

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D20/88

Penalty assessment – whether penalty excessive – hardship to taxpayer – s 82A of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Lau Wah-sum and Francis J Law.

Date of hearing: 25 May 1988.

Date of decision: 19 July 1988.

The taxpayer belonged to a partnership and was responsible for preparing its accounts and tax returns. He understated the partnership's profits. The Commissioner issued a penalty assessment to the taxpayer because he had made the incorrect declarations. The penalties levied were equal to 108.8% of the tax undercharged (being 36.3% of the maxima permitted).

The taxpayer claimed that the penalties were excessive in view of the facts that he had little money, he was a minority partner and his wife was ill.

Held:

The penalties, being slightly more than the tax undercharged, were high but not excessive.

Chan Yuen-jor for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

This appeal relates to whether or not penalties imposed by the Deputy Commissioner on the Taxpayer in respect of three years of assessment, namely 1982/83, 1983/84 and 1984/85, are excessive.

The Taxpayer submitted that he was one of the partners in a family business owned by himself, his brothers and his sister. It appeared that the partnership had relied upon him to file tax returns and handle the accounting affairs of the partnership. He was entitled to approximately 30% of the partnership during the three years of assessment. The

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total amount of tax under-charged for the three years was \$170,010 and total penalties of \$185,000 were imposed upon the Taxpayer. The Taxpayer said that the amount of the penalties was excessive bearing in mind that he was a man of modest means who was a minority partner. He pointed out that after operating the business for many years he had only been able to save a small amount of money. His wife had recently been seriously ill in hospital. In the light of these circumstances, he said that the penalties should be reduced by at least 50%.

The representative for the Commissioner confirmed that the Commissioner had taken into account the mitigating factors in the present case which included the fact that, after an initial interview when the Taxpayer appeared to have denied the understatement of profits, the Taxpayer had cooperated with the Inland Revenue Department. It was also confirmed that, when assessing the penalties, the Deputy Commissioner had borne in mind both the quantum of the profits under-disclosed and the means of the Taxpayer.

Whilst the Board has considerable sympathy for the Taxpayer in the light of the personal difficulties which he had recently encountered, it is not possible for us to find that the penalties imposed are excessive. Penalties of a little more than 100% of the tax under-charged are high but not excessive. It is appropriate that the penalties should be imposed upon the person who makes the incorrect tax declarations and it is a private matter between that person and his partners as to whether or not he will be required to bear the entire quantum of the penalties or can seek to recover part from his partners. This is not something which the Deputy Commissioner or the Board can take into account.

Whilst the Board has sympathy for the Taxpayer in his current personal hardship, it must also be taken into account that the partnership had the benefit of substantial sums of money which should have been declared and paid by way of tax. Whilst the Taxpayer claimed to have acquired only very modest savings after many years in business and now to have personal financial hardship, it was also drawn to our attention that, in the two years following the years of assessment under appeal, the partnership business had made substantial profits which were substantially higher than the profits made in any of the years in question. It is hardly open for the Taxpayer to claim hardship when the partnership of which he held nearly 1/3 made an assessable profit of \$1,497,613 in the year of assessment 1985/86 and \$829,016 in the year of assessment 1986/87.

On all of the facts of this case, we are unable to say that the Commissioner's three penalty assessments are excessive and accordingly we dismiss the appeal.