

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D20/90

Profits tax – whether a loss on a foreign exchange contract can be deducted from profits of stock trading.

Panel: Robert Wei QC (chairman), Donald Cheung Quintin and Foo Tak Ching.

Date of hearing: 10 January 1990.

Date of decision: 28 June 1990.

The taxpayer registered himself as carrying on business as stock investment and dealing. He entered into one isolated foreign exchange transaction which resulted in a substantial loss. The taxpayer sought to set off the exchange contract loss against the profits of his stock investment and dealing business.

Held:

One isolated exchange contract did not constitute a trade of foreign exchange dealing.

Appeal dismissed.

Cases referred to:

Cooper v Stubbs 10 TC 29
D55/87, IRBRD, vol 3, 1

H Bale for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. This is an appeal by a taxpayer against an additional personal assessment for the year of assessment 1982/83 on the ground that the assessment is excessive as his profits tax assessment for 1982/83 did not take into account a loss of \$547,200 which he sustained on a foreign exchange futures contract in US dollars.

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- (a) That since 1 March 1979 he had done only one foreign exchange dealing on his own account, that is, the afore-mentioned US dollar contract.
- (b) That he had entered into the US dollar contract in the hope that he could earn an easy profit.
- (c) That he had no specialized knowledge of foreign exchange transactions, although he handled and made decisions in foreign exchange transactions on behalf of the company he worked for.

3. The question for this appeal is whether the Taxpayer carried on a trade or business of foreign exchange dealing and whether the loss on the US dollar futures contract was sustained by the Taxpayer in the carrying on of that trade or business. The word 'trade' is used in this context to include 'an adventure in the nature of trade'.

4. For a trade of foreign exchange dealing to exist, one would normally expect to find some habitual and systematic operations (Cooper v Stubbs 10 TC 29). Here there was nothing of the habitual or systematic, but only one US dollar futures contract closed out by a contrary purchase. In our view, what the Taxpayer did was a one off gambling transaction which did not amount to the carrying on of a trade or an adventure in the nature of trade. Nor can it be regarded as the carrying on of a business. There was no element of skill or expert knowledge or organisation of a business nature. There were no inherent attributes of a business such as the employment of staff, keeping of accounting records, setting aside working capital, acquisition of assets and equipment for use in the business and carrying on his activities in a businesslike manner. (See D55/87). At the hearing the Taxpayer stressed the fact that he had registered a change of his business to 'stock investment and exchange dealings'. We do not think that is relevant in view of the fact that the change was registered sometime after the US dollar contract was closed out.

5. For these reasons the appeal is dismissed and the additional personal assessment for the year of assessment 1982/83 is hereby confirmed.