INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D3/03

Salaries tax – assets betterment statement – sections 66(1) and 68(4) of the Inland Revenue Ordinance ('IRO').

Panel: Geoffrey Ma Tao Li SC (chairman), Chiu Chun Bong and Charles Hui Chun Ping.

Dates of hearing: 23 October 1997, 19, 20 and 26 November 2001.
Date of decision: 4 April 2003.

Following extensive inquiries made into the taxpayer's financial affairs, the Commissioner took the view that the taxpayer had underdeclared his income and determined to substantially increase the taxpayer's salaries tax assessments for the years of assessment 1982/83 to 1987/88. An assets betterment statement was prepared by the Commissioner to show the taxpayer's assets were such that the declared income for the relevant years of assessment was substantially on the low side.

Tax returns had been submitted by the taxpayer for the relevant years of assessment showing income derived from Company A of which the taxpayer was both a director and shareholder. The grounds of appeal revealed that there were four aspects which had to be investigated.

Held:

The taxpayer has failed to produce much, if any, real evidence to justify his assertions or to dispel the inferences that arise from the assets betterment statement. The taxpayer had to show that the discrepancy or an allegedly unaccounted amount contained in the assets betterment statement could be explained by those aspects contained in his grounds of appeal. The taxpayer has failed to do so.

Appeal dismissed.

Ngan Sin Ling for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

The relevant assessments

1. The Taxpayer appeals in these proceedings under section 66(1) of the IRO in respect of a determination by the Commissioner of Inland Revenue ('the Commissioner') regarding salaries tax assessments that were made on him for the years of assessment 1982/83 to 1987/88.

2. The determination was dated 5 September 1996. In it, the Commissioner substantially increased the Taxpayer's salaries tax assessments for those years of assessment. The additional assessable income as determined by the Commissioner amounts to some $10,979,289 and the additional tax payable thereon, $1,809,865.

3. The additional assessments were made by the Commissioner following extensive inquiries which had been made by him in relation to the Taxpayer's financial affairs. The inquiries started in late 1988.

4. Tax returns for salaries tax had been submitted by the Taxpayer for the relevant years of assessment showing income derived from a company called Company A of which he was both a director and shareholder. These returns showed an assessable income for the relevant years of assessment of only $1,410,000.

5. The Commissioner took the view that the Taxpayer had underdeclared his income. As we have said, investigations commenced on the Taxpayer's financial affairs in late 1988. Numerous interviews were carried out with the Taxpayer and lengthy correspondence exchanged from November 1988 through to the determination. At this time, the Taxpayer was represented by tax representatives (first the First Tax Representatives, later the Second Tax Representatives). Details of the course of the investigations are given in the determination and reference should be made to that document for a full account of what happened. However, we highlight the following facts and matters:

(a) The Taxpayer was continually requested by the Commissioner to provide details of his financial affairs (both in Hong Kong and overseas) together with supporting documents. It is clear that the Commissioner intended to carry out a comprehensive investigation. Details were sought in relation to the financial position and dealings of Company A and of a sole proprietorship called Company B, bank accounts, properties, investments and all other aspects of the Taxpayer's financial situation. We should just add here that Company B was a sole proprietorship registered in the name of the Taxpayer's wife ('the Wife'), through which Company A carried out various transactions (said to be principally making payments to subcontractors) relating to its business within the

PRC. Company A's business activities related to the manufacture of electronic products for sale worldwide. The products would be manufactured in other parts of China. It was said by the Taxpayer's then tax representatives in a letter dated 10 April 1992 that Company B did not belong to the Wife but to a PRC entity, Company C.

(b) Despite the information and materials provided by the Taxpayer and the submissions made on his behalf by his representatives, the Commissioner was not satisfied. An assets betterment statement dated 26 March 1993 was prepared by the Commissioner and sent to the Taxpayer for his comments. This assets betterment statement was intended to show that the Taxpayer's assets were such that the declared income for the relevant years of assessment was substantially on the low side. As shown in this (the first) assets betterment statement, the discrepancy was $12,843,205 for the period in question.

