Case No. D46/02

Profits tax – deductions – whether jockey entitled to deduct expenses for sauna, gymnasium and physical training – sections 16(1) and 17(1) of the Inland Revenue Ordinance ('IRO') – section 51(1) of the Income Tax Assessment Act 1936 (Australia) – Australian Taxation Rulings TR 95/20 – Australian Taxation Determination TD 93/114.

Panel: Audrey Eu Yuet Mee SC (chairman), Chan Koon Hung and Peter Ngai Kwok Hung.

Dates of hearing: 6 May and 8 July 2002.
Date of decision: 3 August 2002.

The appellant is a professional jockey. In his tax return he sought to deduct an apportionment of 80% of $87,490 which was the sum total of various expenses including sauna, gymnasium and physical training. The assessor refused to accept the deductions on the basis that they were private in nature. The appellant objected to the assessment. The issues before the Board were (i) whether the appellant actually incurred the expenses claimed, and if so, how much; and (ii) whether the appellant was entitled to claim deduction for 80% of the same as the expenses to the extent to which they were incurred in the production of profits.

The appellant called three jockey trainers to give evidence as to why the jockey's weight was important for his profession. The appellant also gave evidence and stated that his normal everyday weight was 118 pounds but he had to keep within 113 pounds in order that he could ride a horse that was to carry 116 pounds. He emphasized that this was certainly not for pleasure. It was extremely hard work. He had to go regularly to the gymnasium with sweat clothes and do very strenuous exercises. It was neither easy nor enjoyable.

The bulk of the appellant's claim was not substantiated by the receipts he had produced. Although it was clear from the determination that the Revenue was challenging the amount spent and querying whether they were actually spent, the appellant did not take steps to provide further independent verification.

Held:

1. The onus was on the appellant to satisfy the Board that the expenses were incurred. For the purpose of this appeal, the Board was only prepared to accept the eight invoices totalled $5,600. The appellant might well have incurred other similar

expenses during the material period. However it was not for the Board to speculate as to how much more he might have incurred.

2. The Revenue did not challenge the appellant's evidence that his normal weight was 118 pounds and he had to deduct five pounds in order to make the necessary weight to ride some of the horses that were required to carry a weight of no more than 116 pounds. Further, it was not just a simple matter of losing weight, as a jockey and a good one at that, the appellant had to be very fit. The appellant said that he had a personal trainer for this purpose. The Board accepted the appellant's evidence that he did not do this for pleasure and that it required a lot of hard work. Insofar as the Australian authorities were guidance, the Board found that the taxation rulings did permit fitness expenses if these were essential for income production purposes. The Board also noted that even in Cooper, the Commissioner did allow the expenses for the gymnasium. The Board found that the expenses were indeed primarily for business purpose and, in the light of the appellant's concession, the Board was prepared to accept the 80/20 apportionment and allow the appellant deductible expense to the extent of 80% of the $5,600 proved by the appellant.

3. The Board added that it had reached the finding on the facts of this case. The Board did not know if the situation of the other jockeys were similar to that of the appellant. It would be a matter of evidence on the facts of each case.

Appeal allowed in part.

Cases referred to:

Anthony Patrick Fahy trading as Fahy Company v CIR 3 HKTC 695
D32/93, IRBRD, vol 8, 261
Federal Commissioner of Taxation v Cooper 21 ATR 1616

Wong Kai Cheong for the Commissioner of Inland Revenue.
Raymond Tang Wai Man of Asia Pacific Financial Consultants Limited for the taxpayer.

Decision:

Appeal

1. The Appellant appeals against the profits tax assessment for the year of assessment 1999/2000 ending June 1999. He claims that certain expenses for sauna, gymnasium and physical training should be deductible.

Background

2. The Appellant is a professional jockey. He filed a tax return declaring a profit of $4,157,149 for the relevant year of assessment ending June 1999. This profit was arrived at after deducting various expenses including:

	$
Medical expenses	10,689
Sauna, gymnasium and physical training (87,490 × 80%)	69,992

3. The assessor refused to accept the above deductions on the basis that they were private in nature. Accordingly, the assessor added the same back onto the assessable profits and assessed tax payable at $631,332.

4. The Appellant objected to this assessment via his tax representative.

The determination

5. Following the objection, the Commissioner of Inland Revenue gave his determination on 21 November 2001. He disallowed the medical expenses because some was admittedly incurred by the Appellant's wife and the only other bill submitted related to dental expenses. We note that the agreement between the Jockey Club and the Appellant provides for medical cover and insurance. However, dental expenses are not included.

