

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D37/00

Penalty tax – duty of taxpayer to rectify his error in his return – section 82A of the Inland Revenue Ordinance (‘IRO’) – frivolous appeal – order to pay cost.

Panel: Ronny Wong Fook Hum SC (chairman), Henry Lau King Chiu and Lily Yew.

Date of hearing: 8 June 2000.

Date of decision: 12 July 2000.

The taxpayer made an incorrect tax return in that he failed to report to the Revenue ‘director’s fee’ in the sum of \$4,000,000 from Company A. The amount of tax, which would have been undercharged if the return had been accepted as correct, was \$493,050. The taxpayer explained that he was not aware of the ‘director’s fee’ of \$4,000,000 until notice from Company A and he did not report the same to the Revenue as he thought the Revenue had already been appraised of such receipt in view of the notice of revised assessment. The Commissioner imposed additional tax in the sum of \$50,000 as 10.14% of the undercharged amount of tax. The taxpayer appealed against the assessment of additional tax. The taxpayer was represented by his wife and his wife informed the Board that the taxpayer had no intention to defraud the Revenue and paid all tax as assessed.

Held :

1. The Board were of the view that the taxpayer was duty bound to report to the Revenue. The taxpayer made no attempt whatsoever to rectify his error in his return and the taxpayer has furnished the Board no reasonable explanation for his error. The penalty of \$50,000 is reasonable in the circumstances.
2. The Board were of further view that this appeal was frivolous. Had the taxpayer properly considered the authorities sent to him prior to the hearing of this appeal, it would have been apparent to him that this appeal should not have been maintained. The Board further ordered the Taxpayer to pay \$1,500 as costs of the Board.

Appeal dismissed and a cost of \$1,500 charged.

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Go Min Min for the Commissioner of Inland Revenue.

Taxpayer represented by his wife.

Decision:

1. By his return dated 21 May 1998, the Taxpayer reported to the Revenue his earnings for the year of assessment 1997/98 amounting to \$3,130,000 comprising of \$3,000,000 from Company A and \$130,000 from Company B.
2. By a return dated 1 May 1998, Company A reported to the Revenue payment of \$3,000,000 as 'director's fee' in favour of the Taxpayer for the year ended 31 March 1998. This return was however replaced by another one dated 31 July 1998. The Revenue was informed by this latter return that the 'director's fee' for the Taxpayer for the like period was in fact \$7,000,000.
3. By a notice of assessment dated 14 September 1998, the Taxpayer was assessed on the basis of \$3,130,000 as his income for the relevant year. By a notice of amended assessment dated 26 March 1999, the Taxpayer was re-assessed on the basis of \$7,130,000. The Taxpayer duly paid the tax so assessed.
4. On 21 June 1999, the Commissioner pointed out to the Taxpayer that she was of the opinion that the Taxpayer had, without reasonable excuse, made an incorrect tax return for the year of assessment 1997/98 in that he failed to report to the Revenue 'director's fee' in the sum of \$4,000,000. The amount of tax which would have been undercharged if the return had been accepted as correct was \$493,050. The Commissioner informed the Taxpayer of her intention to assess additional tax under section 82A of the IRO, (Chapter 112).
5. By letter dated 25 June 1999, the Taxpayer explained that he was not aware of the 'director's fee' of \$4,000,000 until notice from Company A. He did not report the same to the Revenue as he thought the Revenue had already been apprised of such receipt in view of the notice of revised assessment.
6. After taking into account the Taxpayer's explanation, the Commissioner by notice dated 27 July 1999 imposed additional tax in the sum of \$50,000. This is about 10.14% of the amount of tax that would have been undercharged had the Taxpayer's return been accepted as true.
7. The Taxpayer appealed against the assessment of additional tax.
8. The Taxpayer authorised his wife to appear at the hearing before us. She did not

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challenge the due receipt by the Taxpayer of the sum of \$4,000,000 for the year of assessment 1997/98. She pointed out that the Taxpayer had no intention to defraud the Revenue. The Taxpayer paid all tax as assessed. The Taxpayer however did not seek any professional advice in relation to the merits or otherwise of this appeal.

9. We are of the view that given the Taxpayer's acceptance that the sum of \$4,000,000 was his income for the year of assessment 1997/98, he was duty bound to report the same to the Revenue. His return dated 21 May 1998 was incorrect. He made no attempt whatsoever to rectify his error. He has furnished us no reasonable explanation for his error.

10. The Taxpayer is properly assessed additional tax under section 82A of the IRO. Bearing in mind the amount of income under reported, we are of the view that the penalty of \$50,000 is reasonable in the circumstances. We dismiss his appeal.

11. We are of the further view that this appeal is frivolous. Had the Taxpayer properly considered the authorities sent to him prior to the hearing of this appeal, it would have been apparent to him that this appeal should not have been maintained. We further order the Taxpayer to pay \$1,500 as costs of the Board.