(c) We should just briefly mention the function of assets betterment statements. These documents are a common and recognised means used by the Commissioner to compare the income (or profits, as the case may be) for the relevant period as disclosed in a taxpayer's tax returns, with his assets and level of expenditure over the same period. If both match, then no further action need be taken. However, where discrepancies exist between the declared income and the taxpayer's assets or expenditure, this may then give rise to an inference that the taxpayer may have underdeclared his income. Assets betterment statements are compiled using all relevant facts and materials relating to the taxpayer's financial affairs. Where discrepancies occur, the taxpayer is then usually given an opportunity to proffer an explanation. Ultimately, assets betterment statements are merely evidential tools by which it can be demonstrated whether or not in any given case, a taxpayer has properly declared his income (or profits) for tax purposes.

(d) In the present instance, there being a discrepancy as shown in the said assets betterment statement dated 26 March 1993, the Taxpayer was asked to provide further explanations and provide further information. This the Taxpayer attempted to do by a further round of interviews and correspondence.

(e) Eventually, following the further representations and materials supplied by the Taxpayer, a revised assets betterment statement dated 8 May 1995 was provided to the Taxpayer. This was in the form merely of a letter that revised certain details in the original document. This now showed a discrepancy of $11,436,260. The assets betterment statement (as revised) formed the basis for the Commissioner's assessment under appeal. We will hereafter refer to the revised document simply for convenience as the Assets Betterment Statement.

6. The Assets Betterment Statement contained details setting out the quite dramatic increase in the Taxpayer's assets during the relevant period with which we are concerned. Particular attention was paid to the Taxpayer's bank accounts and deposits, remittances to overseas accounts, withdrawals from Company A as well as his landed properties and other investments. As will presently be seen, the Taxpayer's remittances to overseas accounts and his withdrawals from Company A feature prominently in this appeal. The Assets Betterment Statement also showed an estimate made by the Commissioner of the Taxpayer's standard of living. His private and living expenses were estimated to total $1,080,000 for the relevant period.

The grounds of appeal

7. Following the determination, the Taxpayer appealed by a letter dated 2 October 1996 from the Second Tax Representatives. The following grounds of appeal are identified:

(a) In making the calculations contained in the Assets Betterment Statement, the Commissioner erred by failing to exclude from his consideration various payments which had been made by the Taxpayer for the settlement of various expenses he had made on behalf of Company A and Company B, subcontracting fees, suppliers' invoices, design fees, commissions etc and the repayment of money previously deposited with him or advanced by relatives and friends.

(b) The Commissioner was also in error in including as taxable amounts monies which were referable to consultancy fees and bonuses received by the Taxpayer from various PRC entities. These fees, it was said, were attributable to work that had been carried out by him outside Hong Kong and were therefore not taxable.

(c) The Commissioner was incorrect in estimating the level of the Taxpayer's private and living expenses. The total for the years of assessment under review ought to have been $586,000 instead of $1,200,000.

(d) In view of the errors set out above, the Commissioner's additional assessments should be set aside in their entirety.

8. Accordingly, the following aspects had to be investigated in this appeal, these comprising the Taxpayer's grounds of appeal and being his explanations for the discrepancies alleged by the Commissioner in the Assets Betterment Statement:

(a) Settlement of expenses and other fees by the Taxpayer.

(b) Repayment of money deposited or advanced by relatives and friends.

(c) Consultancy fees and bonuses received by the Taxpayer for overseas work.

(d) Private and living expenses.

The hearings

9. The initial hearing of this appeal took place on 23 October 1997. That day, as the Taxpayer was by then no longer represented and acting in person, we were concerned that he fully understood the burden that was imposed on him by section 68(4) of the IRO.

