

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D4/84

Board of Review:

William Turnbull, *Chairman*; N. J. Gillanders & Kenneth T. C. Lo, *Members*.

23 May 1984.

S.82A Inland Revenue Ordinance — penalty assessment — tax undercharged — whether penalty assessment excessive.

The appellant filed Tax Returns out of time which grossly understated his taxable income. The Commissioner made additional assessments under Section 82A. The appellant appealed on the grounds that the additional assessments were excessive having regard to the appellant's lack of education and ignorance of accounting practice and that the level of the assessments exceeded that of previous reported decisions.

Held:

Each case must be decided on its own facts and on the facts the additional assessments were not excessive.

Appeal dismissed.

Chiu Shin-koi for the Commissioner of Inland Revenue.

A. R. Suffiad instructed by Messrs. John Ku & Tam for the appellant.

Reasons:

This is an appeal by the sole proprietor of a business against assessments to additional tax under section 82A of the Inland Revenue Ordinance. An agreed Statement of Facts was provided to the Board together with a number of Appendices. The appeal proceeded on the basis of the agreed facts and Appendices without further evidence being called by either the Appellant or the Commissioner.

Counsel for the Appellant quite rightly conceded that this was a case where the Commissioner was entitled to assess additional tax under section 82A but argued that on the facts the amounts of the assessments were excessive.

The circumstances which her Board was asked to take into account in deciding whether or not the additional tax was excessive were that the Appellant and his wife were not well educated and had no knowledge of accounting; that the 2 main causes of the undercharge to tax were; that payments to coolies employed could not be substantiated by receipts; that the Appellant had deducted his personal and family expenses from his profits owing to ignorance; and that the Appellant had shown good faith in taking the initiative in preparing the assets betterment statement which had formed the basis of the final profits tax assessments.

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Counsel for the Appellant argued that although the Appellant was certainly not blameless he should be excused to some extent on the foregoing grounds. The Board was referred to two previous decisions of the Board namely No. 1 of 1982 and No. 1 of 1983 both of which related to additional assessments under section 82A. Counsel for the Appellant argued that what his client had done or failed to do was not worse than in the other two cases and in fact was less blameworthy. He submitted that the additional assessments levied on the Appellant were excessive because they were substantially in excess of either of the two cases cited.

Each case must stand or fall on its own merits. Although there must be consistency in the law it is difficult to draw exact comparisons between different cases. Previous decisions of this Board can only summarise the evidence and facts before the Board. Rarely is an appeal from an additional assessment under section 82A either black or white but rather numerous shades of grey. Each case is unique and must be considered on its own merits.

A careful analysis of this present case shows that the conduct of the Appellant left very much to be desired. He started business in 1969 so that by the Year of Assessment 1974/75 he had already been in business for some years. The nature of his business was that of subcontracting of air-conditioning systems. Some 80 to 120 daily paid workers were employed and their wages were paid twice monthly by autopay through Hongkong and Shanghai Banking Corporation since March 1976.

The Appellant first knew that his affairs were under investigation when he received a letter of enquiry from the Inland Revenue Department in April 1979. It is not necessary or appropriate to set out in this decision the long story of events which eventually led to an agreement being reached on 24 November 1982 between the Appellant and the Inland Revenue Department as to the contents of an Assets Betterment Statement which formed the basis for Revised Assessments being issued for the years 1974/75 through to 1979/80. However it is appropriate to mention one or two facts to demonstrate that even after the Appellant was aware of his tax affairs not being in order he still did not do what one might have expected him to do. As late as 28 August 1982 he filed with the Inland Revenue Department a Tax Return for the year ended 31 March 1980 certifying as true and correct a profit for that year of \$257,636.59. These profits were increased to the figure of \$355,833 after investigation. During the period from April 1979 until the final revised assessments were issued in November 1982 the Inland Revenue Department was obliged to raise additional assessments to profits tax which the Appellant then would appeal. This does not indicate or demonstrate the Appellant's good faith shown by his taking the initiative to file true and correct tax returns or to prepare Betterment Statements as submitted by his Counsel but rather suggests that he only cooperated when force so to do as suggested by the Commissioner's representative.

The suggestion that the Betterment Statement as agreed was incorrect because of payments to coolies which could not be substantiated by receipts is again no excuse. As the representative for the Commissioner rightly pointed out the Appellant had agreed the

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Betterment Statement after being warned that additional assessments might be raised under section 82A, and furthermore if the Appellant's Statements with regard to coolie wages were correct then the Appellant's business would have been running at a loss which even the Appellant did not suggest to be the case.

The suggestion by Counsel for the Appellant that we should excuse his client's conduct in deducting personal and family expenses from his business because of ignorance and misconception of profits tax law is not acceptable.

In this case the Appellant not only filed Tax Returns out of time but also Tax Returns which grossly understated his taxable income.

Having studied that facts before the Board and having carefully taken into account the submissions made by Counsel for the Appellant this Board cannot find that the additional assessments made by the Commissioner under section 82A are excessive and accordingly confirms the same as follows:—

<i>Year of Assessment</i>	<i>Tax Undercharged</i>	<i>Section 82A Additional Tax</i>
1974/75	\$ 33,831	\$ 20,200
1975/76	72,261	108,300
1976/77	54,531	80,900
1977/78	36,281	50,400
1978/79	46,076	60,100
1979/80	14,729	18,000
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	\$257,709	\$337,900
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