

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D121/97

Salaries tax – contract for service or contract of service – expenditure deductible – delay in giving notice of appeal – sections 8, 12(1)(a), 14, 66(1), 66(1A) and 66(2) of the Inland Revenue Ordinance.

Panel: Christopher Chan Cheuk (chairman), Kenneth Chow Charn Ki and Mathew Ho Chi Ming.

Date of hearing: 21 November 1997.

Date of decision: 16 March 1998.

The taxpayer was employed as an ‘account executive’ and also as ‘representative’ or ‘agent’ of an investment company. He was assessed under the Personal Assessment category. He appealed against the determination and submitted that he should be assessed under Profits Tax category instead of Personal Assessment. Further, as an agent of an investment company, daily expenses incurred like transport expenses, entertainment fees, paging and mobile phone charges, should be deductible from tax.

His grounds were, inter alia, (1) his remuneration was based on commission (2) he did not have to follow strict office hours (3) he had to paid for all expenses and salaries for his assistants (4) he could work for other firm or company (5) he could take whatever leave he liked and needed no prior approval.

Further his application was out of time.

Held:

- (1) The Board believed that it was a genuine case of non-delivery. The taxpayer had changed his address and the Revenue was not aware of it. The determination was sent to his former address. According to the taxpayer’s evidence the last time that he had communication with the Revenue before the determination was some time in 1993. It was three years after the last communication that the determination was delivered. It was a long lapse of time that the Board cannot blame the taxpayer for not informing the Revenue for the change of address. Thus, the Board allowed the extension of time to file the notice of appeal on 28 March 1997. (Section 66(1A) applied)
- (2) Whether the employment is contract of service or contract for service is a question of fact. The Board adopted the test in Lee Ting-sang v Chung

INLAND REVENUE BOARD OF REVIEW DECISIONS

Chi-keung [1990] 1 HKLR 764 to decide whether the taxpayer worked on his own account. (Board of Review Decisions D73/95 and D74/95 applied).

- (3) Taking all the evidence as a whole by balance of probabilities the Board concluded that the taxpayer's agreement with the Company was a contract of service. He was an employee of the Company and was therefore subject to the provisions of salaries tax.
- (4) The Board considers and finds that:
 - (a) the fact that he paid commission to others does not necessarily imply that he worked on his own account;
 - (b) the title given to a person is not decisive though it does have some bearing;
 - (c) in the Appointment Contract dated 8 May 1990, he was described as account executive, he was referred to as an employee and had a probation period of three months, he had to work according to fixed office hours, he received a monthly salary of \$2,000 plus a travelling allowance of \$1,000, sick leave had to be approved by the Company with the support of doctor's certificate and he was entitled to eleven days of annual leave;
 - (d) in Clause 7 it was expressly stated that the taxpayer had to 'adhere to all business rules, regulations, conditions and policies as set out by the Company.';
 - (e) in a letter dated 9 June 1993, the executive director of the Company stated that the taxpayer's activities and duties designation were under the guidance of marketing manageress, Miss E. The letter enclosed the Service Agreement. It was also stated that the taxpayer was required to perform his duties according to the Service Agreement. He was also prohibited from working with other organisations. He was required to attend work at regular hours and to observe the Company's regulations. The letter clearly indicated that he was an employee of the Company under a contract of service;
 - (f) A further letter of 2 June 1994 from the executive director disclosed that throughout the assessment period the taxpayer received salary and allowance;
 - (g) he did not employ any of the persons he named to assist him;
 - (h) the Company had the power to control over the taxpayer.

INLAND REVENUE BOARD OF REVIEW DECISIONS

- (5) Deductibility of expenses in respect of salary income is governed by section 12 of the Inland Revenue Ordinance. The Board found that it was a trade practice that the taxpayer had to rebate part of the commission he earned to the introducers of business. Accordingly, the Board allowed the deduction of \$261,000 under section 12(1)(a).

Appeal allowed.

Cases referred to:

Lee Ting-sang v Chung Chi-keung [1990] 1 HKLR 764
D73/95, IRBRD, vol 11, 130
D74/95, IRBRD, vol 11, 145

Tse Yuk Yip for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

Appeal

1. This is an appeal by the Taxpayer, Mr A against the determination of Commissioner of Inland Revenue dated 7 December 1996 in respect of the salaries tax assessment for the year of assessment 1991/92.

