Case No. D 25/83

Board of Review:

William Turnbull, *Chairman*; John C. Chan and P. A. Hall, *Members.*

3 April 1984.

Profits tax—consolidated account in foreign currency—rate of exchange to be applied—foreign currency depreciating—whether capital assets should be revalued in United States Dollars before calculating depreciation allowances.

The appellant was an international shipping company based in Israel and was assessed to Profits Tax for the year 1975/76 as a non-resident shipowner. Although the appellant received payments in various currencies it maintained its consolidated accounts in Israeli Pounds. The Commissioner assessed the profit on an average rate of exchange for the base year and calculated depreciation allowances on capital assets on their acquisition price disclosed by the accounts. The appellant appealed, inter alia, on the grounds that the exchange rate should be that obtaining at year end and that capital assets should be revalued from United States Dollars into Israeli Pounds each year.

Held:

(1) The appellant's profits should be calculated on the basis of the year end exchange rate.

(2) Having established the value of a capital asset that remains its value for depreciation allowance purposes.

Appeal allowed in part and assessment remitted to the Commissioner for revision accordingly.

Wong Ho-sang for the Commissioner of Inland Revenue.
Anthony P. Fahy of Messrs. A. P. Fahy & Co. for the appellant.

Reasons:

This Appeal is by an international shipping company carrying on business in Hong Kong against an assessment to profits tax on that part of its profits arising in or derived from Hong Kong. Circumstances and fate have conspired together to create an exceptionally complex and confusing set of facts and applicable law. To try to write a simple concise and clear decision is very difficult even though the principles and the decision itself are clear.

The Appeal is on three Grounds. The first relates to the effect of a change of tax law on the method of assessing the Company's assessable profit or loss. The second relates to translation of income expenses and profit or loss from one currency to another and the third is a claim to revalue assets to take into account currency fluctuations. We will deal with each ground of appeal separately.

The case spans a period when a fundamental change was taking place in Hong Kong taxation. The change, which took place in the mid-1970s, was to convert from a preceding year assessment basis to a current year assessment basis. The complexities of trying to write this decision are further compounded by the long elapse of time which has taken place before this case came before the Board of Review. With the exception of this Appeal there is probably little importance today in understanding the old basis of our tax law and the complex transitional provisions which were introduced when the change took place.

To add yet another dimension to the complexities we find that the crux of the Appeal involves attempting to find theoretical profits namely that part of an international shipping company's profits which can be said to be attributable to the portion of its business conducted in or through Hong Kong. A further twist of fate has made the case turn upon losses in some years with profits in others, the early days of major inflation and currency depreciation. Finally we find that profits or losses turn upon depreciation which is treated differently in different countries.

First we will try to set out the broad principles involved before delving into the detailed facts of the case.

Prior to 1975 profits tax was assessed on a preceding year basis. Section 18 sub-sections 1 and 2 read as follows:—

> "18.(1) Save as provided in this section, the assessable profits for any year of assessment from any trade, profession or business carried on in the Colony shall be computed on the full amount of the profits therefrom arising in or derived from the Colony during the year preceding the year of assessment.
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> (2) Where the Commissioner is satisfied that the accounts of a trade, profession or business carried on in the Colony are usually made up to some day other than 31 March, he may direct that the assessable profits from that source be computed on the amount of the profits therefrom arising in or derived from the Colony during the year ending on that day in the year preceding the year of assessment. Where, however, the assessable profits from any trade, profession or business have been computed by reference to an account made up to a certain day, and no account is made up to the corresponding day in the year following, the assessable profits from the source both for the year of assessment in which such failure occurs and for the 2 years of assessment following shall be computed on such basis as the Commissioner in his discretion think fit."

It should be noted that section 18 relates specifically to profits. Section 19 then deals with losses and so far as relevant reads as follows:—

> "19.(1) Subject to the provisions of subsection (3) where a loss is incurred in any year of assessment up to and including the year of assessment commencing on 1 April 1974 by a person chargeable to tax under this Part the amount of such loss attributable to activities in the Colony shall notwithstanding the provisions of section 70 be set off against what would otherwise have been the assessable profits of such person for that year of assessment.

