

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D36/93

Profits tax – depreciation allowance – whether roof and advertising sign constitute plant and machinery – section 37 of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), John C Broadley and Nicholas Ian Billingham

Dates of hearing: 2 June and 16 September 1993.

Date of decision: 23 November 1993.

The taxpayer purchased a roof of a building complete with a neon advertising sign erected thereon. The taxpayer claimed as an allowance deduction a depreciation allowance on the entire roof including the neon advertising sign on the ground that it constituted plant and machinery. The assessor rejected this and maintained that at the most the taxpayer was only allowed to a depreciation allowance calculated on the capital cost of an asset being the structure located on the roof top of the building. The taxpayer appealed against this decision. However prior to the hearing of the appeal the taxpayer conceded that the Commissioner was right and it was agreed to vary the assessment by a depreciation allowance calculated on the capital cost of the neon advertising sign. The matter was referred to the Board for its endorsement.

Held:

The Commissioner was correct and the taxpayer was permitted to deduct a depreciation allowance calculated on the capital cost of the asset namely the neon advertising sign and not the entire cost of the roof.

Appeal allowed in part.

H Bale for the Commissioner of Inland Revenue.

Robert Lew of Messrs James Lew & Co for the taxpayer.

Decision:

This is an appeal by a private limited company against a number of profits tax assessments for the years of assessment 1986/87 to 1990/91. The Taxpayer claimed that it should be eligible for certain depreciation allowances. The facts are as follows:

INLAND REVENUE BOARD OF REVIEW DECISIONS

1. In late 1986 the Taxpayer purchased the roof of a building for a consideration for \$15,000,000. There was situate on top of the roof of the building a metal frame to which was attached a sign.
2. The Taxpayer lodged its profits tax returns with supporting accounts and tax computations for the years of assessment 1986/87 to 1990/91. In these tax returns and computations the Taxpayer claimed depreciation allowances in respect of the roof which it had purchased.
3. The assessor considered that the roof should rank for rebuilding allowances and not depreciation allowances and issued profits tax assessments on the Taxpayer accordingly.
4. The Taxpayer objected to these tax assessments on the ground that it should have been allowed depreciation allowances under section 37 of the Inland Revenue Ordinance.
5. The ground of the objection by the Taxpayer was that the entire purchase price of the roof should qualify for depreciation allowances and the Taxpayer submitted that the sign included electrical wiring, lights fittings, switchboards and transformers which were an integral part of the sign. It was further argued that the roof top itself performed the function of allowing the sign to be erected and had no other value.
6. By his determination dated 26 February 1993 the Deputy Commissioner rejected the argument put forward by the Taxpayer on the ground that 'a roof is an integral part of a building and does not qualify as "machinery or plant"'. The Deputy Commissioner stated that there might be a case for accepting that the sign including its metal frame might qualify as 'machinery or plant' provided that there was a realistic basis for calculating the capital expenditure on the provision of the plant or machinery.
7. By letter dated 25 March 1993 the Taxpayer appealed to the Board of Review against the determination of the Deputy Commissioner.

At the time and date for the hearing of the appeal the representative for the Taxpayer duly appeared and informed the Board that an agreement had been reached with the Commissioner to settle the matter. The basis of the settlement was that the Taxpayer accepted that the price which it had paid to purchase the roof did not qualify for depreciation allowances but only the cost of the structure thereon which comprised the sign. It had been agreed between the Commissioner and the Taxpayer that the cost of the structure for the purposes of section 38A of the Inland Revenue Ordinance should be \$1,500,000 and that depreciation allowances should be allowed in respect of this sum. The representative for the Taxpayer tabled before the Board a statement of agreed terms signed on behalf of the Taxpayer and the Commissioner.

The representative for the Commissioner confirmed that the Commissioner had agreed to settle the matter on the basis outlined to the Board.

INLAND REVENUE BOARD OF REVIEW DECISIONS

The Board is of the opinion that the determination of the Commissioner was correct and that the Taxpayer was not entitled to a depreciation allowance calculated on the price which it had paid for the roof. A roof as such does not qualify as 'machinery or plant'. However the sign does qualify as 'machinery or plant' and provided that a separate cost can be attributed to the structure comprising the sign then the same qualifies for depreciation allowances as 'machinery or plant'.

Accordingly the Board orders that the profits tax assessments against which the Taxpayer has appealed should be annulled or reduced as follows:

- (1) Profits tax assessment for the year of assessment 1986/87 showing net assessable profits of \$7,320 with tax payable thereon of \$1,354 is hereby annulled.
- (2) Profits tax assessment for the year of assessment 1987/88 showing net assessable profits of \$13,510 with tax payable thereon of \$2,431 is hereby annulled.
- (3) Profits tax assessment for the year of assessment 1988/89 showing net assessable profits of \$1,022,626 with tax payable thereon of \$173,846 is hereby annulled.
- (4) Profits tax assessment for the year of assessment 1989/90 showing net assessable profits of \$1,818,266 with tax payable thereon of \$300,013 is hereby reduced to net assessable profits of \$1,638,202 with tax payable thereon of \$270,303.
- (5) Profits tax assessment for the year of assessment 1990/91 showing net assessable profits of \$1,974,004 with tax payable thereon of \$325,710 is hereby reduced to net assessable profits of \$1,918,708 with tax payable thereon of \$316,586.'