Late Application

2. In the letter dated 7 December 1996 from the Commissioner to the Taxpayer enclosing the determination, the relevant sections 66(1), (1A) and (2) of the Inland Revenue Ordinance (the IRO) were quoted and the Taxpayer was reminded to give notice of appeal within one month after the transmission to him the determination. The letter was sent to the Taxpayer to his former address at District B.

3. The Taxpayer gave evidence that he had moved to District C in 1993. He did not receive the determination and was not aware of it until 10 March 1997 when he was sent a demand note claiming tax in arrears and interest. He immediately communicated with the Revenue and was told of the decision. He requested for a Chinese version of the determination, which was given to him on 24 March 1997. On 28 March 1997 he gave the notice of appeal. He applied to the Board for filing of the notice of appeal out of time.

4. The Board believes that it is a genuine case of non-delivery. The Taxpayer had changed his address and the Revenue was not aware of it. The determination was sent to his former address. Subsection 66(1A) allow us some discretion: we may extend the period for

INLAND REVENUE BOARD OF REVIEW DECISIONS

filing the notice of appeal only if we are satisfied that the Taxpayer *'was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal'*.

5. We believe that the Taxpayer did not receive the determination on 7 December 1996 and also that he was not aware of it until 10 March 1997. His removal was the main reason for the non-delivery. According to the Taxpayer's evidence the last time that he had communication with the Revenue before the determination was some time in 1993. It was three years after the last communication that the determination was delivered. It was a long lapse of time that we cannot blame the Taxpayer for not informing the Revenue for the change of address. Most probably, he had forgotten about the tax investigation. We find that the reason given is a reasonable one. Accordingly we allow the extension of time to file the notice of appeal on 28 March 1997.

Issues

6. There are two issues in this appeal: first, whether the Taxpayer's income is subject to salaries tax (section 8) or profits tax (section 14) and second, whether certain expenditure claimed to be incurred by the Taxpayer is deductible. The second issue will be affected by our decision on the first issue.

Proceedings

7. The Taxpayer acted in person. He submitted no documentary evidence but relied solely upon the bundles produced by Ms Tse for the Revenue. The first bundle of 101 pages was produced by consent and marked as exhibit 'R1'. The second bundle consists of two parts. The first 50 pages, the production of which the Taxpayer raised no objection, were produced by consent and marked as exhibit 'R2'. The second part running from page 51 to page 60 are the correspondences between the Revenue and certain persons who were alleged to have received commission from the Taxpayer, which together with another set of similar correspondence was admitted by the Board as exhibit 'R3'.

Taxpayer' Case

8. The Taxpayer's case is very simple. He did not deny that he worked for Company D, an investment company ('the Company') during the relevant period. His position with the Company was not exactly clear: in at least two documents he was referred to as 'Account Executive' and in another as 'Representative' or 'Agent'. It was his first job after he had left school.

9. There is no formal document which sets out the detail grounds of appeal. As the Taxpayer is not legally represented and is acting in person, we cannot expect that all the documents are in order. We have to sort them out among the different letters to the Revenue why he considered that the agreements he had with the Company should be construed as contract for service and not contract of service. We have found the following grounds of appeal among the various correspondences:

INLAND REVENUE BOARD OF REVIEW DECISIONS

- (a) The two main grounds of appeal are found in his Notice to the Board dated 28 March 1997, Exhibit 'R1' page 4 paragraphs 2 and 3:

2. *The IRD claimed that my income for the whole year was computed in accordance with the returns submitted by Company D for which I worked. I was assessed under Personal Assessment category. But I worked as a contracted agent for the Company. So I should be assessed under Profits Tax category instead of Personal Assessment.*
3. *As an agent of an investment company, daily expenses incurred like transport expenses, entertainment fees, paging and mobile phone charges, should be deductible from tax. It was stated clearly in the contract signed between Company D and myself that I was entitled to hire some assistants to assist me in finding and liaising with clients. But I had to solely shoulder all the costs in connection with salaries and commissions of my assistants. So all those expenses should be deducted from my tax.'*

- (b) He explained why he was called 'Account Executive' in his letter dated 28 March 1992, Exhibit 'R1' page 44 paragraph (2):

'(2) My agency post in Company D is Account Executive, but this title is only assist me to find clients such as under the franchise, franchisee utilize the name of the established company to attract customers. My daily work includes to find new clients and place order (buy or sell) in forex and bullion market on behalf of the new and existing clients.'

- (c) In paragraph 3 of the same letter, to show that he was an independent agent he claimed that his remuneration was based on commission:

'(3) My remuneration package includes commission/service fee for business/service done. The commission earned is based on how many lots or orders I have placed. The more lots or orders I have placed, the more commission I will receive.'