(2) Where the amount of loss which may set off under subsection (1) is such that it cannot be wholly set off against the assessable profits of a person chargeable to tax under this Part for the year of assessment in which the loss occurred, the amount not so set off shall be carried forward and shall be set off against what would otherwise have been assessable profits of that person for the future years of assessment in succession:

Provided that—

(*a*) the amount of any such loss allowed to be set off in computing the assessable profits for any year of assessment shall not be set off in computing the assessable profits for any other year of assessment; and

(*b*) where a loss is set off under this subsection in respect of the year of assessment commencing on 1 April 1975 or any subsequent year of assessment, that loss shall be set off before the set off of any loss under section 19C."

To understand section 19 it is necessary to refer to the next following section namely 19A. This provides that losses will be calculated in the same way as profits but will be calculated on the basis of the current year and not on the basis of the preceding year. Section 19A reads as follows:—

"19A.(1) For the purposes of section 19, the amount of a loss incurred by a person chargeable to tax under this Part shall, subject to the provisions of subsection (2) of this section, be computed in a like manner as assessable profits are computed.

(2) Where the assessable profits of a person chargeable to tax under this Part are computed in accordance with section 18(2) by reference to accounts for a period ending on some day other than 31 March in the year prior to the year of assessment, any loss which may be set off under the provisions of section 19 shall be computed by reference to such person's account for a similar period ending on the same day in the year of assessment, and the loss so computed shall be deemed to be the loss incurred by such person in that year of assessment.

(3) Where a person commences to carry on a trade, profession or business in the Colony within the year of assessment commencing on 1 April 1974, any loss incurred by that person in that year of assessment shall be computed by reference to such person's accounts for a similar period as that person's assessable profits would have been computed under section 18C.

(4) Subsections (1) and (2) shall apply to the years of assessment up to and including the year of assessment commencing on 1 April 1974."

The effect of the interaction of section 18 and section 19A is that two calculations may be necessary the first being to assess a taxable profit on the preceding year basis and the second to adjust the taxable profit by any actual loss incurred during the current year. There is an overriding provision contained in section 19 that losses can only be deducted once and a further provision that if the assessable profits in the year in question are less than the actual losses in that year, the balance of such losses can be carried forward into succeeding years to be set of against future profits.

The position regarding depreciation allowances was quite simple. A depreciation allowance was to be allowed when calculating the profit or the loss for the year in which the expenditure was incurred with annual allowances thereafter. As there are various types of depreciation allowances it is inappropriate to set out the relevant sections in this decision.

The best way of demonstrating the law is to show it at work in few examples.

Let us assume that we are dealing with a business which in year 6 makes a profit of $1 million and incurs capital expenditure of $500,000. In the next succeeding year, year 7, the business makes a profit of $1,250,000 and incurs capital expenditure of $500,000. In the next year, the 8th year, a loss is made of $250,000 with additional capital expenditure of $300,000. In the following year, the 9th year, the business is again profitable and makes $500,000 profit and incurs capital expenditure of $1,100,000.

In year 7 we have a simple situation. The business made a profit of $1 million in the preceding year 6 and was allowed initial depreciation allowances on capital expenditure of $500,000 being the capital expenditure incurred in that year 6. Under section 18 tax for year 7 was assessed on the basis of the preceding year profit. There is no need to consider the effect of section 19A because a profit was also made in year 7.

In year 8 a different situation arises. The assessable profit for the 8th year is $1,250,000 made in the preceding year 7. When determining the profit for the preceding year 7 initial depreciate allowances would be permitted on the capital expenditure of $500,000 incurred in year 7 and in addition annual depreciation allowances on the preceding years' capital expenditure of $500,000 were permitted. However under section 19A the loss which had been made in the 8th year can be deducted from the assessable profit of the business so that the profit of $1,250,000 would be reduced by the sum of $250,000. When calculating the actual loss in the 8th year initial depreciation allowances on the capital expenditure of $300,000 incurred in the 8th year is permitted plus annual allowances for expenditure in the preceding years. Thus in effect two years' financial results with two years' depreciation allowances are brought into account in one year.

When we come to look at the 9th year the assessable profit is calculated on the preceding year basis. As there was no profit in the 8th year there can be no tax liability in the 9th year even though an actual profit was made in year 9. Accordingly there would be a nil assessment in year 9.

When we come to the 10th year, assuming that the business remains profitable, the situation returns to normal and tax would be assessed on the profit made in year 9 namely $500,000. Initial depreciation allowances relating to the capital expenditure of $100,000 incurred in year 9 plus annual allowances on previous capital expenditure are allowed in computing the profit of $500,000.

