

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D150/98

Penalty Tax – late filing of profits tax return – costs – sections 51, 68(9) and 82A of the Inland Revenue Ordinance.

Panel: Ronny Wong Fook Hum SC (chairman), Kenneth Leung Kai Cheong and Ng Yin Nam.

Date of hearing: 7 January 1999.

Date of decision: 15 January 1999.

The profits tax return for the year of assessment 1996/97 was issued to the taxpayer on 1 April 1997. The taxpayer only lodged its profits tax return on 2 April 1998. This was the 5th successive year when the taxpayer failed to meet its obligation.

Held:

- (1) This is the 5th successive year when the taxpayer failed to meet its obligation. The delay of 4 months and 18 days is still a very substantial one. The Commissioner is fully justified on the facts to increase the level of penalty so as to bring home to the taxpayer its clear duty to report its profit in a timely fashion.
- (2) Had proper attention been paid to previous decisions of the Board, it would have been apparent to the taxpayer that this appeal has no possible chance of success. Public fund has been unnecessarily wasted in the hearing of this appeal. The taxpayer was ordered to pay \$1,000 by way of costs.

Appeal dismissed and a cost of \$1,000 charged.

Cases referred to:

D6/94, IRBRD, vol 9, 88
D59/94, IRBRD, vol 9, 343
D63/96, IRBRD, vol 11, 641

G S Chadha for the Commissioner of Inland Revenue.

Yeung Mui Kwan, David of Messrs David M K Yeung & Co for the taxpayer.

Decision:

INLAND REVENUE BOARD OF REVIEW DECISIONS

1. The Taxpayer is a company incorporated on 25 August 1981. It trades in leatherware merchandise.

2. The Taxpayer failed to submit its profits tax return for the year of assessment 1996/97 within the time prescribed by the Revenue:
 - (a) The profits tax return for the year of assessment 1996/97 was issued to the Taxpayer on 1 April 1997. By virtue of the Revenue's block extension scheme for lodgement of returns, the Taxpayer had up to 15 November 1997 to submit this return.

 - (b) On 28 November 1997, the assessor, not having received the return from the Taxpayer, raised an estimated profits tax assessment for the year of assessment 1996/97 of \$820,000 with tax payable thereon of \$135,300.

 - (c) On 13 February 1998, the assessor raised an additional estimated profits tax assessment for the year of assessment 1996/97 in the sum of \$410,000 with tax payable thereon of \$67,650.

 - (d) The return in question showing assessable profits of \$2,303,681 was lodged by the Taxpayer on 2 April 1998. This was late by 4 months and 18 days. The return makes it clear that the assessor had underestimated the Taxpayer's profit by \$1,073,681. The sum of \$1,073,681 was duly assessed on 16 April 1998 with tax payable thereon at \$380,107. No additional provisional profits tax in respect of the sum of \$1,073,681 was charged for the year of assessment 1997/98 as the return in question was received after 31 March 1998.

3. On 2 July 1998 the Commissioner gave notice to the Taxpayer of his intention to impose additional tax under section 82A(4). After considering representations by the Taxpayer's tax representative dated 1 August 1998, the Commissioner by notice imposed additional tax in the sum of \$100,000. This represents 26.31% of \$380,107 which is the amount of tax which has been undercharged in consequence of the Taxpayer's failure to comply with the notice under section 51(1). The Taxpayer appeals against this assessment of additional tax.

4. The Taxpayer has a very poor record in failing to submit its returns within the time stipulated.

Year of assessment	Due date for return	Actual date of submission	Period of delay	Tax undercharged	Additional tax	% of additional tax on tax undercharged
1992/93	15-11-1993	15-3-1994	4 months	\$219,490	\$20,000	9.11%
1993/94	15-11-1994	28-12-1994	1 month &	\$128,677	-	-

INLAND REVENUE BOARD OF REVIEW DECISIONS

			13 days			
1994/95	15-11-1995	20-1-1996	2 months & 5 days	\$72,396	-	-
1995/96	15-11-1996	22-8-1997	9 months & 7 days	\$123,980	\$25,000	20.16%

5. In respect of its omission for the year of assessment 1996/97, the Taxpayer through its tax representative, made the following representations to the Revenue:

- (a) The two directors and shareholders of the Taxpayer ‘remained as “astronauts” staying both in Hong Kong and overseas with their families staying overseas. As such, their time spent in the company’s operation and accounting matter was limited.’
- (b) The Taxpayer failed to find suitable person to handle both the administrative and accounting work of the company.
- (c) The directors had to spend a lot of time to tackle problems arising from the Taxpayer’s lack of internal support.

6. These representations are substantially similar to those put forward by the Taxpayers in explaining its previous defaults. The Taxpayer had done little to ensure due compliance of its obligations under section 51 of the Inland Revenue Ordinance. There is no excuse at all for its non compliance. The Commissioner is fully entitled to invoke its powers under section 82A.

7. The Taxpayer made reference to the amounts of additional tax imposed for the years of assessment 1992/93 and 1995/96. Particular emphasis was placed on the penalty for the year of assessment 1995/96 when the Taxpayer was late by 9 months and 7 days. We are not impressed by this submission. This is the 5th successive year when the Taxpayer failed to meet its obligation. The delay of 4 months and 18 days is still a very substantial one. The Commissioner is fully justified on these facts to increase the level of penalty so as to bring home to the Taxpayer its clear duty to report its profit in a timely fashion. In these circumstances, we see no basis to interfere with the Commissioner’s assessment at 26.31% of the amount of tax undercharged.

8. For these reasons, we dismiss the Taxpayer’s appeal.

9. Had proper attention been paid to the decisions of this Board in D6/94, IRBRD, vol 9, 88, D59/94, IRBRD, vol 9, 343 and D63/96, IRBRD, vol 11, 641, it would have been apparent to the Taxpayer that this appeal has no possible chance of success. At the hearing before us, the Taxpayer referred to 9 cases in support of its contention that a lower tariff should be adopted. The Taxpayer’s representative frankly admitted that none of those cases involved habitual defaults. We are of the view that public fund has been unnecessarily wasted in the hearing of this appeal. We therefore exercise our power under section 68(9) of

INLAND REVENUE BOARD OF REVIEW DECISIONS

the Inland Revenue Ordinance and order the Taxpayer to pay an additional sum of \$1,000 by way of costs.