6. The Commissioner disallowed the expenses relating to sauna, gymnasium and physical training. He said the bills produced covered only a very small part of the amount claimed. Further, he relied on Godfrey J (as he then was) in Anthony Patrick Fahy trading as Fahy Company v CIR 3 HKTC 695 disallowing the expenses incurred by an accountant for his operation on the ground that it is private in nature and incapable of apportionment.

The issues in the appeal

7. At the hearing of the appeal, we were informed by the Appellant's representative, Mr Tang, that the Appellant no longer pursued his appeal in respect of the medical expenses. The only issues before us were:

(a) Did the Appellant incur any of the $87,490 sauna, gymnasium and physical training expenses? And if so, how much?

(b) If so, was the Appellant entitled to claim deduction for 80% of the same as the expenses to the extent to which they were incurred in the production of profits?

The evidence

8. During the first day of the hearing, the Appellant called Mr A, a trainer and a former jockey, to give evidence on his behalf.

9. Mr A's evidence was short and not challenged by the Revenue. Mr A explained why the jockey's weight was important for his profession. About five days before each race meeting, the Jockey Club announces the weight each race horse will carry. The weight ranges from 113 to 133 pounds. This includes the saddle and other gear which together weigh about three pounds. In other words, the jockey's body weight should be between 110 and 130 pounds. If Mr A wants the Appellant to ride the horse, he will ask the Appellant if he can get within the stipulated weight by the day of the race. If he cannot, Mr A will give the ride to some other jockeys who can. As a rough guidance, one pound means three lengths' difference for the horse. Although a trainer has a discretion to allow the horse to carry two more pounds than the stipulated weight, this is not always welcomed by the owner or preferred by the trainer. The jockeys do not earn an income unless they get a ride. The bulk of the jockey's earnings is his share of the prize money. Thus to earn his profits, he must get the ride, and watch his weight very carefully. There are basically three ways to lose weight:

(a) cut down on food and liquid intake, but this obviously affects the strength of the jockey;

(b) go to sauna and sweat;

(c) take Lasix, this is a very effective way to lose a few pounds over a very short period of time but this has been banned for a number of years and the Jockey Club administers random tests to ensure that the jockey is not taking the prohibited medications.

Mr A said he used to be a jockey about 30 years ago. He had a similar weight problem as he was also quite tall for a jockey. It is not a simple task to remain physically strong and fit and at the same time maintain the body weight. It is common for jockeys to feel ill after a few races in a meeting

because of dehydration. For a champion jockey like the Appellant, riding skill is of course very important, but weight is also very important as he will not be given the ride unless he can keep within the required weight.

10. We are provided with a number of written statements. There is one from Mr B. He has been training the Appellant for the past three years. According to him, the workouts were strenuous and by the end of each session, the Appellant would be wet with perspiration. That was healthier than losing weight through the sauna. The training altered and strengthened certain parts of the body. In addition to giving him the edge over his rivals, it also reduced any loss of work through injury and recovery time.

11. There is a statement from Mr C, a trainer. He referred to an occasion when he wanted the Appellant to ride a horse that stipulated a weight of 114 pounds. The Appellant could normally do it. However the gymnasium was closed and the Appellant was unable to use the sauna. In the end, the Appellant was unable to get within the weight and another jockey was given the ride and won.

12. We are also provided with written statements from Mr D of Physiotherapy and Sports Injury Centre E and Mr F, a structural therapist from Fitness Centre G. They speak about special exercises to correct the Appellant's muscle imbalance caused by the clockwise track work causing leaning to the right. Both these gentlemen's evidence relates to expenses incurred after the year of assessment in question and we do not regard their statements as relevant for our present appeal.

13. The Appellant gave evidence on the first day of the hearing. He is 1.67 metres, one of the tallest jockeys racing in Hong Kong. His normal everyday weight is 118 pounds, but he has to keep within 113 pounds in order that with his gear, he can ride a horse that is to carry 116 pounds. That means that he must lose five pounds from his usual weight. He emphasized that this was certainly not for pleasure. It is extremely hard work. He has to go regularly to the gymnasium with sweat clothes and do very strenuous exercises. It is neither easy nor enjoyable. This is more vigorous than that for normal individuals or even other athletes as the type of cardiovascular workout that he does requires a very rapid heart rate. He goes from one routine to another doing two-minute sessions in a continual workout under the guidance of his personal trainer Mr B for one and a half hours. Although the Jockey Club also has a gymnasium, he goes to Fitness Centre G as his personal trainer is there.

