

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D18/87

*Board of Review:*

Robert W. N. Wei, *Chairman*, TING Woo-shou Kenneth and CHAN Pang-fee, *Members*.

**25 August 1987.**

Additional Tax — Section 82A of the Inland Revenue Ordinance — whether additional tax assessments were excessive.

The appeal is concerned with assessments to additional tax made by the Commissioner of Inland Revenue pursuant to Section 82A of the Inland Revenue Ordinance for the years 1974/75 to 1978/79. The additional tax assessments were made on the basis of the revised Assets Betterment Statement the correctness of which the Appellant accepted. The Appellant contended, however, that the additional tax assessments were excessive in view of what had been said in the three statutory declarations which purported to show that the betterment profits were offshore income.

*Held:*

Since the Appellant had accepted the correctness of the revised Assets Betterment Statement, it was not open to him to adopt a stand in the appeal which necessarily implied that the revised Assets Betterment Statement was incorrect. Furthermore the Board did not accept the evidence contained in the three statutory declarations not tested by cross-examination or corroborated by documentary evidence.

Appeal dismissed.

LEE Wai-kwok for the Commissioner of Inland Revenue.

S. M. McColl for the Appellant.

*Reasons:*

1. This is an appeal against additional tax assessments made under Section 82A of the Inland Revenue Ordinance for the years of assessment 1974/75 to 1978/79 in respect of the incorrect salaries tax returns submitted by the taxpayer.
2. At the hearing of the appeal, Mr. McColl the taxpayer's representative conceded that the salaries tax returns were incorrect and that the only ground of appeal was that the additional tax assessments were excessive having regard to the circumstances of this case.
3. The taxpayer gave evidence before the Board. He stated that the betterment profits on which the additional tax assessments were made arose from three sources: (a) income from two companies in Japan; (b) proceeds of sale of his wife's property in Taiwan; and (c) additional funds given to his wife by her father in Taiwan. He relied on three statutory declarations which he produced to the Board. They were made respectively by a person

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claiming to be the managing director of one of the Japanese companies, a person claiming to be an executive officer of the other Japanese company and a person claiming to be his father in law. They stated in general terms that during the accounting period they paid sums of money amounting to the total amounts respectively stated in the statutory declarations to the taxpayer either directly or through his friends in the case of the two Japanese companies and to the taxpayer and his wife in the case of his father in law.

4. None of the three declarants was called as a witness. No other witness was called, nor any documentary evidence adduced, to prove that the betterment profits came from these sources in Japan and Taiwan. In the course of their investigations the Revenue made certain concessions in respect of the alleged funds from Taiwan.

5. On 10 January 1984 the taxpayer signed a revised assets betterment statement (ABS) prepared by the Revenue which contains the following paragraphs:—

“4. I understand that upon finalisation of the assessments, the case will be put up to the Commissioner or his deputy for consideration of penal action.

5. The above statement (i.e., the revised ABS) includes an aggregate amount of my services income approximately \$1,800,000.00 which is earned by me outside Hong Kong but in the lack of sufficient documentary evidence, the said amount is deemed to be my assessable income in Hong Kong in order to bring my case to an end.”

6. As to the purpose in producing these statutory declarations, the taxpayer stated in his written statement produced to the Board by his tax representative as part of his evidence in chief:—

“I have produced these statement not to contest the correctness of the revised ABS—as I am advised that I have no option but to accept this. Rather, I have produced that statements to indicate to the Board the nature of the betterment profits, which I request should be taken into account in determining whether the penalty tax is excessive in all the circumstances.”

7. The additional tax assessments were made on the basis of the revised ABS the correctness of which the taxpayer accepts. This means at least that he accepts that he cannot prove that profits were offshore income. But he says that the additional tax assessments are excessive in view of what is said in the three statutory declarations, which purport to show that the betterment profits were offshore income. Since he has accepted the correctness of the revised ABS, the Board is of the view that it is not open to him to adopt a stand in the appeal which necessarily implies that the revised ABS was incorrect.

8. In any event, the Board does not accept the evidence contained in the three statutory declarations which were not tested by cross-examination or corroborated by documentary evidence.

9. The taxpayer also stated that he truly believed that the betterment profits were not subject to tax because of their offshore nature. However, since he has not proved to the

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Board's satisfaction that these profits were traceable to Japan or Taiwan, or advanced any other ground for entertaining such a belief, the Board is unable to accept that statement.

10. The additional tax assessments were 60% for the year of assessment 1974/75 and 49.5% for the years of assessment 1975/76 to 1978/79 respectively of the maximum penalty laid down by the law. There is nothing in the circumstances to show that the amounts are excessive.

11. The taxpayer did not argue that he had a reasonable excuse for making the incorrect returns in that he reasonably believed that the betterment profits were not liable to tax in view of their offshore nature. However, for the reasons stated above he would have failed on this ground as well had he raised it.

12. It follows that this appeal is dismissed and the additional tax assessments are hereby confirmed.