10. The Taxpayer was told that he had to provide more materials to support his grounds of appeal. In particular, he was informed that not only did he have to provide more concrete evidence (especially documentary evidence) in support of his contentions but that it was advisable to provide a breakdown of the figures relevant to each of the aspects identified in paragraph 8 above. For example, in relation to alleged repayments made to relatives and friends, the Taxpayer was told of the need to identify specific amounts, to provide evidence that monies were deposited or advanced by relatives in the first place etc. In short, the Taxpayer was in effect told that he had to provide more material to prove just how the discrepancies in the Assets Betterment Statement could be explained away in the way alleged in his grounds of appeal. On the basis of the few materials he had provided to us that day and it being clear that more documents must have existed if his case were to have any degree of plausibility, it would have been quite likely that whatever he or the Wife might have said in their testimony, his appeal would fail.

11. In order to allow him an opportunity to gather more evidence, we adjourned the hearing. This was an indulgence that was granted purely in view of the fact that the Taxpayer was acting in person. It should, however, not be thought that the Taxpayer (or the Wife, who was obviously assisting him in the appeal and who also helped in his business dealings) were somehow not capable people. On the contrary, from our observation of them in the conduct of the appeal and their testimony, both were highly intelligent people with sharp business minds.

12. It was not until November 2001 that the hearing of the appeal resumed. The hearings took place on 19, 20 and 26 November 2001. It is fair to say that the Taxpayer has been given maximum leeway to prepare and gather evidence for the appeal. We are grateful to the Commissioner for his co-operation and indulgence to the Taxpayer in this regard.

13. The Taxpayer and the Wife gave evidence. Mr D (who was working for the Taxpayer's First Tax Representatives at the relevant time) also gave evidence on his behalf. For the Commissioner, the relevant testimony was given by Mr E, an assessor for the Inland Revenue Department ('IRD') who handled the investigation into the Taxpayer's affairs in this case and who

in fact prepared the Assets Betterment Statement. His testimony dealt with the method and data used in the compilation of the Assets Betterment Statement.

14. We now deal with the various aspects of the appeal set out in paragraph 8 above, these as we have said comprising the Taxpayer's grounds of appeal. We shall comment on the testimony given by the said four persons, where appropriate, in relation to each aspect. We should just observe there that (save in one respect) the Taxpayer did not really challenge the details contained in the Assets Betterment Statement as such. Rather, it was his case that the discrepancies or lack of correlation alleged by the Commissioner to arise from the Assets Betterment Statement could be explained by reference to those aspects referred to above.

Settlement of expenses and other fees by the Taxpayer

15. It is apparent that quite substantial payments (over $9,300,000) were made by Company A to subcontractors in China to process raw materials into finished products that would eventually shipped from Hong Kong to Company A's customers abroad. Despite the Taxpayer saying in evidence that he made these payments himself on behalf of Company A, he was unable to relate this to any entry in the Assets Betterment Statement. Indeed, he accepted in his evidence that he could not point to any document whatsoever that would link the alleged payments made by him to any entry in the Assets Betterment Statement.

16. The most obvious part of the Assets Betterment Statement to which this issue relates are the withdrawals made by the Taxpayer from Company A. This is described in the Assets Betterment Statement as 'UNIDENTIFIED WITHDRAWALS'. The Taxpayer's current account with Company A and other documents showing withdrawals made by the Taxpayer in the course of the period in question and over which the Commissioner has raised queries as shown in the Assets Betterment Statement do not, however, refer to the purpose of the withdrawals as being payments which the Taxpayer intended to make or had made on behalf of Company A or anyone else. Furthermore, these withdrawals are to be found on the 'debit' side of the account. There is no corresponding entry on the 'credit' side to indicate or at least give some sort of hint that the withdrawals made by the Taxpayer related to payments made by him on behalf of the company. If it really was the case that the Taxpayer withdrew sums of money from Company A (and the total queried by the Commissioner amounts to $2,556,046: see the Assets Betterment Statement and the evidence of Mr E) for the purpose of making payments of expenses etc on its behalf, one would have expected a record of this, particularly in the director's current account. Indeed, from some of the extracts of Company A's current account we have seen, it is apparent that at times, the purpose of withdrawals from or payments into the company was expressly stated (as one would expect). However, the Commissioner's queries are more directed to those withdrawals by the Taxpayer where the purpose was not revealed in the current account. References in the current account to 'Petty cash draw by director' and 'unidentified payment' when relating to withdrawals by the Taxpayer obviously give rise to the inference that the withdrawals were for the Taxpayer's personal use rather than any other purpose. The entries in Company A's current account have been made,