- (d) He said that he did not have to follow the office hours in paragraph 4 of the said letter:

'(4) Strictly, no time-table is set up for me but the Company advises me to attend the meetings in order to provide me with up-dated information and technique about forex and bullion field but it is not a must. Actually, I do not have to attend office at regular hours or fixed time. My working hours is from 8:00 a.m. to 4:00 a.m. mid-night, from Monday to Friday, I may attend and leave office at any time mentioned above. My place of

INLAND REVENUE BOARD OF REVIEW DECISIONS

work is also very flexible, at home, in office or at wherever I can place order by mobile phone or other means.'

- (e) He stated that he paid for all expenses out of his own pocket in paragraph 5 of the said letter:

'(5) All the expenditures and outgoings incurred is wholly and exclusively absorbed by me and nothing will be reimbursed by the Company.'

- (f) In paragraph 6 he could work for other firm or company:

'(6) As I am the agent, I am free to work with other organisation without any prior approval sought from the Company if my other job is not in conflict with the interest of my present work under agency agreement.'

- (g) In another letter dated 28 July 1993 Exhibit 'R1' page 58 paragraph 2 he claimed that he employed his own staff and paid for it:

'(2) In order to increase my income, I was authorised to recruit any person or company as an associate agent, in the same way, I was wholly and exclusively responsible to bear all the expenses incurred in recruiting and conducting the associate agent. In other words, the said expenses was necessarily incurred in the production of the assessable income. Obviously, there was a direct connection between the expenses and the production of my income from agency.'

- (h) In the same letter at paragraph 4 he also claimed he had to be responsible for error or fraud.

'(4) Under Principle of Agency, I, as an agent, was personally responsible for any error or fraud committed during trading. It was a main difference from an employee under employment.'

- (i) In another letter dated 25 April 1997 he claimed that he could take whatever leave he liked and needed no prior approval, Exhibit 'R1' page 61 paragraph (6):

'(6) I was not entitled to any annual leave and I also was not needed to seek for any approval for any leave from Miss E. However, I usually notified her for my leave so that she might inform me for any emergent news and sometimes handled my clients orders.'

- (j) In the same letter at paragraph 7 he said that the provision of equipment by the Company was not a point to be used against him.

INLAND REVENUE BOARD OF REVIEW DECISIONS

'(7) In my cases, the principal provides the agent with the equipments in order to assist the agent to earn money. Therefore, I am very doubtful why you consider the equipment provided by Company D was constituted to be my employer, but not my principal.'

Law

10. Whether the employment is contract of service or contract for service is a question of fact. The point we have to decide is whether the Taxpayer worked on his own account as described in the Privy Council case, Lee Ting-sang v Chung Chi-keung [1990] 1 HKLR 764 in which Lord Griffiths put forward the following test:

'Is the person who has engaged himself to perform these services performing them as a person in business on his own account?' 'If the answer to that question is "Yes", then the contract is a contract for service. If the answer is "No", then the contract is a contract of service.'

The test has been adopted and applied in at least two Board of Review Cases, D73/95 and D74/95. There is no reason why we should not use the same test.

Evidence

11. In his testimony, the Taxpayer described to us how he conducted his business. He called himself an agent for the Company. He approached his own clients for business. Some of the clients were referred to him by the Company; others were his own friends or clients introduced to him by them. For every transaction he handled he was entitled to a commission but he also had to pay commission to those who introduced clients to him. We accept that this was the practice of the trade.

12. The fact that he paid commission to others does not necessarily imply that he worked on his own account. We have to examine all the evidence and to consider the case as a whole. The Taxpayer's testimony was not of much assistance to us. Apart from bare assertions that he was employed as agent, he did not advance his case further but rely on the documents already admitted as evidence.

13. There are at least four documents relating to his nature of work with the company: (a) Agent's Agreement made on 1991-1992 (without specific date), Exhibit 'R1' pages 7-8, (b) Appointment Contract dated 8 May 1990, Exhibit 'R1' pages 35-36, (c) Service Agreement dated 4 February 1991, Exhibit 'R1' pages 37-38, and (d) Rules For Bullion and Forex Trading, Exhibit 'R1' pages 78-82. In the Agent's Agreement he was described as Agent for the Company and in the Appointment Contract and the Service Agreement he was referred to as Account Executive. We do not think the title given to a person is decisive though it does have some bearing. The Board has to analyse the true nature of the documents to see whether the Taxpayer performed the services on his own.

