

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D34/02

Penalty tax – incorrect tax return.

Panel: Ronny Wong Fook Hum SC (chairman), Edmund Leung Kwong Ho and Paul Shieh Wing Tai.

Date of hearing: 25 March 2002.

Date of decision: 22 July 2002.

The appellant agreed that he made incorrect returns for the years of assessment 1994/95 to 1999/2000. As a result, additional tax was imposed upon him.

The appellant appealed against the additional tax imposed as he entrusted the accounts of his business to an accountant but the accounts were confusing.

Held:

The Board would not interfere as it was the duty for the appellant to engage a competent person to handle the accounts of his business. Besides, he failed to report over half of his agreed profits. After all, the Revenue had made appropriate allowance for his co-operation.

Appeal dismissed.

Woo Shu Sum for the Commissioner of Inland Revenue.
Taxpayer in person.

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Decision:

1. The Appellant ('Mr A') commenced trading in the name of Company B in 1983.
2. Between 5 November 1997 and 30 August 2000, Mr A submitted the following returns in respect of his earnings including the profits he made from Company B.

Year of assessment	Date of return	Profit returned \$
1996/97	5-11-1997	228,934
1997/98	10-8-1998	273,718
1998/99	16-8-1999	124,362
1999/2000	30-8-2000	210,054

3. The Revenue commenced investigation into Mr A's tax affairs in December 2000. He was accompanied by his daughter ('Miss A') in all the interviews he had with the Revenue.
4. On 4 January 2001, in response to requests from the Revenue, Mr A submitted to the Revenue various vouchers for verifications by the assessors. On 23 March 2001, in the presence of his daughter, Mr A confirmed his returns for the years of assessment 1994/95 and 1995/96 with profits as follows:

Year of assessment	Date of confirmation	Profit returned \$
1994/95	17-3-2001	241,113
1995/96	17-3-2001	189,575

5. During an interview with the assessors held on 7 May 2001, Mr A reached agreement with the Revenue in relation to his fiscal position for the years of assessment 1994/95 to 1999/2000.

Year of assessment	Profits already returned \$	Agreed revised profits \$	Profits short returned \$	Profits short returned as a percentage of the agreed revised profits %
1994/95	214,113	480,782	266,669	55.40
1995/96	189,575	490,625	301,050	61.30
1996/97	228,934	560,823	331,889	59.17
1997/98	273,718	732,398	458,680	62.62
1998/99	124,362	303,637	179,275	59.04
1999/2000	210,054	508,397	298,343	58.68

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Total	1,240,756	3,076,662	1,835,906	59.67
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6. On the basis of the agreement reached on 7 May 2001, the Revenue sent Mr A revised assessments on 29 May 2001 for the years of assessment 1994/95 to 1999/2000. Mr A raised no objection against such revised assessments.

7. By notice dated 24 July 2001, the Commissioner informed Mr A of his opinion that Mr A had, without reasonable excuse, made incorrect returns for the years of assessment 1994/95 to 1999/2000. Mr A was invited to make representations for the Commissioner's consideration in the exercise of his powers under section 82A of the Inland Revenue Ordinance.

8. By letter dated 20 August 2001, Mr A submitted that:

- (a) He is in dire financial circumstances and he could not afford to pay additional tax.
- (b) He sold one of his flats in August 2001 and his business is not satisfactory.
- (c) He co-operated fully with the Revenue in their investigations.

9. By notices dated 21 November 2001, the Commissioner imposed the following additional tax on Mr A:

Year of assessment	Agreed revised profits	Profits short returned	Profits short returned as a percentage of the agreed revised profits	Amount of tax undercharged	Additional tax imposed	Relationship between additional tax and tax undercharged
	\$	\$	%	\$	\$	%
1994/95	480,782	266,669	55.40	55,556	63,000	113.39
1995/96	490,625	301,050	61.30	54,325	58,000	106.76
1996/97	560,823	331,889	59.17	62,665	65,000	103.72
1997/98	732,398	458,680	62.62	79,508	77,000	96.84
1998/99	303,637	179,275	59.04	2,284	2,000	87.56
1999/2000	508,397	298,343	58.68	34,107	29,000	85.02
Total	3,076,662	1,835,906	59.67	288,445	294,000	101.92

10. This is Mr A's appeal against the additional tax so imposed.

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11. Mr A submitted that:
- (a) He did not attain a high level of education. He started work after he finished primary three.
 - (b) Company B was and still is a one-man operation.
 - (c) He entrusted the accounts of Company B to an accountant. The accounts of Company B were confusing.
 - (d) He is fully aware of his mistakes. He urged us to reduce the amount of additional tax as much as possible.
12. Mr Woo for the Revenue submitted that:
- (a) The Revenue had to spend about three months in order to reconcile Mr A's accounts. Considerable man-hours were involved as the records of Mr A were incomplete and confusing.
 - (b) Mr A was co-operative. Due to Mr A's level of education, everything had to be explained in simple language in order to secure his understanding.
 - (c) The Commissioner took into account the interest element on the amount of tax that would have been undercharged had the returns of Mr A been accepted as correct. The additional tax imposed was arrived at after giving Mr A a 25% allowance in view of his co-operation.
 - (d) The overall percentage of about 100% of the amount of tax undercharged is consistent with the level of additional tax sanctioned by this Board for cases of this nature.
13. Whilst we are sympathetic to Mr A's economic plight, we are not disposed to interfere in the circumstances of this case:
- (a) Company B is a business of long standing. It is the duty of Mr A to engage a person of competence to handle its accounts.
 - (b) Mr A's defaults relate to six tax years. In each of those years, he failed to report over half of his agreed profits.
 - (c) The Commissioner had made appropriate allowance for his co-operation.

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14. For these reasons, we dismiss Mr A's appeal.