one assumes, by someone with some basic knowledge of bookkeeping. Indeed the Wife said in cross-examination that she handled the accounts for both Company A and Company B. She is a very capable businesswoman. We reiterate the fact that there is no reason (and none has been advanced by the Taxpayer) why withdrawals made for the purpose of enabling expenses etc to be paid on the company's behalf should not have been recorded as such. Much was made by the Taxpayer (and his representatives) of the fact that often expenses are paid in cash, especially within China, but that is not the point. Even accepting this, we find it difficult to accept the absence of any record.

17. At one stage in his evidence, the Taxpayer asserted that he was paid commissions or bonuses by PRC entities for work he had carried out in China and such payments were deposited into his accounts in China. From these accounts, he made the payment for expenses on behalf of Company A (or Company B). He said that the withdrawals he made from Company A as well as payments made to him by cheque from that company represented reimbursements for such payments of expenses. There is indeed some evidence (though not contemporaneous) that payments were made to the Taxpayer from various Chinese entities and these presumably represent fees, commission or bonuses paid to him, but if the withdrawals from Company A's current account (or any other payments) were meant to reflect reimbursements to the Taxpayer for payments made on its behalf for expenses incurred in China, again we would have expected the current account to reflect this. Neither this nor any other document does so. If the Taxpayer's explanation of withdrawals from or any other payments made to him by the company is to be accepted here, it is a convoluted series of transactions where any businessman would appreciate the necessity of having a clear record. There is none. In these circumstances, we do not accept the Taxpayer's account.

18. Other expenses that the Taxpayer says he incurred on Company A's behalf included allowances paid to visiting representatives of PRC companies (mainly if not exclusively an entity known as '[Company F]') who, it is said, could not take out much money from the PRC (the limit was said to be $500). It was said that this type of expenses was included in the Assets Betterment Statement under the headings 'REMITTANCES OUTWARDS' and 'UNIDENTIFIED WITHDRAWALS'. There is, however, again no document (as one would have expected) that records this elaborate series of transactions to link them with any item in the Assets Betterment Statement. We do not accept this explanation.

19. For completeness' sake, we also refer to the fact that there were other expenses that the Taxpayer referred to such as procurement fees, design fees and commissions. Again, we have seen no evidence that links payments made by the Taxpayer (if they were made in the first place) to any item in the Assets Betterment Statement. The Taxpayer maintained that these expenses were paid by him from monies that were either withdrawn from Company A or remitted abroad (again under the 'REMITTANCES OUTWARDS' and 'UNIDENTIFIED WITHDRAWALS' parts of the Assets Betterment Statement). However, despite being asked continually throughout his testimony to do so, he was unable to adduce any evidence to relate the relevant entries in the Assets

Betterment Statement to expenses allegedly paid on Company A's behalf. Many documents were produced merely showing that Company A had expenses (and we fully accept that it did: it was running a business), but these provide no link to the Assets Betterment Statement.

20. The Taxpayer did at one stage in his evidence say that in fact he did keep records of the use by him of monies from his personal accounts to pay expenses and of his running account with Company A, but that these records have since been destroyed. It was his evidence that they had been destroyed before the commencement of the Commissioner's investigations, although the records relating to allowances paid to visiting Chinese personnel from Chinese companies were in existence even after the commencement of investigations but were later destroyed (for reasons which were not readily apparent). It is in our view very suspicious (at least odd) that no prior reference had been made by either the Taxpayer or his representatives as to the existence of these records. On the contrary, in the correspondence from the Second Tax Representatives to the Commissioner following the first assets betterment statement (dated 26 March 1993), constant reference was made to the absence of documentation, with various excuses being given such as the lapse of time and there being no statutory requirement to have such documentation. We refer in particular to the letters dated 4 June 1993, 21 June 1995 and 12 April 1996 from the Second Tax Representatives to the Commissioner. This is quite inconsistent with the assertion that in fact, relevant records did exist but that these had been destroyed.