INLAND REVENUE BOARD OF REVIEW DECISIONS

14. If we had no other documents except the Agent's Agreement, it would not be difficult to come to the conclusion that the Agreement was a contract for service. In the document he was described as Agent for the Company; his main duty was to secure clients to buy and sell the commodities; he could recruit any person as associate agent; he himself had to bear all the expenses and the agent had to be responsible for error and fraud. It looked as if the Taxpayer was working all on his own.

15. When we examine the other three documents the whole picture changes. In the Appointment Contract 8 May 1990 (R1 Pages 35-36), he was described as Account Executive, he was referred to as an employee and had a probation period of three months, he had to work according to fixed office hours, he received a monthly salary of \$2,000 plus a travelling allowance of \$1,000, sick leave had to be approved by the Company with the support of doctor's certificate and he was entitled to eleven days of annual leave.

16. In the Service Agreement dated 4 February 1991 which was signed about 10 months after the Appointment Contract, the Taxpayer was described both as Account Executive and the Representative. It set out the power and scope of work of the Taxpayer. In Clause 7 it was expressly stated that the Taxpayer had to '*adhere to all business rules, regulations, conditions and policies as set out by the Company*'. A set of the Rules and Regulations of the Company, (Exhibit 'R1' pages 78-82) which was signed and acknowledged by the Taxpayer gave a detail description of how business should be conducted.

17. At the hearing when the Taxpayer was asked why he signed the Service Agreement and the Rules and Regulations, he said that it was his first job, and he did not know much English and did not exactly know the contents thereof. He went on to describe that in reality he did not have to follow the terms of the contract. He went back to the Company whenever he had work to do. He said that his work was not under the supervision of any person. But, according to the letter of 9 June 1993 from Mr F, Executive Director to the Company, Exhibit 'R1' page 68, the Taxpayer's 'activities and duties designation were under the guidance of Marketing Manageress, Miss E.' The letter enclosed the Service Agreement. It was also stated that the Taxpayer was required to perform his duties according to the Service Agreement. He was also prohibited from working with other organizations. He was required to attend work at regular hours and to observe the Company's regulations. The letter clearly indicated that he was an employee of the Company under a contract of service.

18. About half a year later by a letter dated 27 January 1994 upon enquiry by the Revenue, Exhibit 'R1' page 70, the same writer Mr F on behalf of the Company gave us another version:

'Mr A was employed as an Account Executive as per the Service Agreement dated 4 February 1991. In addition Mr A entered into an Agent's Agreement at a later date and the reason being that Mr A wanted to act as an agent for and on behalf of his clients. In addition with the Agent's Agreement Mr A was

INLAND REVENUE BOARD OF REVIEW DECISIONS

entitled to recruit other persons without seeking approval from the Company. In essence the Agent's Agreement gave Mr A greater independence.'

19. Mr F would definitely be a helpful witness if called to explain the situation and to test the veracity of the second version. It was not the Taxpayer's case that he was both an employee and an agent of the Company. In his evidence he maintained that he was not under the control of the Company at all and he was an independent agent. He claimed that he employed staff to work for him.

20. But, the other evidence and his own testimony did not help him at all. A further letter of 2 June 1994 from Mr F disclosed that throughout the assessment period the Taxpayer received salary and allowance. Mr F drew a clear distinction between the two posts 'Account Executive' and 'agent', and stated that '*Mr A resigned as account executive on 21 March 1992 and resigned as agent end March 1992*'. Even if there were such distinction in his employment, we were not told which part of the commission was attributable to one and not to the other. From what we have gathered from the testimony, the Taxpayer tried to claim that all the commission was earned in the capacity as an agent and not as an employee.

21. The Taxpayer claimed that he employed the following staff who worked for him:

- (a) Miss G, secretary from 1 April 1991 to 30 June 1991;
- (b) Miss H, secretary from 1 July 1991 to 31 January 1992;
- (c) Miss I, clerk/messenger from 1 April 1991 to 31 October 1991;
- (d) Mr J, clerk/messenger from 15 October 1991 to 31 March 1992.

According to the Notes to the Profit & Loss Account, they received salaries and wages, in the sum of \$39,000 (Miss G), \$40,800 (Miss H), \$38,500 (Miss I) and \$27,500 (Mr J). They had worked for the Taxpayer ranging from three to nine months but when Taxpayer was asked at the hearing, he could hardly remember any of them. It was the Taxpayer's first job and most probably, it was the first time he employed anyone to work for him. It is totally incredible that he could not remember any of them. At the same time the receipts produced to us were for receipt of commission and not salary or wages. Because of this in balance we find it as fact that he did not employ any of the persons named to assist him. We have doubts on those receipts.