14. The Appellant's evidence became confusing when he was asked to provide a breakdown of the charges and the expenses claimed. Initially he said he did personal training four times a week; Monday, Tuesday, Thursday and Friday. Later his representative Mr Tang corrected that to eight times a month for six months. At the material time, the charge was $700 for each visit of one and a half hours. The total came to $700 × 8 times × 6 months = $33,600.

15. As for the sauna, he now uses the dry bath in Fitness Centre G, but at the material time, he used the steam sauna in Sauna Centre H at District I. He would have a massage for one and a half hours and then use the steam sauna for some 20 minutes. Although the Jockey Club also had a steam sauna, he preferred going to Sauna Centre H as he could have the massage at the same time. Initially he said he would go to the sauna four times a week, sometimes three times a week, and have a massage at least once a week, sometimes twice a week, depending on how much weight he needed to take off. Almost immediately he changed his evidence to four times a month. He explained the figures as follows. Each visit would cost $1,200. That was $1,000 for one and a half hours of massage at $600 per hour plus $200 for sauna. He would go once a week for about ten months as he was on holiday and away for the remaining two months. The total came to $1,200 × 4 × 10 months = $48,000. However these figures do not tally with the amount shown on page 27 of the Board bundle. This is the only invoice from Sauna Centre H produced by the Appellant. It showed a total of $840, not $1,200. It was made up of two items: $560 for sauna and (finger pressure) massage and $280 for massage. When asked, the Appellant explained that the bill was for one hour or 45 minutes. The normal bill for one and a half hours would be more. But he was still unable to explain how it would work out to be $1,200 per visit. He said the actual cost should be $1,400 but then he would be given $200 reduction for paying cash. Still this cannot be reconciled with the charges shown in the only Sauna Centre H invoice.

16. The bulk of the Appellant's claim is not substantiated by the receipts he has produced. At the first hearing, the Appellant produced eight receipts from Fitness Centre G, some of which refer to training with Mr B for $700. They total 8 × $700 = $5,600. The Appellant explained that it was $500 per hour and $700 for one and a half hours. In addition, there is the receipt from Sauna Centre H as referred to in paragraph 15 above. However, the receipt bears no customer name. The rates of $560 and $280 shown thereon do not tally with the figures given earlier by the Appellant.

17. Even if we accept the amounts given in paragraphs 14 and 15 above, they only total $33,600 + $48,000 = $81,600. This still falls short of the amount claimed $87,490 by $5,890. When asked to explain the shortfall, Mr Tang, the representative cut in to say 'The discrepancy of a few thousand dollars is sometimes you get some people go to your room, go to your house to do the massage for you. That is occasionally some of the massage is like that'. He said that these were 'cash payments'. These promptings were repeated by the Appellant who gave evidence to the same effect. During the hearing, Mr Tang was not asking questions to lead the evidence. Instead he exhibited a frequent propensity to cut in and give evidence on the Appellant's behalf. He continued to do so despite our reminders that he should refrain from so doing.

18. Although it was clear from the determination that the Revenue was challenging the amount spent and querying whether they were actually spent, the Appellant did not take steps to provide further independent verification. For example, he could have asked Fitness Centre G or Mr B to corroborate the amount claimed. He could have asked Sauna Centre H to provide confirmation of the rates charged even if it was not possible to confirm the number of times he went

there. He could at least have provided a better breakdown explaining how the amount of $87,490 was arrived at. This he failed to do. We regret to say that even though they knew the amount was challenged, the Appellant's representative did not come equipped with a reconciliation of the figures. Thus we invited the Appellant's representative, if he should so wish, to produce the working papers to explain how the figure of $87,490 was arrived at. He was given two weeks to do that, subject to the consent of the Revenue. The matter was thus adjourned after the first hearing on 6 May 2002.

