Case No. D 1/82

Board of Review:

L. J. D'Almada Remedios, J.P. *Chairman*; Michael W. Y. Choy, M. W. Kwan, Lee Wing-kit, *Members*.

2 April 1982.

Inland Revenue Ordinance, s. 82A – penalty assessment – Tax affairs handled by qualified person – whether penalty can be avoided.

For the years 1974/75 to 1979/80 the appellant had employed person to deal with his tax affairs. In 1981 the appellant's new tax advisor submitted revised accounts which showed additional assessable profits which were accepted by the appellant. As a result of the undertaking of profits for 3 years and failure to make return for another 3 years a penalty assessment by way of additional tax was levied. The appellant appealed on the grounds that he was not responsible for these failures since he had employed a qualified person to look after his tax affairs.

Held: As a general rule a person does not absolve himself from the penal consequences of the Ordinance simply because he leaves his tax affairs in the hands of a qualified person. It is for the appellant to ensure compliance with the Ordinance.

Appeal dismissed.

CHIU Shin-koi for the Commissioner of Inland Revenue.
KO Wah-chiu of Ko Sik & Co. for the Appellant.

Reasons:

The Appellant carries on business in sole proprietorship. For the years of assessment 1975/76 and 1976/77, the assessor had to resort to estimated assessments under section 59(3) in the absence of returns by the Appellant to which objections were lodged. Subsequently, the Appellant submitted revised assessments for those years through his then tax representative.

For the years 1977/78, 1978/79 and 1979/80, the Appellant did not submit Profits Tax Returns within the time stipulated by the assessor and again estimated assessments were issued to which no objections were lodged.

On the 5 November 1980, the Inland Revenue Department instituted detailed investigation into the financial affairs of the Appellant and on the 18 November 1980, the Appellant informed the Department that he had appointed another tax representative to handle his tax affairs.

On the 29 April 1981, the Appellant's new tax representative submitted revised accounts for the years 1975/76 to 1979/80 and based thereon the additional assessable profits as shown below were accepted by the Appellant:

Year of Assessment	*Basis Period*	*Profit originally assessed*	*Revised profit agreed*	*Additional assessable profit*
1974/75……	Y.E. 31/3/1975	$ 37,227	$144,290	$107,063
1975/76……	Y.E. 31/3/1976	90,967	296,258	205,291
1976/77……	Y.E. 31/3/1977	76,533	332,410	255,877
1977/78……	Y.E. 31/3/1978	100,000	484,033	384,033
1978/79……	Y.E. 31/3/1979	150,000	482,800	332,800
1979/80……	Y.E. 31/3/1980	250,000	431,901	181,901

As a consequence of the Appellant having understated his profits for the first three years (1974/75 to 1976/77) and his failure to furnish returns for the next three years (1977/78 to 1979/80) within the stipulated time, the following penalty assessment by way of Additional Tax was raised under section 82A:

Year of Assessment	*Tax undercharged*	*Section 82A Additional Tax*
(1)	(2)	(3)
1974/75……...……	$20,634	$12,300
1975/76……...	32,124	19,200
1976/77……...	42,951	25,700
1977/78……...	72,604	43,500
1978/79……...	72,420	40,500
1979/80……...	64,785	31,400

The Appellant's case is that the additional tax which is in the nature of a penalty should not have been imposed as he is not to blame for what has happened. He argues that he had placed his tax affairs in the hands of a qualified tax representative and the neglect or omission to furnish returns within time was the fault of his tax representative and not his. He states that his present tax representative was able to submit returns acceptable to the Revenue and he is unable to account for profits understated in the first three years as his former tax representative was supplied with the same accounting documents which

consisted of bills, receipts and vouchers. The Appellant admits that he did not keep books of accounts for years of assessment appealed against.

On the material before us we are unable to regard the Appellant's contention as amounting to reasonable excuse. The returns for the first three years were signed by the Appellant. Each of these returns contained a declaration by him that the statements made are true and correct and that he has disclosed the whole of his assessable profits. However, the Appellant only declared 25% to 30% of the actual profits he made during each of those years. The discrepancy is not marginal but substantial. The Appellant must have known that the returns were incorrect; but even if he was not aware of that (as stated by him in evidence) – which we find difficult to accept in view of the gross understatement of profits – his failure to keep proper books or accounts which may have prevented him from checking the accuracy of his returns is not an acceptable excuse for understating profits.

Indeed we would comment that, as a general rule, unless an issue arises as to the taxability of any transaction, a taxpayer does not absolve himself from the penal consequences of the ordinance simply because he had left his tax affairs in the hands of a qualified person if the returns submitted by him show an understatement of profits. He is answerable for those employed by him in the absence of some reasonable excuse.

For the years 1977/78, 1978/79 and 1979/80, the Appellant failed to submit returns. It is for the Appellant to ensure compliance with the obligations imposed on him by the ordinance. He has failed to take such steps as would be expected of him to avoid the delay and we find no valid excuse for a neglect that has extended over such a long period of time. In the circumstances, the Commissioner was justified in imposing the additional tax under section 82A which we do not consider to be excessive. The appeal is dismissed and the additional tax for each of the Years of Assessment 1974/75 to 1979/80 inclusive is confirmed.