It can be seen from the foregoing that the profit or loss and depreciation allowances as per the business accounts are used once only but that in the 8th year the actual profit made in year 7 and the actual loss made in year 8 are combined when determining the relevant tax liability. In the following 9th year the loss suffered in the preceding year is disregarded because it has already been used in full as an allowance against the assessable profit in the 8th year and cannot be used twice. As however there was no assessable profit in the 8th year no tax is payable in the 9th year even though as actual profit was made in that year.

That then was the situation prior to 1975. Commencing on 1 April 1975 the law was amended to provide that profits tax would be assessed on the actual year's profit basis. Section 18B(1) covers the position and reads as follows:—

> "18.B(1) Subject to subsection (2) and to sections 18C, 18D and 18E, the assessable profits for any year of assessment commencing on or after 1 April 1975 from any trade, profession or business carried on in the Colony shall be computed on the full amount of the profits therefrom arising in or derived from the Colony during the year of assessment.
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> (2) Subject to sections 18C, 18D and 18E, where the Commissioner is satisfied that the accounts of a trade, profession or business carried on in the Colony are made up to some day other than 31 March, he may direct that the assessable profits from that source for any year of assessment be computed on the full amount of profits therefrom arising in or derived from the Colony during the year ending on that day in the year of assessment."

Section 19C subsections (4) and (6) and section 19D provide for corporations making losses and reads as follows:—

> "19.C(4) Where in any year of assessment a corporation or a person, who is not an individual, a partnership or a corporation, carrying on a trade, profession or business sustains a loss in that trade, profession or business, the amount of that loss shall be set off against the assessable profits of the corporation or person (including its share of the assessable profits of a partnership in which it is a partner) for that year of assessment and to the extent not so set off, shall be carried forward and set off against the corporation's or the person's assessable profits and its share of assessable profits of such a partnership for subsequent years of assessment.
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> (6) For the purpose of this section—
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> (*a*) the amount of any loss set off in computing the assessable profits for any year of assessment shall not be set off in computing the assessable profits for any other year of assessment;
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> (*b*) the amount of any loss carried forward to any year of assessment to be set off against the assessable profits for that year shall not be set off more than once in that year of assessment;
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> (*c*) the total amount set off against assessable profits shall not exceed the amount of the loss;
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> (*d*) the amount of any loss of be set off under this section shall be the loss attributable to activities in the Colony;
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> (*e*) the amount of any loss sustained in any trade, profession or business carried on for the benefit of a trust by a person in his capacity as trustee shall not be available for set off except against the assessable profits of that trust from that trade, profession or business for subsequent years of assessment."

Accordingly with effect from the year of assessment commencing on 1 April 1975 it was only necessary to look at one set of accounts namely the accounts which showed the actual profit or loss arising in the year of assessment.

In setting out the foregoing we have not concerned ourselves with a number of peripheral matters which are not material to the present case. For example the new provisions relating to assessment of provisional profits tax based on previous profits are not material.

Having traced the situation under the old preceding year basis law and under the new actual year system we must now study the transitional provisions which were designed to permit a transfer from one basis to the other without undue harshness or loss on either the Revenue or the Tax Payer.

Section 18A is the relevant section and sub-sections 1 and 2 read as follows:—

> "18A.(1) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(1) but the actual profits from that source for that year of assessment exceed those assessable profits as so computed, then, notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits.
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> (2) Where the assessable profits for the year of assessment commencing on 1 April 1974 from any trade, profession or business fall to be computed under section 18(2) on the amount of profits from that source for the year ending on a day other than 31 March in the year preceding that year of assessment but the actual profits from that source—
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> (*a*) for the year ending on the corresponding day in the year of assessment; or
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> (*b*) if the accounts for that trade, profession or business were made up to more than 1 day in the year of assessment, for the year ending on such of those days as the Commissioner may direct,
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> exceed those assessable profits as so computed, then, notwithstanding section 18, the assessable profits for the year of assessment commencing on 1 April 1974 shall be computed on the basis of those actual profits."

In short section 18A provides that for the year of assessment commencing 1 April 1974 (the transition year) tax will be assessed on the higher profit of the preceding year or the actual year. Putting it another way the effect of section 18A is to provide that during the transition year some businesses would be taxed on a preceding year basis and the actual profit made in the year of assessment would be disregarded and in other cases the Tax Payer would be assessed on his actual profit made in the year of assessment and the profit arising in the preceding year would be disregarded and ignored forever.

