 105C 黑色電源綫	18,000	2.4	43,200
04.08.1997	6" SPT2 # 16/2C 105C 黑色電源綫	18,000	2.4	43,200
29.09.1997	6" HO3VV-F 3C/0.75MM 灰色電源綫	10,000	3.9	39,000
22.02.1998	6" SVT2 # 18/0.75MM 60C灰色電源綫	12,000	3.0	36,000

- (e) 5 invoices issued by the Firm to [Factory H] at [Address I in China] (Appendix H). The invoices contain the following particulars:

Date	Description	Quantity	Unit Price	Amount (RMB)
21.06.1997	6" SPT2 # 16/2C 105C 050 W/I TH-010	20,000	2.52	50,400
09.07.1997	6" SPT2 # 16/2C 105C 050 W/I TH-010	18,000	2.52	45,360
04.08.1997	6" SPT2 # 16/2C 105C 050 W/I TH-010	18,000	2.52	45,360
29.09.1997	6" HO3VV-F 3C/0.75MM 993 W/I TH-221	10,000	4.2	42,000
22.02.1998	6" SVT # 18/60C/0.75MM 993 W/I TH-221	12,000	3.2	39,600

- (10) In declining to accept the Assessor's invitation to withdraw the objection, the Taxpayer put forth the following contentions:

- (a) "Although the bank record salary payment is not **exactly** HK\$10,000.00 for **some** month end, I have marked the related pay-out in the bank record copy to you and they are around HK\$10,000.00. Thus, in fact, the salary payment can be traced back to bank record. ... Also, ... the salary payment mode is by

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cash; when I pay [the Father] the \$10,000 salary, I do not need to draw exactly \$10,000.00 but only \$7,000.00 if I have \$3,000.00 in my pocket.”

- (b) “More importantly, [the Father] has acknowledged the receipt of the salary and the signed receipt should be an appropriate evidence for my salary payment. As far as I know, it is the common business practice to accept receipt as the evidence actually incurred. Why discriminate [the Father] receipt in this case? The proprietor’s relationship with the payee can be father & son but also can be employee and employer. That’s why a copy of [the Father’s] employment contract was sent to you to prove the validity of employee and employer relationship. Thus, the proprietor’s relationship with payee is insufficient to deny the validity of the salary receipt. Besides, logically, once [the Father] acknowledged and signed the salary receipt from me, I have already proved that the salary was **actually paid.**”
- (c) “From copies of sales and purchase invoice and [the Father’s] travelling document, you can note that [the Father] has done and finished many transactions and work in PRC for [the Firm]. Despite that [the Father] is the father of the proprietor, these were **not free lunch** from [the father] and the proprietor had to exchange it for each month’s HK\$10,000.00 salary payment. It is unreasonable for you to assume that someone will work for [the Firm] in free. Thus, unless it cannot be proved that [the Father] has paid labour effort to [the Firm], the salary payment must have been incurred and paid to [the Father] wholly for the business purpose rather than for private purpose.”
- (d) “In considering the reasonableness of the salary, the relevant factors include the requirement of the job, the market price of the same post, and the ability of the payee. From the copy of travelling document and employment contract, you can note that the salary payee, [the Father] is required to travel frequently to and to station long in PRC in order to develop the PRC market. Also, those accommodation expense incurred by [the Father] in PRC is not reimbursed by [the Firm].”
- (e) “You have argue that I have no evidence to indicate his working experience in Hong Kong. But, in H.K. job market, the market price for a general clerk without any experience or special skill is

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about \$8,000.00 per month. The entry salary for the civil servant post of Clerical Assistant is also around \$8,000.00. From the above points, it can see that the \$10,000.00 per month salary payment to [the Father] is not unreasonably high. ... Before joining [the Firm], [the Father] was the sales of [Company J]. His basic salary was HK\$8,000.00 per month and commission was around HK\$5,000.00 per month. There was no agent income record for [the Father] because he has worked only two months for [Company J] and the company was closed.”

- (f) “To develop the China market involve large time and cost, but it is impossible for me to do by myself in part time and is not economy for me to run the business in full time. Thus, I must have a staff to help me. If my father did not take my offer, I will also recruit another one to do the job for me, but I have no confident that I can recruit an employee at the same terms as to [the Father]. Despite the small size of the income in the first year, I have confident to the future business of [the Firm]. Accordingly, it is commercially justifiable to have a staff at a rate of \$10,00.00 per month. ... in order to justify further the \$10,000.00 / month salary, two lists of recent market price of different jobs are attached for your perusal [Appendix I]. Please note that in such a weak economy, many jobs is over \$10,000.00/month.”
- (11) The Assessor was still not convinced that the Firm had incurred salary expenses in the production of its assessable profits. Accordingly, the Assessor raised on the Taxpayer the following loss computation and Personal Assessment for the year of assessment 1998/99:

Loss Computation

Loss per return	\$139,228
<u>Less: Salary paid to the Father</u>	<u>130,000</u>
Assessed Loss transferred to Personal Assessment	<u>\$9,228</u>

Personal Assessment

Income from:	
wholly owned properties	\$76,233
salaries	<u>374,344</u>
Total Income	450,577
<u>Less: Interest payable</u>	\$76,233

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Loss from business	<u>9,228</u>	<u>85,461</u>
Reduced Total Income		365,116
<u>Less: Personal Allowance</u>		<u>108,000</u>
Net Chargeable Income		<u><u>\$257,116</u></u>
 Tax Payable thereon		 <u><u>\$33,209</u></u>

(12) The Taxpayer objected to the 1998/99 Personal Assessment on the ground that the assessment was excessive. He claimed that the salary expenses of \$130,000 paid to the Father was incorrectly disallowed in the computation of the Firm's business loss.