21. The only reference to documents that had been lost was in relation to the loss of a container (housing documents) when the First Tax Representatives moved offices in 1989. In this context, we also take into account the testimony of Mr D who was called by the Taxpayer to give evidence in relation to the loss of the container. Mr D was working for the First Tax Representatives at the relevant time. In cross-examination, he stated he could not recall ever seeing the type of records the Taxpayer now says he kept.

22. There was also a contradiction between the testimonies of the Taxpayer and the Wife. While he maintained that the records had been destroyed or thrown away, she said at first that the notebook had merely been lost 'probably from the pocket of clothes when changing'.

23. To conclude, we are of the view that it cannot be shown that any item referred to in the Assets Betterment Statement (particularly under the headings 'REMITTANCES OUTWARDS' and 'UNIDENTIFIED WITHDRAWALS') is linked to or can be explained by reference to the payment of expenses and other items by the Taxpayer. The Taxpayer accordingly fails here.

Repayment of money deposited or advanced by relatives and friends

24. Substantial remittances were made by the Taxpayer to overseas accounts in his or the Wife's names in the USA (there was a small remittance to their son's account). As shown in the Assets Betterment Statement, these totalled some $6,367,040 over the relevant period with nearly

$4,700,000 in the year of assessment 1987/88 alone. They are detailed under the heading 'REMITTANCES OUTWARDS'.

25. No documents (or indeed any details) were provided to substantiate the claim that monies were used to repay amounts that had been deposited or advanced to them by relatives or friends. This was one of the points made by Mr E in his evidence. This was despite continual requests on the Commissioner's part that evidence be provided.

26. We are indeed hampered by a lack of documentation to substantiate most of what the Taxpayer alleges. What few documents have been provided do not show clearly the amount of money deposited or advanced and how such monies were repaid, much less provide any sort of link with the Assets Betterment Statement. It is significant that the Taxpayer's Second Tax Representatives effectively admitted this but tried to explain the absence of documents: **see their letter dated 4 June 1993 to the Commissioner**. We find this unconvincing. Although there may have been no documents passing between the payer (the Taxpayer) and the recipients of sums of money (the relatives or friends), nevertheless we would have expected the payer to have kept internal contemporaneous records. We find it quite extraordinary that no documents or records were kept relating to (for example):

(a) The exact amounts deposited or advanced by the Taxpayer's relatives and friends.

(b) The time when such deposits or advances were made.

(c) The accounts into which such monies were paid.

(d) The amount and dates of repayments made to such relatives or friends.

(e) How all the above is linked to entries in the Assets Betterment Statement.

27. Given it was implicit in the Taxpayer's case that monies belonging to relatives and friends obviously did not belong to him, we find it astounding that no records were kept. How, therefore, could the Taxpayer properly account to these relatives and friends? Furthermore, the purposes of such deposits or advances made by relatives or friends were somewhat obscure. There were vague references to the fact that some of the relatives or friends were from Taiwan and that it was accordingly more convenient for them to leave money with the Taxpayer. Of the few documents produced by the Taxpayer, some did appear to show that relatives did send money to the Taxpayer's wife to be held on trust: **see paragraph 5 of the note of interview dated 28 November 1991 and the attached letter dated 21 August 1991 from the Wife's aunt**. However, no evidence was given as to when, if at all, such money was repaid.