19. When the hearing was resumed on 8 July 2002, the Appellant did not turn up to provide further evidence. Mr Tang relied on further documents submitted on 16 May 2002. This was marked 'Exhibit A2'. These are not working papers that we suggested Mr Tang should produce. Mr Tang said they are based on the working papers. There are six statements of account from the Jockey Club with various items highlighted. The highlighted items relate to charges for 'swimming guest', exercise center visits or monthly fee, gym monthly fee, riding etc. There is also an invoice from '[J]' from Mr B covering charges for 'XX & YY' at $1,200 each for two occasions in May. The amount for XX was shown to be $600 instead of the usual $700 mentioned at the last hearing. The highlighted items on the six Jockey Club statements and the '[J]' invoice add up to exactly $5,890. However, they are totally different from the 'cash payments' that the Appellant mentioned at the first hearing to explain the $5,890 shortfall.

The law

20. Section 16(1) of the IRO provides:

> ' *In ascertaining the profits in respect of which a person is chargeable to tax under this Part for any year of assessment there shall be deducted all outgoings and expenses to the extent to which they are incurred during the basis period for that year of assessment by such person in the production of profits in respect of which he is chargeable to tax under this Part for any period, ...'*

21. Section 17(1) restricts the deduction of 'domestic or private expenses':

> ' *For the purpose of ascertaining profits in respect of which a person is chargeable to tax under this Part no deduction shall be allowed in respect of –*
>
> *(a) domestic or private expenses, including –*
>
> *(i) the cost of travelling between the person's residence and place of business; and*
>
> *(ii) ...;*

> *(b) subject to section 16AA, any disbursements or expenses not being money expended for the purpose of producing such profits; ...'*

22. The onus is placed upon the Appellant on appeal to prove that the assessment appealed against is excessive or incorrect.

23. Mr Wong of the Revenue cited a number of cases in England. However, we have to be careful when looking at these cases as the wording in the United Kingdom statutes is different from that in Hong Kong. In particular, the United Kingdom statutes only allow deduction where the expenses are incurred 'wholly and exclusively for the purposes of his business'. There is no similar requirement in Hong Kong that the expenses had to be 'wholly and exclusively' so incurred. Indeed the words 'to the extent' in section 16(1) of the IRO impliedly suggest that the expenses can be apportioned partly for business and partly for other purposes.

24. Mr Wong for the Revenue relies heavily on Anthony Patrick Fahy v CIR 3 HKTC 695. The taxpayer in that case was an accountant. He met with an accident and was hospitalized for an operation to insert various metal rods into his leg. The taxpayer claimed deduction of his medical expenses including the use of a private room, food and the use of telephone. The Revenue relied on the part of the judgment on apportionment:

> *' But where the expenditure has a dual purpose, partly of a domestic or private nature, and partly for the purposes of the preservation of the Taxpayer of his own person as an asset to his business, to the extent that the expenditure is a domestic or private character, in my judgement it is not allowable.*
>
> ...
>
> *In my judgement, the requirement for this operation was as much for domestic or private as it was for business purposes. I cannot believe (although I think at one stage the Taxpayer was inclined to suggest it) that the Taxpayer would not have had this operation at all but for the purpose of earning or continuing to earn the profits of his profession. Nor can I see any way of distinguishing between those elements of the purpose which are domestic and private and those which are business. It seems to me to be one indivisible matter; there cannot be any sensible apportionment.'* (emphasis added)

On the facts of that case, it is hardly surprising that the judge disallowed the deduction. The taxpayer would have incurred the medical expenses even if he was not an accountant. He needed to get well. It was necessary as part of his personal expenses. We invited Mr Wong of the Revenue to produce some more analogous cases involving athletes and/or actors. The first hearing was thus adjourned partly for this purpose.

25. After the adjournment, the Revenue produced a supplementary authority bundle. Mr Wong relied on D32/93, IRBRD, vol 8, 261. The taxpayer was a theatrical performer. He claimed deduction for certain costumes and clothes. The taxpayer produced sample garments which the Board was satisfied were purchased for use by the taxpayer for his services. The taxpayer also produced sample invoices, however the Board was not satisfied that these items were in any way related to the production of the taxpayer's earnings. In the absence of any detailed breakdown of the figures, the Board apportioned the expenses under this head on a 50/50 basis and allowed deduction for half of the amount claimed. This part of the decision is more readily understandable than the other part of the judgment where the Board also apportioned the consultation and medicine expenses and allowed half of the same. They would appear to be personal rather than business expenses. The Board said that expenses to cure a common cold would not be deductible. Unfortunately the decision does not go into further detail to explain why some of the consultation and medicine expenses should be different from the ordinary expenses incurred in curing a common cold. Mr Wong for the Revenue explained that the Revenue did not accept that part of the judgment as correct but the amount involved was too small to warrant an appeal.