(13) By letters dated 14 February 2000 (Appendix J) and 23 October 2000 (Appendix K), the Assessor requested the Taxpayer to provide further information and documentary evidence in support of his objections.

To date, the Taxpayer has not responded to the Assessor's enquiries.

(14) The Assessor has ascertained the following information:

(a) The Firm has not filed any Employer's Return of Remuneration and Pensions for the years ended 31 March 1998 and 31 March 1999 in respect of the Father.

(b) For the past years, the Inland Revenue Department has never received any Employer's Return of Remuneration and Pensions furnished by any employer in respect of the Father.

(c) According to the records of the Immigration Department, the Father was not present in Hong Kong on 1 January 1997, that is, the date on which he had allegedly entered into an employment agreement with the Firm.

(15) The Assessor considers that there is insufficient evidence to show that the Firm has genuinely carried on a business at [Address C] during the two years under objection. She also has reservation that the expenses claimed in the Firm's accounts were allowable for deduction under sections 16 and 17 of the Inland Revenue Ordinance. In the circumstances, she is of the opinion that the Personal Assessments for the years of assessment 1997/98 and 1998/99 should be revised as follows:

Year of Assessment	<u>1997/98</u>	<u>1998/99</u>
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Income previously assessed [Facts (6) and (11)]	\$247,856	\$257,116
<u>Add</u> : Disallowance of the loss allegedly sustained by the Firm	<u>13,984</u>	<u>9,228</u>
Revised Net Chargeable Income	<u>\$261,840</u>	<u>\$266,344</u>
Revised Tax Payable thereon	<u>\$37,411</u>	<u>\$34,778'</u>

The Taxpayer's case on appeal

5. At the time that the Commissioner made the Determination, the question of share trading activities and the loss allegedly suffered by him had not been brought up by the Taxpayer. When the Taxpayer lodged his notice of appeal with the Board on 26 December 2000, he still had not brought up the same. It was only subsequently when the Taxpayer submitted a sales analysis that it was revealed that he was involved in share dealing. On 8 May 2001, at the beginning of the second session of the hearing of the appeal, Miss Ngan for the Commissioner clarified that, although it was not accepted that the share dealing activities as a trade were carried on by the Taxpayer, the Commissioner would leave it to the Board to consider whether to allow the Taxpayer to argue the point. In the end, the Board decided that, since the cross-examination of the Taxpayer had gone so far as to challenge his alleged share trading activities, the Taxpayer would be allowed to argue the point.

6. The main case of the Taxpayer can be summarised as follows:

- (a) He employed his father in his firm under the name of '[Company B]' to help him to do business in the PRC, especially the selling of power cords. Hence, the salary paid to his father and all expenses incidental to his business should be deducted from his income.
- (b) His losses suffered in the course of share trading should also be deducted.

7. The Taxpayer gave sworn evidence at the hearing of the appeal. He did not call any other witness, including his father.

Our finding

8. We have considered the documentary evidence before us and the oral evidence given by the Taxpayer, especially under cross-examination by the representative of the Commissioner and under questioning by members of the Board.

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9. First, we are not satisfied that the Taxpayer genuinely carried on a business of trading in the PRC. As the Taxpayer was himself in full-time employment, he could only have carried on his alleged business through his father. Hence, everything hinges upon the relationship between the Taxpayer and his father and the activities of the latter.

10. To begin with, if the Father was really employed by the Taxpayer, the latter would be under a statutory obligation to file an employer's return of remuneration and pensions in respect of the Father with the IRD. He must be aware of such an obligation because he is a qualified accountant and works as a senior accountant in Company D. Yet none was filed.

11. Further, the Taxpayer produced a copy of an 'Employment Agreement' dated 1 January 1997 signed between him and his father. No doubt, this was for the purpose of formalizing the relationship between him and his father. Yet, according to him, he paid salary to his father in the sum of \$10,000 in cash every month and he produced only a summary of receipts of salary signed by his father from April 1997 to March 1998. The informal way of handling the payment of salary by the Taxpayer on the one hand is inconsistent with the sense of formality conveyed by the 'Employment Agreement' on the other hand. Moreover, on 1 January 1997, when the Father was supposed to have signed the same, he was according to the record of the Immigration Department not in Hong Kong.

12. The documentary evidence produced by the Taxpayer in support of the alleged trading of power cords in the PRC, namely the invoices, are unsatisfactory in at least two respects:

- (a) The invoices do not show any reference to value added tax in the PRC.
- (b) The invoices do not bear any exact address or telephone or fax numbers of the factories involved.