28. At the hearing in November 2001, the Taxpayer gave evidence as to the existence of a record in the form of a notebook. This was quite a turnaround from what had appeared to be his erstwhile position, namely that there were no records. Certainly, there had been no intimation prior to his giving evidence that such records existed. He could not, however, produce this notebook. Again, the explanation was that it had been destroyed. According to the Taxpayer, it was destroyed or discarded after investigations had commenced in 1988. We find this part of the Taxpayer's evidence extremely unsatisfactory. First, it defies belief why such records, obviously relevant and all the more so in the light of the continual demands by the Commissioner for information, were not produced or referred to earlier. Secondly, no explanation was given by the Taxpayer as to why the records were destroyed. Thirdly, for her part, the Wife thought that the records may have been lost during a move in about 1990. Later in her evidence she suggested that the records were in fact given to the First Tax Representatives who should then have forwarded them to the Commissioner. We find her evidence on this aspect highly suspect. It is the first time anyone has ever suggested that the records may actually have been given to the Commissioner (and presumably lost by him as well). It is contradictory to the evidence from Mr D who, it will be recalled, did not see any such records. It is also contradictory to the contemporaneous correspondence from the Second Tax Representatives to the Commissioner. In the said letter dated 21 June 1995 from those tax representatives to the Commissioner, it is stated, 'We reiterate the fact there is no statutory requirement for an individual to keep proper books and accounts of his personal transactions, [the Taxpayer], in common with other individuals, did not maintain detailed records and accounts of each payment made/income received by him during the period covered by the [Assets Betterment Statement]. Similarly, no separate assets and liabilities statements have been prepared by [the Taxpayer].'

29. In the circumstances, we find that the likelihood is that these alleged records never existed.

30. In the end, we are of the view that the remittances to US accounts in the names of the Taxpayer and the Wife represented transfers of assets from Hong Kong abroad for their own benefit and not for the purposes alleged by the Taxpayer. Again, he cannot demonstrate the vital link with any item in the Assets Betterment Statement. He has simply not made out his case.

Consultancy fees and bonuses received by the Taxpayer for overseas work

31. We have already in part alluded to this aspect in paragraph 17 above. It will be recalled that his evidence was to the effect that the income he received for work carried out in China (outside Hong Kong), whether in the form of fees, commission or bonuses, was deposited into accounts he maintained in China. From these accounts he made payments for expenses etc for which he was reimbursed by Company A.

32. No evidence was produced by the Taxpayer as to whether any such income was ever remitted to Hong Kong or anywhere else. Indeed, at one stage the Taxpayer seems to have

confirmed that the money was kept in the Mainland: **see paragraph 2(iv) of the note of interview dated 2 September 1993**. More importantly, there was no evidence as to how any such income was linked to any item in the Assets Betterment Statement. On the contrary, from his evidence, if anything, the inference is that such income was used for the purposes of meeting expenses and therefore would not feature in the Assets Betterment Statement anyway (except indirectly in that the Taxpayer claims to have obtained reimbursement from Company A as shown in his withdrawals from that company: see paragraph 17 above). Absent any evidence that links such income (even assuming that such income was at the levels alleged by the Taxpayer) to the Assets Betterment Statement, we cannot be satisfied that the Commissioner has erred in any way in relation to the Assets Betterment Statement and has no effect on it.

33. We would finally clarify here that any accounts that the Taxpayer maintained in China (beyond Hong Kong) were not included in the Assets Betterment Statement.

34. The Taxpayer fails on this aspect as well and has not made out his case.

Private and living expenses

35. In the Assets Betterment Statement, the Commissioner has calculated this at $1,080,000 for the years of assessment in question. Broken down, it represents a monthly expenditure of $10,000 (for the years of assessment 1982/83 and 1983/84), $15,000 (for the years of assessment 1984/85 and 1985/86) and $20,000 (for the years of assessment 1986/87 and 1987/88). For the purposes of this appeal, the Taxpayer advocates the figure of $576,000, representing an average monthly expenditure of $8,000.

36. The Taxpayer did not give any evidence directed towards this issue to contradict the figures in the Assets Betterment Statement.

37. In addition, the Commissioner (through Ms Ngan), in her written submissions, has highlighted certain other facts going to the Taxpayer's lifestyle.