It is important to note that when amending the law the legal draftsman and the legislature did not decide to cancel the existing provisions and create new ones but instead moulded onto the existing legal framework additional provisions. Thus section 18A again only refers

to profits and a separate section relates to losses. There are of course no transitional provisions covering losses. Section 19C and 19D are the equivalent of the previous sections 19 and 19A but cover losses under the actual year profit basis and not the preceding year profit basis. The reason why it is not necessary to take into account transitional provisions for losses is that losses have always been brought into account on the actual year basis because of the provisions of section 19A(2).

The provisions relating to depreciation allowances are contained in Part VI of the Ordinance. Depreciation allowances are divided into 2 parts namely an initial allowance and an annual charge. In this case we are not concerned with balancing charges when an asset is sold or destroyed. The basic principle relating to initial and annual allowances can be demonstrated by quoting parts of section 37 sub-section (1) and sub-section (2) as follows:—

> "37.(1) Where a person carrying on a trade, profession or business incurs capital expenditure on the provision of machinery or plant for the purposes of producing profit chargeable to tax under Part IV then,…, there shall be made to him, for the year of assessment in the basis period for which the expenditure is incurred, an allowance, to be known as an "initial allowance".
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> (2) Where at the end of the basis period for any year of assessment a person owns and has in use machinery or plant for the purposes of producing profits chargeable to tax under Part IV there shall be made to him in respect of that year of assessment an allowance to be known as an "annual allowance" for depreciation by wear and tear of those assets. The allowance shall be calculated …"

Depreciation allowances are now brought into account for tax purposes under section 18F of the Ordinance which reads as follows:—

> "18F.(1) The amount of assessable profits for any year of assessment of a person chargeable to tax under this Part shall be increased by the amount of any balancing charge directed to be made on that person under Part VI and decreased by the allowances made to that person under Part VI for that year of assessment to the extent to which the relevant assets are used in the production of the assessable profits.
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> (2) When in any year of assessment the amount of the allowances made under Part VI to any person chargeable to tax under this Part exceeds the total amount of that person's assessable profits, as increased by any balancing charge, the amount of such excess shall, for the purposes of section 19C, be deemed to be a loss of that person for that year of assessment.
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> (3) This section shall apply to the year of assessment commencing on 1 April 1975 and to subsequent years of assessment."

There would not appear to be an equivalent pre 1975 section.

The basis for calculating depreciation did not change under the preceding year basis or the new actual year basis. However it was necessary to have transitional provisions and these are contained in section 40A which reads as follows:—

"40A.(1) Where—

(*a*) the assessable profits of a person for the year of assessment commencing on 1 April 1974 are computed under section 18A; and

(*b*) there is an interval between the end of the basis period for the year of assessment ending on 31 March 1974 and the beginning of the basis period for the year of assessment ending on 31 March 1975.

then, notwithstanding paragraph (*b*) of the definition of "basis period" in section 40(1), but subject to subsection (3) the initial allowance on capital expenditure provided under this Part shall be made only on the higher of the capital expenditure incurred in the interval or the second basis period referred to paragraph (*b*) of this subsection.

(2) Where—

(*a*) the assessable profits of a person for the year of assessment commencing on 1 April 1974 have been computed under section 18; and

(*b*) there is an interval between the end of the basis period for the year of assessment ending on 31 March 1975 and the beginning of the basis period for the year of assessment ending on 31 March 1976,

then, notwithstanding paragraph (*b*) of the definition of "basis period" in section 40(1), but subject to subsection (3), the initial allowance on capital expenditure provided under this Part shall, in respect of the year of assessment commencing on 1 April 1975, be made only on the higher of the capital expenditure incurred in the interval or in the second basis period referred to in paragraph (*b*) of this subsection.

(3) Where the amount of capital expenditure incurred in the interval and the second basis period referred to in subsection (1)(*b*) or in subsection (2)(*b*) is the same, the initial allowance shall be made only in respect of the capital expenditure incurred in the second basis period."

