

# INLAND REVENUE BOARD OF REVIEW DECISIONS

## Case No. D18/89

Penalty assessment – quantum of penalty – whether excessive – section 82A of the Inland Revenue Ordinance.

Panel: T J Gregory (chairman), Ronald J McAulay and Lincoln Yung Chu Kuen.

Date of hearing: 4 May 1989.

Date of decision: 12 June 1989.

The taxpayer filed incorrect profits tax returns for a total of five years of assessment. The taxpayer argued that the penalty assessments levied upon him were excessive because he was ignorant of Hong Kong taxation, his business was small and not good, and he was under pressure of work. He further argued that because of the assets betterment procedure, he had paid higher taxes than he should have done.

Held:

That the penalty assessments were not excessive. The penalty assessments in each case were less than 100% of the tax undercharged and averaged 92% of the tax undercharged.

Appeal dismissed.

Jacob Ng Kwok Ping for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

### 1. THE NATURE OF THE APPEAL

The Taxpayer's appeal was against penalty assessments imposed upon him under section 82A of the Inland Revenue Ordinance with respect to incorrect profits tax returns submitted for the years of assessment 1981/82, 1982/83, 1983/84, 1984/85 and 1985/86.

### 2. The Appeal

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- 2.1 The Taxpayer appeared in person. The Taxpayer stated that:
- 2.1.1 he was ignorant of the Hong Kong taxation system, that his business was a small business and that during the period to which the penalty assessments relate his business was not good;
- 2.1.2 pressure of work and the need to endeavour to improve his business caused him to neglect all tax matters;
- 2.1.3 the refusal of the Revenue to approve the deduction of an alleged borrowing from his assets, as ascertained by an agreed assets betterment statement, resulted in higher taxes than he should have borne; and
- 2.1.4 his appeal was a request for a reduction of the penalties imposed upon him.
- 2.2 The Revenue, in a written submission, drew attention to the fact that alleged ignorance of the law and/or pressure of work was not an excuse for failing to make tax returns. Further, the Taxpayer did not submit profits tax returns for the first three of the relevant years of assessment even after his assessable profits were estimated by the assessor: it was only after the assessor carried out his investigation that returns were made. Further, it was again only after receipt of a substantial estimate for the year of assessment 1984/85 that the Taxpayer submitted a profits tax return for that year, to validate his objection to the estimate. The Revenue concluded by drawing the Board's attention to the fact that each of the penalty assessment was less than 100% of the tax undercharged and on a total basis the penalty assessments were 92% of the tax undercharged.

### 3. Reasons for the Decision

- 3.1 The Board is unable to accept as justification for any appeal against penalty assessments ignorance of the law or pressure of business. Further, the Taxpayer did not adduce any evidence with respect to the alleged loan he complained had not been deducted from his assets by the Revenue.
- 3.2 The Board notes that the additional tax for each of the years of assessment is less than the tax undercharged and, consequently, the total penalty assessments are less than one-third of the permitted maximum penalty. The Board is satisfied that the Commissioner has imposed penalties which are not in the least bit excessive.

### 4. Decision

For the reasons given the Board dismisses this appeal.