26. Mr Wong for the Revenue also relied on the Australian section 51(1) of the Income Tax Assessment Act 1936 which he says is similar to the Hong Kong section.

> ' *All losses and outgoings to the extent to which they are incurred in gaining or producing the assessable income, or are necessarily incurred in carrying on a business for the purpose of gaining or producing such income, shall be allowable deductions except to the extent to which they are losses or outgoings of capital, or of a capital, private or domestic nature, or are incurred in relation to the gaining or production of exempt income.'*

The relevant words '*incurred in gaining or producing assessable income*' had been interpreted to mean 'incurred in the course of gaining or producing assessable income'. Mr Wong relies on the authority of Federal Commissioner of Taxation v Cooper 21 ATR 1616. This was a decision by the Federal Court of Australia. The taxpayer was a professional footballer. He had a tendency to lose weight during the course of the season. The resultant loss of strength affected his ability as a forward and to stay in the first grade. If he dropped from the first grade, his income would suffer. His coach gave him written instructions to eat various food each week '*in addition*' to his normal meals. The taxpayer followed the instructions from his coach and claimed the cost of the additional food in the nature of 'the fourth meal' consisting of additional steak, potatoes, bread, beer and Sustagen. The Federal Court of Australia, by a majority, found that the cost of the 'fourth meal' was not deductible. It is however interesting to note (as mentioned at page 1627 line 5 of the report) that the Commissioner did allow the taxpayer's claim to deduct from his assessable income the costs which he incurred in complying with his coach's advice about building his strength and fitness by attending a gymnasium, but not the expenses for the extra food.

27. The reasoning of the majority was given by Lockhart J at page 1620 as follows:

> ' *... to be deductible the expenditure must be incidental and relevant in the sense of having the essential character of expenditure incurred in the course of gaining or producing the assessable income.'*

It is difficult to know what is meant by 'the essential character of the expenditure'. The character of the expenditure may not change; whether it is deductible very often depends on why it is incurred. Take traveling expenses, it is not deductible if it is incurred for the purpose of getting to work, but it is deductible if it is incurred during work for traveling between the office and the location for a meeting outside the office. It is equally difficult to understand what is meant by 'in the course of' gaining the income. Take a jockey, is the 'course' of gaining income only limited to the time when he is actually racing in the saddle? That is obviously too narrow. If the jockey is required to go training on a simulated machine in order to improve his riding skill, surely the expenses relating to such training is deductible even though the jockey is not then racing on the horse. Thus we confess that we do not find much help from the reasoning given in the Cooper case.

28. On the other hand, we find much greater help from the Australian Taxation Rulings. TR 95/20 contains the following summary which is said to apply to certain classes of employees including dancers and circus performers:

> ' ***Deductible work-related expenses***
>
> • *Fitness expenses where the physical fitness is an essential element of the income-producing activity.'*

Further on, under common work-related expense claims, it is stated thus:

> ' *Fitness expenses including chiropractic/message/physiotherapy*
>
> *A deduction is not allowable for the costs of maintaining general fitness or body shape. A deduction may be allowable if a performing artist can show that physical fitness and physical activity are essential elements of the income-earning activities and are the means by which the performing artist earns his/her income.'*

29. At our request, the Revenue also provided Taxation Determination TD 93/114 which contains the following passage:

> ' *2. An employer's requirement that an employee incur expenditure which is not related to income-producing activities does not convert that expenditure into a deductible outgoing (per Hill J in FCT v Cooper (1991)*

21 ATR 1616 at 1636; 91 ATC 4396 at 4414). Therefore, whilst Police Regulations may require an officer to remain in a physically fit condition, this does not mean expenditure related to keeping fit is allowable as an income tax deduction.

3. *However, there may be circumstances where such expenditure by a police officer is an essential element of gaining income. This could occur in those occupations within the police force where strenuous physical activity by an officer is an essential and regular element of performing that officer's duties. It is considered a police academy physical training instructor may be in this category.*

4. *Those expenses which may be claimed in the above circumstances include gym fees and depreciation of gym equipment. No deduction is available in respect of expenditure on any items of conventional clothing which may be used in the course of keeping fit. This would include such things as tracksuits, running/aerobic shoes, socks, T-shirts or shorts.'*

30. We accept that such Taxation Determination has no application to Hong Kong. However they show that the Australian law does allow fitness expenses provided that they can be shown to be essential means by which the employee earns his income.