What section 40A says is that under the provisions of section 18A the actual profit (complete with depreciation allowances) for either the preceding year or the actual year will be disregarded for tax assessment purposes depending upon which is the lower profit. This could act unfairly on a tax payer. Under section 18A tax is assessed on the greater the profit on the actual year basis or the preceding year basis without reference to the reason for such profit being higher or lower. It could well be that the profit is lower because the Tax Payer had incurred substantial capital investment in one of the two years which would have the effect of substantially reducing his potential taxable profit. Section 18A protects the Inland Revenue by stating that tax is payable on the higher of the two profits. Section 40A protects the Tax Payer by allowing the Tax Payer to claim the higher of his possible two Initial Depreciation Allowances.

It must be understood that in the same way as the effect of the transitional provisions of section 18A is that no tax will be calculated on one of two years' profits, likewise no Initial Allowance will be permitted on capital expenditure in one of two possible years namely 1974/75 or 1975/76. The Tax Payer is entitled to an initial allowance on the higher expenditure in either of the two years but not to initial allowances on both. This could perhaps be considered to be slightly unfair because initial allowances are significantly higher than annual allowances but that is the decision of those who made the law at the time and it is quite clear from the wording of section 40A. There can be no doubt about the

interpretation of the words 'shall be made only on the higher of the capital expenditure'. The use of the word 'only' which appears on a number of occasions in section 40A leaves no room for doubt. Eventually the Tax Payer will obtain his full depreciation benefit because his subsequent annual depreciation allowances will be higher and ultimately on disposal of the asset the balancing charge provisions will cover any possible shortfall. However a Tax Payer who incurred all his capital expenditure in one of the two years in question and none in the other year would be significantly better off than the Tax Payer who had spread his capital expenditure equally over both years.

Having reviewed in some detail the provisions of the Ordinance we can now return to the facts of this case as the same relate to this first Ground of Appeal. The Tax Payer is an international shipping company and was assessed to profits tax under section 23C of the Inland Revenue Ordinance as a nonresident ship owner. Tax was assessed on the Tax Payer for the year of assessment 1975/1976 and the Tax Payer has appealed on the 3 grounds that a loss of only $6,010,875 had been brought forward for set off and should have been $12,012,518.

In the course of hearing the Appeal the representative for the Tax Payer argued at considerable length that the effect of the transition provisions was that his clients lost the benefit of initial allowances for a very substantial sum of money incurred in the course of one year. The Taxpayer being a shipping company was required to invest very heavily in new ships and equipment. To deny the Company initial allowances on capital investments which took place in the course of one year would have a significant effect on the Tax Payer's taxable profit and it was argued was unfair.

It may well be that it is unfair. This is not something on which the Board of Review can comment. It has long been established that there is no equity in taxation law. The provisions of section 40A are quite clear. The Tax Payer is entitled to an initial allowance on the higher of the capital expenditure incurred in one of two years and not to initial allowances on the capital expenditure incurred in both years. The Tax Payer's submission was that because this was unfair he should be allowed Initial Depreciation Allowances on 100% of the capital expenditure by aggregating the expenditure over 2 years and allowing it as a deduction in one year. With this we cannot agree. Accordingly we dismiss the Tax Payer's appeal on this Ground and confirm the decision of the Commissioner.

We have set out above at considerable length the preceding year and actual year provisions for the assessment of profits tax together with the transitional provisions because much time and argument was spent during the hearing of the case in substantiating or disputing various assessments and loss calculations over the years. The crux of the case so far as the Tax Payer is concerned is the claim that Initial Depreciation Allowances on certain capital expenditure which have been omitted should be allowed. As stated we find no merit in the Tax Payer's contentions on this. However it would be inappropriate not to comment on the other submissions made before the Board.

The representative for the Commissioner submitted that profits tax assessments were binding on the Commissioner under the provisions of the Ordinance but determinations of losses were not binding unless and until they were incorporated into assessments of taxable profits. The representative of the Tax Payer agreed with this submission although he expressed his dissatisfaction because in a letter dated 17 February 1976 under the heading of "Provisional Profits Tax" a Chief Assessor had stated:—

> "According to the Return and information submitted you do not have profits chargeable to the above tax for the Year of Assessment 1975/76. My computations are attached."

The attached computation showed assessable profit as nil for the basis period ended 31 December 1974 under the provisions of section 18(2) and section 23C(1). The computation went on to state that there was a loss brought forward of $5,759,889 with a loss for the year ended 31 December 1974 of $6,252,629 giving a total loss to be carried forward of $12,012,518.