22. A closer examination of the Agent's Agreement (Exhibit 'R1' pages 7-8) reviews that the document is not inconsistent with the other three documents, namely, the Appointment Contract, Service Agreement and Rules for Bullion and Forex Trading. The former does not attempt to alter the terms of employment and in fact it does not mention any term of employment at all. What it endeavoured to do was to empower the Taxpayer to employ associate agent who would be paid commission. In other words the other three

INLAND REVENUE BOARD OF REVIEW DECISIONS

documents were still binding on him. Even if what Mr F stated were correct, the Company had the power to control over the Taxpayer.

23. The Taxpayer pointed at the following two clauses.

‘7 *The agent is personally responsible for any error or fraud committed during trading.*’

‘8 *The agent has to compensate the company for destructing or spoiling the company’s documents, equipment or furniture, and should not disclose company’s internal affairs to others.*’

We find that these two clauses were neutral; whether a person was independent contractor or an employee he was liable for his own mistake and damage done to company property.

24. Taking all the evidence as a whole by balance of probabilities we conclude that the Taxpayer’s agreement with the Company was a contract of service. He was an employee of the Company and was therefore subject to the provisions of salaries tax (that is, section 8).

Deductibility of Expenses

25. Deductibility of expenses in respect of salary income is governed by section 12 of the IRO and for ease of reference we quote the relevant subsection (1)(a) thereof:

‘(1) *In ascertaining the net assessable income of a person for any year of assessment, there shall be deducted from the assessable income of that person:*

(a) *all outgoings and expenses, other than expenses of a domestic or private nature and capital expenditure, wholly exclusively and necessarily incurred in the production of the assessable income.*’

26. In the Profit & Loss Account submitted to the Revenue by the Taxpayer, Exhibit ‘R1’ page 47, he set out a list of expenditure:

Expenditure	
Wages and Salaries	HK\$145,800
Assistants’ Travelling and Welfare Expenses	22,655
Commission Paid	238,500
Travelling Expenses	52,282
Entertainment	110,590
Pager and Mobile Phone Expense	16,482
Newspaper and Periodicals	1,868
Printing and Stationery	1,382
Postage and Stamps	1,570
Advertisement	2,800

INLAND REVENUE BOARD OF REVIEW DECISIONS

Daily Consumable Articles		<u>1,560</u>
	Total:	<u>595,489</u>

The expenditure can be broadly classified under four big headings:

- (a) Wages and Salaries of \$145,800. We have dealt with in paragraph 21 and have dismissed this claim as wages and salaries.
 - (b) Entertainment of \$110,590. We have absolutely no evidence on this claim and there are a few receipts which hardly amount to this figure. We shall deal with them when we analyse the evidence.
 - (c) Commission of \$238,500. It is supported by a number of receipts produced by the Taxpayer in the course of investigation. We shall carefully consider them together with the evidence submitted by the Revenue.
- and (d) The other miscellaneous items. These are minor items claimed to have been supported by invoices and receipts, Exhibit 'R2' pages 18 to 49, which have been produced by consent.

Invoices and Receipts

27. The Board went through each of the invoices and receipts produced, and invited the Taxpayer to speak to it. Ms Tse for the Revenue cross-examined the Taxpayer on nearly every one of them and she gave very careful analysis in the submission. The following is our finding:

- (a) Page 1 to 49 which were dated 15 December 1989, 21 May 1992, 27 July 1992, 27 February 1992, 11 April 1992, 26 November 1992, 19 December 1992, 21 January 1993 and 2 February 1993 respectively. They were outside the relevant period and these claims should be dismissed.
- (b) On page 34, the date of receipt had been changed: the figure '5' was written over by figure '3' but the delivery date was written as 9/5. We cannot accept this receipt.
- (c) On pages 34 to 39 no dates were shown on these receipts. The burden is on the Taxpayer to prove that it falls within the relevant period. As he has failed to do so we ignore these receipts.
- (d) Page 33 dated 1 February 1992 was claimed to be a receipt for purchase of moon cakes. The date did not tally with the time for Mid-Autumn Festival.
- (e) Page 32 was an invoice for purchase from Company K and addressed to Mr L with a telephone number. The Taxpayer could hardly remember what it was

INLAND REVENUE BOARD OF REVIEW DECISIONS

for. We cannot accept this as an evidence to support the claim that it is a necessary expenditure for production of his income.