Findings

31. The first issue is whether the Appellant incurred any of the $87,490 as claimed and if so, how much. We refer to the evidence set out in paragraphs 14 to 19 above. The onus is on the Appellant to satisfy us that the expenses were incurred. We are satisfied that some expenses were incurred. However in the light of the very unsatisfactory nature of the evidence given, we cannot be satisfied how much was actually incurred other than those that were substantiated by receipts which we accept for the purpose of this appeal.

32. We have doubts about the invoice from Sauna Centre H as it does not provide the name of the person incurring the expense, and more importantly, the two figures shown thereon do not tally with what the Appellant said was the usual charge of $1,200 per visit.

33. We cannot place reliance on the $3,000 invoice produced after the first hearing. It purports to come from '[J]' which was not mentioned by the Appellant at the first hearing. It shows charges for another person 'YY' in addition to 'XX' which we assume to be the Appellant. Even in relation to the charge for XX alone, the amount is $600 instead of the usual $700 per visit for Mr B and the gymnasium. The Appellant did not turn up at the second hearing to explain the discrepancies in this invoice.

34. As for the other items shown on the Jockey Club statements, we accept they were incurred. But they were totally unexplained by the Appellant. There is no explanation as to how or why these charges were incurred in the production of products. More importantly, they were different from the 'cash payments' that the Appellant stated at the first hearing.

35. For reasons given, for the purpose of this appeal, we are only prepared to accept the eight invoices from Fitness Centre G in respect of the gymnasium and the training from Mr B at $700 per visit. The total thus comes to $700 × 8 invoices = $5,600. The Appellant might well have incurred other similar expenses during the material period. However it is not for us to speculate as to how much more he might have incurred. In the circumstances, we can only find that the Appellant did incur $5,600 for his training with Mr B.

36. Next, we turn to the second issue. How much of this $5,600 is deductible expense? We bear in mind the law cited above.

37. Whilst we accept that Fahy was correctly decided on the facts of that case, we find that the present case is distinguishable. In that case, the requirement for the operation was as much for domestic or private as it was for business purpose, hence no apportionment was possible. In the present case, the Revenue does not challenge the Appellant's evidence that his normal weight is 118 pounds and he has to deduct five pounds in order to make the necessary weight to ride some of the horses that are required to carry a weight of no more than 116 pounds including the saddle and the gear. It does not take much imagination to realize that for a man measuring 1.67 meters tall, it is a real effort to keep under 113 pounds. Further, it is not just a simple matter of losing weight, as a jockey and a good one at that, the Appellant has to be very fit. There is a very fine line between being fit but not being muscular; muscle building adds to the weight. Whilst a rapid weight loss may be achieved by simple dehydration and sweating, it is far healthier to do this over a period of time. The Appellant says that he has a personal trainer for this purpose. We accept the Appellant's evidence that he does not do this for pleasure or enjoyment and that it requires a lot of hard work. Insofar as the Australian authorities are guidance, we find that the taxation rulings do permit fitness expenses if these are essential for income production purposes. We also note that even in Cooper, the Commissioner did allow the expenses for the gymnasium.

38. Mr Wong for the Revenue says that the expenses were personal in nature. We accept that fitness exercises do improve the physical well being. In the present case, the Appellant through his representative seeks apportionment of 80% of the expenses for business and accepts that 20% may be said to be for personal or non-business purpose. Mr Wong accepts that apportionment is possible if the expenses are partly for business and partly for non-business purpose. Deduction may be allowed 'to the extent' that the expense is for business purpose. We find that the expenses are indeed primarily for business purpose and, in the light of the Appellant's concession, we are prepared to accept the 80/20 apportionment and allow the Appellant deductible expense to the extent of 80% of the $5,600 proved by the Appellant.

39. For reasons given, we allow the appeal to the extent of allowing deduction for $4,480, being 80% of $5,600. We should add that we have reached the finding on the facts of this case. Mr Tang for the Appellant repeatedly said during the course of the appeal that our ruling will serve as precedent for all the other jockeys. We do not know if the situation of the other jockeys are similar to that of the Appellant. It will be a matter of evidence on the facts of each case.