As all losses are subject to re-calculation and assessment when a subsequent assessment is issued, it is necessary to look back into preceding loss calculations. This is not a very satisfactory procedure and led to yet further complications in the hearing of the Appeal. Having heard the arguments and submissions and having perused the financial statements produced in the course of the hearing this Board considers that the computation of losses as determined by the Commissioner in his determination dated 23 May 1983 with regard to this first ground of appeal and subject to what we decide later in this decision with regard to the two other grounds of appeal is correct. It is not practical or possible to set out in detail in this decision the calculations of profits and losses on which the assessment was based.

We now turn to the second Ground of Appeal which relates to exchange rates. The Tax Payer arranged for a senior representative to attend before the Board of Review and give evidence as to the accounting principles and procedures adopted by the Company. He explained that at the time in question the home country of the Tax Payer, Israel, was experiencing devaluation of its currency. To overcome the problems which this caused the Company adopted certain accounting principles which he said were in accordance with international accounting practices.

The general principle of maintaining accounts must be to reflect the true position as closely as possible. Artificial profits or losses should not be created by adopting accounting principles for the benefit or detriment of the Tax Payer. Furthermore consistency in treatment is to be preferred wherever possible and changes in accounting policies adopted by a Tax Payer should only be permitted where there is obvious and clear justification. Likewise the Commissioner should not impose arbitrary rules to replace those used by the Tax Payer unless there are good reasons for so doing. In the present case we have a situation where actual revenue was earned and expenses paid in local currencies (including Hong Kong Dollars) throughout the world or in United States Dollars. These sums were converted into Israeli Pounds either direct from the currencies concerned or through the

medium of United States Dollars. The conversions would take place at actual prevailing rates of exchange as appropriate.

The problem arises with regard to notional or arbitrary conversions into Hong Kong Dollars when determining assessable profits or losses. The Tax Payer, being an Israel Company, maintains its consolidated accounts in Israeli Pounds. At the year end a balance is struck and the resulting profit or loss for the year ascertained in Israeli Pounds. A rate of exchange is then applied to this Israeli Pound profit figure to convert it into Hong Kong Dollars. The rate used by the Tax Payer has traditionally been the rate prevailing at the year end. The Commissioner argues that this is wrong and that some sort of average rate should be used because the profit of the Tax Payer is stated at an artificially low Hong Kong Dollar amount because of the steady decline in the value of the Israeli Pound during the year. Whilst this Board of Review can see the logic in this argument, the converse would be the case if the Israeli Pound were to appreciate and not depreciate or indeed if the Hong Kong Dollar of US Dollar were to fluctuate. World inflation and currency devaluations have created many problems in the accounting world and to date there is no complete answer.

We were informed that the Commissioner had in previous years accepted the year end rate for converting profits into Hong Kong Dollars and we see no good reason for changing this.

The principles on which the Tax Payer maintained its accounts were clearly stated in the accounts published by the Tax Payer and details were provided to the Commissioner. Having heard the evidence the Board of Review decides that there is no reason to disturb the principles on which the Company had maintained its accounts and filed its Hong Kong tax returns. Accordingly the Tax Payer succeeds on this second Ground of Appeal and the assessment under appeal should be recalculated and amended accordingly.

The third Ground of Appeal is a submission by the Tax Payer that because of the depreciating Israeli Pound the capital assets of the Company should be re-valued from United States Dollars into the Israeli Pounds each year with the resulting increase in value carried to a capital account and the revised higher value used for calculating depreciation allowances. This is a submission with which the Board of Review cannot agree. Having acquired an asset and having entered the value of that asset into its accounts the Tax Payer cannot then re-value the asset for depreciation allowance purposes. The provisions of the Inland Revenue Ordinance are quite clear. These allow depreciation allowances to be calculated on the capital expenditure incurred. So far as Hong Kong taxation is concerned a company can maintain its accounts in any currency which it wishes but having decided the expenditure on the asset it is not then open to the Tax Payer to re-value its capital assets at another figure calculated in another currency and thereby artificially increase the depreciation allowances. Having established the value of a capital asset, that is its value for tax depreciation purposes until such time as it is scrapped or sold or otherwise ceases to exist in the accounts of the Tax Payer.

Based on the foregoing the Appeal by the Tax Payer is dismissed on Grounds of Appeal (1) and (3) but remitted to the Commissioner to re-assess the tax liability on Ground of Appeal (2) accepting the Tax Payer's submission that the year end exchange rate should be used.