

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D24/84

*Board of Review:*

William Turnbull, *Chairman*; E. J. V. Hutt & Yung Chu-kuen, Lincoln, *Members*.

### **31 January 1985.**

S. 82A of Inland Revenue Ordinance—penalty assessment—whether ignorance or the employment of qualified accountants to handle the tax returns is reasonable excuse.

Additional tax was imposed on the Appellant under Section 82A in respect of incorrect profits tax returns. Appellant (deceased) appealed through her husband acting as her personal representative on a number of grounds including that her husband, who actually prepared the tax returns, was ignorant, illiterate or unable to understand what the obligations required and that since 1978 they had employed qualified to handle the tax returns.

*Held:*

Anyone who carries on business has obligations in respect to that business which include obligations under the Inland Revenue Ordinance. Such obligations cannot be avoided by saying that the taxpayer was ignorant, illiterate or unable to understand what the obligations required. Nor is it an excuse that qualified accountants were employed, as they could do no more than act on the information provided to them and in accordance with the instructions given to them.

Appeal dismissed.

Chan Sui-keung for the Commissioner of Inland Revenue.  
Personal representative for the Appellant.

*Reasons:*

This is an appeal against penalty assessments by way of additional tax imposed under section 82A of the Inland Revenue Ordinance covering the years of assessment 1974/75 to 1980/81 in respect of incorrect profits tax returns filed by the Appellant now deceased.

The appeal was handled on behalf of the Appellant by her husband. The husband had full knowledge of all of the relevant facts. In fact it appeared that it was the husband who had prepared the tax returns signed by his wife and it was the husband who appeared to have been in real control of the business although it was registered in the name of his wife.

The husband informed the Board that the business was very small when it first started and that he had no knowledge of accounting matters or taxation. Initially the husband spent most of his time overseas in Taiwan handling other business. When the business in Hong

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Kong became difficult for his wife to handle he came back to Hong Kong to take over the full time running of the Hong Kong business.

The husband said that for the years before 1978 the tax returns were handled by unqualified street writers. Since 1978 the tax returns had been handled and prepared by qualified persons.

The husband went on to say that he was illiterate but his children were well educated and that since 1978 they had asked qualified accountants to handle the tax returns.

It is difficult to understand exactly what the husband was trying to submit. It would appear that his argument was that prior to 1978 he was illiterate with no understanding of accounting or taxation and therefore should be excused for failing in his obligations under the Inland Revenue Ordinance and for filing incorrect tax returns. For the years subsequent to 1978 his argument would appear to be that it was not his concern because the qualified accountants were responsible and not he or his wife.

Such arguments and submissions have no substance whatsoever. Prior to the appointment of qualified accountants the law imposed a clear obligation on the Appellant to file true and correct tax returns. This she failed to do. Anyone who carries on business has obligations in respect to that business which include obligations under the Inland Revenue Ordinance. Such obligations cannot be avoided by saying that the tax payer was ignorant, illiterate or unable to understand what the obligations required.

Likewise it is no excuse to say that qualified accountants were employed and that this exonerated the Appellant. Qualified accountants can do no more than act on the information provided to them and in accordance with the instructions given to them. The client and not the accountant must take full legal responsibility for what the client signs. In this case the matter is made worse by the following facts:—

- (1) It was in 1978 that Appellant was placed on notice by the Inland Revenue Department that there may be problems when the Inland Revenue Department that there may be problems when the Inland Revenue Department requested further information relating to the Appellant's tax affairs.
- (2) The Appellant had the benefit of professional advice and was no longer dependent upon her husband and street writers who had no accounting or taxation expertise.
- (3) The Appellant had the benefit of the advice given by her children who were stated to have been well educated.

In spite of the foregoing the understatement of the Appellant's income increased in subsequent years and not decreased.

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The husband went on to explain that the profits tax assessments were unfair on two grounds even though the Appellant had accepted them as being correct. The first ground was that true and correct records of the business had not been maintained because part of the business related to activities which were unlawful. The second argument propounded was that a significant part of the assessed profits did not arise in Hong Kong but were profits arising in Taiwan and which were remitted back to Hong Kong and which should not have been taxable as profits in or derived from Hong Kong.

The first of these two submissions has no foundation whatsoever. It is a long and well established principle that tax must be paid on legal and illegal profits. A tax payer must so conduct his affairs as to comply with his obligations under the Inland Revenue Ordinance and must face the consequences of failure so to do.

The second of these two submissions is legally correct provided it is substantiated by the facts. However the facts do not substantiate such a proposition. The husband stated that the business in Taiwan had no employees and no factory. It comprised the receipt of commissions on design services which the husband provided to third parties who were involved in the business of counterfeiting. The husband further stated that no records of the Taiwan business were available and that remittances from Taiwan to Hong Kong were made illegally. The onus of proof in such cases lies with the Appellant. The Commissioner has already allowed the Appellant a substantial sum by way of allowance for profits which may or may not have been remitted from Taiwan. The Appellant accepted the profits tax assessments as being correct. According to the agreed betterment statement the net assets of the Appellant increased very significantly in the years ended 31 March 1978, 1979, 1980 and especially in the year ended 31 March 1981.

When asked about the alleged remittances of profits made in Taiwan from Taiwan to Hong Kong the husband stated that the biggest sums were remitted to Hong Kong in about 1980 or 1981 and that in earlier years only small sums were remitted. The Board of Review has no hesitation in rejecting the submissions and statements made by the husband. It would appear that at best the Appellant and her husband had no respect or concern regarding their tax liabilities in Hong Kong even though the business which they were operating was making significant profits and notwithstanding that in the middle of the period in question they had the benefit of professional advice and the assistance of their educated children. At worst this would be a case of the most blatant tax evasion.

Taking the best view of the facts this is a case of total disregard by the Appellant and her husband of their tax obligations in Hong Kong and the Board upholds the Additional Assessments made under section 82A of the Ordinance and the appeal is dismissed.