We shall deal with these below.

13. As regards the first unsatisfactory feature referred to above, the Taxpayer plainly admitted that he was aware of the law in the PRC requiring invoices to be issued with a reference to value added tax. He said that he was involved in an illegal process by not adding value added tax so that he could set his prices lower. From the Board's point of view, this is something out of the ordinary and the Board would require something more solid than the mere assertion by the Taxpayer to be satisfied that this is in fact the truth. In this regard, the evidence of the person actually involved in the process, namely the Father, would be very important.

14. As regards the second unsatisfactory feature referred to above, the invoices produced only bear the name of '[Factory F]' with its address '[Address G in China]' and no other particulars. This is very unusual.

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15. The invoices also bear on their face a chop with the words '[Company K] Accounts Department'. The Taxpayer was cross-examined by Miss Ngan about this. He had to admit that his own employer, Company D, had a subcontractor in the PRC by the name of K. According to him, however, this is a company different from his own supplier, Factory F, whose English name is also K. We find this to be incredible and we do not accept the evidence of the Taxpayer.

16. As regards the share trading activity, it transpires that the Taxpayer did his share sales and purchases via a brokerage firm by the name of Company L. The Taxpayer originally alleged that he was operating his share trading account through his father. It finally came out in evidence that the Father was hardly involved in the share activities and that it was the Taxpayer's mother who was at the office of Company L everyday doing the sales and purchases. She would liaise with the Taxpayer by telephone.

17. The Taxpayer was questioned in relation to the bank account used for the share activities and his supply of information to the IRD. The following is an extract of the evidence:

'CHAIRMAN: [Mr A], what is your mother's name?

A. [Madam M].

CHAIRMAN: Now, in your letter dated 4th February 2001, which appears in Bundle R1, Page 18, you answered certain questions by the Inland Revenue, correct?

A. Correct.

CHAIRMAN: On Page 19 in Item 9 you gave the particulars of the bank accounts, yes?

A. Correct.

CHAIRMAN: And then under the same item you say "Apart from the savings account of [Bank E] which can only be operated by me, both [the Father] and me can operate the bank accounts." Yes?

A. Correct.

CHAIRMAN: Is that a correct statement?

A. Like I said earlier [Madam M] can act on behalf of [the Father].

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CHAIRMAN: I thought your evidence earlier was that you had intended to make [the Father] a signatory of the bank account but eventually you did not do so. Is that correct?

A. Initially I wished to open a joint account with my father because all the transactions were being dealt with through him. But later I found that it is not feasible because most of the time he had to travel to PRC and conduct some trading activities on behalf of me. That is why in the last hearing I just mentioned that all my share dealings were being performed by my mother. But when I paid salaries I did not pay salary in the name of my mother but in the name of my father.

CHAIRMAN: No, [Mr A], my question to you is, was your father, [the Father], ever a signatory to any of the bank accounts listed under Item 9?

A. Never.

CHAIRMAN: But your mother, [Madam M], has been a signatory to the [Bank N] accounts, is that correct?

A. Correct.

CHAIRMAN: In that case do you agree that you have written something which is untrue here under Item 9? You agree or not agree?

A. I am afraid you are correct, Mr Chairman. In fact what I want to express in words is that it is to show how many people are involved in my operation.

CHAIRMAN: Why did you not write the truth, which was that your mother, [Madam M], could operate the bank account?

A. Like I said earlier, inside the account of [Company B] I have only employed one staff member and that is my father, [the Father], who is the one to provide me the service, but for certain services I need somebody to perform – in my mind I would envisage that my mother was to be treated as a contractor. That is why in the last hearing I disclosed that my mother would trade the shares and I was, what I mean is my mother operated the share dealing on behalf of my father. To a certain extent it seems that I was lying but I did not do it inadvertently. I was just treating my mother as a contractor of my father.'

18. The answers given by the Taxpayer in the extract of evidence set out above are fairly typical of his evidence throughout the hearing. He obviously knows how to get out of a difficult

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situation. We do not accept his evidence on the alleged share trading activities. There is at least a doubt as to whether the alleged trading was done on his behalf or by his mother on her own behalf. The resolution of the doubt is certainly not assisted by the absence of the mother at the hearing.

19. Two further features throw doubt on the allegation of share trading in his business by the Taxpayer:

- (a) Notwithstanding the fact that his firm had ceased business on 1 November 1999, the monthly statement of accounts supplied by Company L shows that the Taxpayer continued to purchase and sell shares in January 2000.
- (b) The fact that the claim regarding the share trading activities was raised only at the last minute and after the filing of the notice of appeal. As a qualified accountant, the Taxpayer could not have failed to appreciate that he could make a claim for tax purposes when he was actually doing the alleged share trading. If he had genuinely thought that it was a valid claim, he would have made it much sooner.

20. Section 68(4) of the IRO provides that: *'The onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.'* In all the circumstances enumerated above, we are not satisfied that the Taxpayer has discharged this onus.

21. We therefore dismiss the appeal by the Taxpayer and confirm the assessments made by the Commissioner in the Determination.