Case No. D2/83

Board of Review:

L. J. D'Almada Remedios, *Chairman*; Patrick W. C. Chan, D. A. Graham & Edmond T. C. Lau, *Members.*

3 May 1983.

S. 82A Inland Revenue Ordinance—penalty assessment—husband understating wife's income—reasonable excuse.

The appellant's wife derived income from employment from two sources. In his 1979/80 and 1980/81 returns, the appellant understated his wife's income, to the extent in the 1980/81 return of the whole income from one source. The Commissioner imposed a penalty assessment by way of additional tax in respect of the 1980/81 return. The appellant appealed on the grounds that if the Revenue had brought the earlier omission to his attention he would have completed the return in question with greater care and that he did not know his wife's income and could only speculate.

Held:

(1) In the absence of any evidence that the relationship between the appellant and his wife was in any way strained the grounds of appeal were groundless frivolous and wholly devoid of merit.

(2) The level of additional tax was inappropriate in all the circumstances and was therefore increased.

Appeal dismissed.

L. A. Wimpress for the Commissioner of Inland Revenue.
Appellant in Person.

Reasons:

The primary facts are simple. The Appellant is a civil servant. He is married. His wife works. She derives income from employment from two sources: the Housing Department and also as an employee of E Industries (H.K.) Ltd. In the Appellant's returns he understated her income for the year of assessment 1979/80 to the extent of $1,100. Although the Commissioner was entitled to, he did not see fit to impose a penalty for this omission. For the year of assessment 1980/81, the Appellant understated his wife's income to the extent of $10,344. In respect of his incorrect return, the Commissioner imposed a penalty assessment of $300.

In appealing against this assessment the Appellant attempts to put the blame on the Revenue. He says that if the Revenue had informed him earlier of his omission or neglect in regard to his 1979/80 return, he would have been more careful in the preparation of the return for the year for which he has been penalised. He further states that he did not have detailed figures of his wife's income, so he made rough calculations. This is not only an unacceptable excuse but factually incorrect. His return for that year completely omitted any reference to his wife's income from E Industries (H.K.) Ltd. which accounted for the shortfall of $10,344.

At the hearing before the Board, the Appellant stated that E Industries (H.K.) Ltd. was a small company operated by his wife's employer with his wife as the only employee and that his wife's remuneration was credited to her bank account by auto-pay system. As there is no suggestion that his relationship with his wife was in any way strained, we do not accept the validity of his statement that he had to speculate on his wife's earnings by making rough calculations since the return he has furnished wholly omitted his wife's income from E Industries (H.K.) Ltd. We do not see what difficulty he could have had, if he were minded to submit a true return, in ascertaining his wife's earnings either by asking her about it or by examining her bank statements or by obtaining, or requesting his wife to obtain, her Employer's Return regarding her income. In this connection we observe that he submitted the incorrect return in June 1981. The Employer's Return showing his wife's earnings were furnished to the Revenue in April 1981. Indeed, the Employer's Return (Form I.R. 56B) is prepared in quadruplicate and the pink copy or fourth sheet is intended to be given to the employee to assist him/her in completing the Salaries Tax Return. But whether or not the Appellant or his wife were provided with a copy of I.R. 56B, details must have been available to the Appellant or his wife well before the completion of his Salaries Tax Return on the 30th June 1981.

There is no excuse for filing a return showing that his wife only derived income from the Housing Department when he knew full well that she also earned income from E Industries (H.K.) Ltd. which income we note, is greater than her income from the Housing Department. When the Appellant signed the declaration in the return that he has disclosed the whole of his wife's income, he must also have realized that he was not making a true declaration, or at the best he could not care whether his declaration was true or false.

We find the Appellant's appeal in this case to be groundless frivolous and wholly devoid of any merit. We therefore order that he pays as costs of the Board a sum of $100.

The additional tax of $300 imposed on the Appellant represents only 6.47% of the maximum that could have been charged. Having regard to the circumstances of this case, we consider this levy to be inappropriate. Pursuant to the powers vested in the Board by virtue of section 68(8) of the Inland Revenue Ordinance, we increase the additional tax assessment from $300 to $500.