- (f) Items 29 and 31 relating to printing 5000 bills for distribution and an advertisement in a newspaper in respect of design of aquarium, which had no relation to the Taxpayer's business whatsoever.
- (g) Pages 25, 27 and 28 were invoices issued to the Taxpayer. The first two related to the telephone monthly subscription for his mobile phone. No evidence was shown to us that the phone was used '*wholly exclusively and necessarily incurred in the production of the assessable income.*' Page 28 was a credit card sales slip issued by a restaurant. The Taxpayer could not remember under what circumstances he incurred the expense.
- (h) The rest of the receipts and invoices did not bear the Taxpayer's name; some of the items related to men's clothings, rice, tooth paste and other items of domestic or private nature. From this evidence we can safely draw the conclusion that the Taxpayer submitted whatever receipts he could obtain and did not care whether the expenditure was incurred in connection with his business.

Because of the above findings we dismiss all the claims relating to entertainment and those expenditures claimed to have been supported by invoices.

Commission

28. It leaves behind the last major item of expenditure that is, Commission. It is common ground that the Taxpayer received a total sum of \$570,058 as commission. It is also found by us as a fact that it was a trade practice that he had to rebate part of it to the introducers of business. The question we have to decide is how much he paid out. Before us there are two sets of accounts referring to the subject:

- (a) The Notes to the Accounts submitted by the Taxpayer (Exhibit 'R1' page 47) show the commission to be \$238,500.
- (b) The receipts produced by the Taxpayer, the sums of which Ms Tse for the Revenue had kindly added together and were shown on the list prepared by her (Exhibit 'R2' page 50), show another figure of \$435,300.

We do not intend at this stage to draw any conclusion from this discrepancy except to state that the observation that the Taxpayer was at that time a mere school leaver and it was his first job. We were not informed what was the volume of trade which could produce that amount of income. We are convinced that he had to pay commission to others. We have to examine the receipts one after another and analyse them against the evidence before us.

INLAND REVENUE BOARD OF REVIEW DECISIONS

29. We find that all the receipts are printed in one form. We were told that the receipt form was provided by the Company; we have no reason to doubt that. The receipt contains the following particulars: the name of recipient, his identity card number, address and the amount received as commission. Each receipt was signed and was alleged to have been signed by the recipient of the commission. These receipts were submitted by consent and accepted as evidence by the Board. Unless we have doubts, we have to accept the receipts as we find them.

30. Among the list of the names of recipients which we went through with him, the Taxpayer could only identify three. Most probably, he could claim that the rest of them were introduced to him by the Company or other persons so he had no recollection of them. But such claim was not consistent with the four persons whom he alleged to be his employees. They were Miss G, Miss H, Miss I and Mr J. We have dealt with this point in paragraph 21 above. We do not intend to repeat it again. We have great reservation on the veracity of this claim. We doubt the truth of these receipts.

31. Credits must be given to Ms Tse for the Revenue for her thoroughness and diligence in preparation of this case. She took the trouble of writing to each of the alleged recipients and made enquiry whether they received the money claimed by the Taxpayer. (In fact, the investigator, whoever he may be, should have done this during the investigation period). She received a total of six replies. All of them denied that they had ever received the sums alleged. With such evidence it is wrong for us to allow the various sums attributable to those persons as deductible expenditure.

32. There are four cases where no receipts have ever been given. Neither do we find any other evidence to support the Taxpayer's claim. As the burden of proof is on the appellant, we find it unreasonable to allow the claim for these four cases.

33. After eliminating those receipts and cases of payment on which we have suspicion and reservation, the Board is left with the following receipts signed by Mr M (\$36,000), Mr N (\$41,000), Mr O (\$39,500), Mr P (\$32,500), Mr Q (\$36,000), Mr R (\$38,000) and Mr S (\$38,000) totalling \$261,000, which receipts we have no reason to doubt. We accept the Taxpayer's explanation that the said payments by the Taxpayer to the said seven persons were expenses '*wholly, exclusively and necessarily incurred in the production of the assessable income.*' We allow the deduction of \$261,000 under section 12(1)(a).

Conclusion

34. For reasons given above we allow the appeal to the extent that the net chargeable income of \$602,371 be reduced by a sum of \$261,000 to \$341,371 and the Board direct that tax payable thereon be assessed accordingly.