Case No. D1/83

Board of Review:

L. J. D'Almada Remedios, *Chairman*; Ho Sai-chu & Peter P. L. Li, *Members.*

15 April 1983.

S. 82A Inland Revenue Ordinance—penalty assessment—failure to inform Commissioner pursuant to section 51(2)—tax not charged—reasonable excuse—whether additional tax excessive.

The appellant failed to inform the Commissioner of Inland Revenue of his chargeability to Profits Tax for the years of assessment 1975/76 to 1980/81. The Commissioner imposed a penalty assessment by way of additional tax. The appellant appealed on the grounds (inter alia) that he could not read or write English and was ignorant of the tax liability and though he had been exempted from filing returns and that the additional tax was excessive.

Held: Ignorance of the law whether occasioned by failure to read and write English or limited education is no excuse and the additional tax was not excessive.

Appeal dismissed.

Yeung Kwai-cheung for the Commissioner of Inland Revenue.
Miss Katherine K. Y. Lo of Stevenson & Co. for the appellant.

Reasons:

As a result of investigations carried out by the Revenue in 1981, the Appellant was found to have made profits totalling $1.3 million for the years of assessment 1975/76 to 1980/81. During those 6 years the Appellant failed to inform the Commissioner of his chargeability to tax for the profits he derived from his business as required by section 51(2) of the Inland Revenue Ordinance. The Commissioner, therefore, imposed a penalty assessments by way of additional tax under section 82A in a sum amounting to 34% of the maximum penalty that could be levied.

The Appellant advances three grounds of appeal against these assessments.

His first ground is that when the Assessor discovered his omission to comply with section 51(2), he was issued with Profits Tax Returns to complete and for that purpose he was given time to furnish those returns. It is submitted that by so doing the officer of the Inland Revenue Department had granted him an extention of time so that it cannot be said that he committed a breach of section 51(2). It is hardly necessary for us to say that when a taxpayer is handed a tax return form to complete and given time to do so, it has no bearing

whatsoever with the statutory obligation he must observe as required by section 51(2) which has nothing to do with time for filing returns.

The Appellant's second ground of appeal is that there was reasonable excuse for his breach. He says he comes from a poor family in China. His education is limited. He does not read or write English and is totally ignorant about our tax laws. He commenced business in 1965. He furnished income tax returns. But in 1967 as his income was small he received from the Inland Revenue Department a letter which he says gave him the impression that he was exempt from filing returns. We would comment that persons who do not read or write English or whose education may be limited do not for that reason escape the consequence of section 82A. Ignorance of the law is no excuse. We do not believe that the letter he received could have given him the impression that he is exempt from tax or which could possibly have led him to believe the he need not pay tax no matter what his income may be. The standard printed letter (in both Chinese and English) that is usually sent is crystal clear. It sets out the provisions of section 51(2). If he has received such a letter we do not see how he could have mis-read it. He is unable to recall what was stated in the letter he received and he only has himself to blame if he did not see fit to seek clarification or advice if such was needed at all. The efficacy of section 82A would be rendered meaningless if what is contended by the Appellant amounts to reasonable excuse.

His final ground of appeal is that the additional tax though not in excess of that for which the Appellant is liable, is excessive having regard to the circumstances. It is the Appellant's assertion that he was induced to agree to his assessable profits in the sum of $1.3 million on a representation by the Assessor that a penalty (if any) which may be imposed by the Commissioner would be minimal. On this understanding he signed the agreement to settle the matter once and for all. If what the Appellant says is true, one would expect that on the imposition of the penalty his immediate reaction would be to query the levy or voice an objection founded on that basis. Yet he failed to do so when he wrote to the Assessor in connection with it. Subsequently, when he lodged his grounds of appeal, this crucial point which must have occurred to any person as important, was also neither made or mentioned. It was not until five months later, in July 1982, that it was first raised. We, therefore, have no hesitation in rejecting the Appellant's allegation in this regard and we accept the evidence of the Assessor and her witness.

Although the Appellant was ably represented by his solicitor at the hearing before us when all that could be advanced in his favour was said, we do not think that the additional assessments was excessive. The Commissioner was entitled to take into account, which presumably he did, that the Appellant, with knowledge that his failure to comply with section 51(2) had been detected, still chose not to make full disclosure of his profits by submitting returns (after the forms had been handed for completion) showing a total profits in the sum of $563,896 which is an understatement of 56% of his true profits. But for the fact the Appellant was co-operative in the investigations conducted by the Revenue, the penalty assessments could well have been higher. We do not, therefore, regard the additional assessments amounting to 34% of the maximum penalty to be excessive having regard to the circumstances.

Accordingly, the additional assessments are confirmed.