38. We are of the view that in the circumstances, this ground of appeal also fails.

Other matters

39. It will be apparent from the above analysis that the Taxpayer has failed to produce much, if any, real evidence to justify his assertions or to dispel the inferences that arise from the Assets Betterment Statement. Much complaint was made by him of the fact that the case had been ongoing for nearly 15 years and that partly for that reason, he was unable to produce the necessary documentation or to account precisely for the discrepancies as shown in the Assets Betterment Statement. This contention, however, in our view, has to be seen against the fact that as from 1988,

the Commissioner has been requesting full information and details from the Taxpayer. Unfortunately, such information and details have consistently not been forthcoming.

40. The Taxpayer said that at one stage, relevant documents had been given to his previous tax representatives, the First Tax Representatives. However, these documents were lost or stolen during the move of office of that firm from Central to Queensway. It is not clear when the move took place but this incident was referred to in a letter dated 21 May 1991 from the First Tax Representatives to the IRD (it is said the container housing the documents was apparently stolen). That letter refers to a move of office from Wanchai to Central but Mr D, who gave evidence as to this loss, said the move was the other way round.

41. The letter mentions for the first time the loss of the documents (no previous letter from that firm had alluded to this). However, Mr D said that the loss of the container was in 1989. We note it is somewhat surprising that if the container did contain important documents or information relevant to the Commissioner's investigations, why the loss was not earlier revealed. We can only assume that it did not contain anything important.

42. We are not satisfied that the loss of documents is sufficiently significant to affect materially our conclusions on the various aspects dealt with above:

(a) The said letter dated 21 May 1991 refers to the Taxpayer's 'records' for 1981 to 1984 having been lost (although Mr D said that the documents in the container related to the period from 1976 to 1985). This immediately begs the question of the absence (or existence) of relevant documents for the periods of time before 1981 and after 1984. Yet the Taxpayer was unable to point to the existence of relevant documents before 1981 or after 1984, much less produce them.

(b) At the first hearing, the Wife gave evidence of the contents of the lost documents. She said that they were mainly invoices, cheque stubs and information on clients and contracts relevant to the withdrawals made by the Taxpayer as reflected in his current account with Company A. The withdrawals over the period 1981 to 1984 as summarised in the Assets Betterment Statement amount to over $1,000,000.

(c) However, no other documents were produced to show that the withdrawals made by the Taxpayer from 1981 to 1984 were attributable to expenses paid on Company A's behalf by the Taxpayer. At the very least, as stated above, one would have expected there to have been some record kept by that company or the Taxpayer himself if he was making payments on behalf of the company. The absence of documentation in this regard seriously undermines the veracity of the Taxpayer's contentions.

43. We also record the fact that following our telling the Taxpayer at the first hearing of the necessity to produce more relevant documentation, the Taxpayer produced more documents for the Board at the second hearing in November 2001. We have gone through them and have come to the conclusion that they fall far short of what is required. They do not assist the Taxpayer in what he had to demonstrate.

44. At the beginning of the second hearing, the Taxpayer sought to produce hitherto undisclosed documents to show that the Assets Betterment Statement was wrong in stating that the cash he had in banks and time deposits as at the end of March 1981 was only $494,816 (it was on the basis of significant increases in those items during the relevant period that in part contributed to the discrepancy of $11,436,260). There had to be added, he said on the basis of various documents, some US$98,502.05. Quite apart from the fact that these documents should have produced as long ago as 1988, they do not assist the Taxpayer. It is clear that this amount (if indeed the Taxpayer is right in the first place) was not taken into account in the Assets Betterment Statement so that the increase in the amount of cash and time deposits for the relevant period as shown in that document remains the same in any event.

Conclusion

45. The Taxpayer had to show that the discrepancy or allegedly unaccounted amount of $11,436,260 contained in the Assets Betterment Statement could be explained by those aspects contained in his grounds of appeal. The Taxpayer has failed to do so.

46. For the above reasons, we dismiss this appeal. It only remains for us to thank both sides for their presentation of at times a difficult case.