

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D50/02

**Profits tax** – whether request to provide particulars as to the nature of expense reasonable.

Panel: Ronny Wong Fook Hum SC (chairman), Arthur Chan Ka Pui and Tang Chi Chuen.

Date of hearing: 6 July 2002.

Date of decision: 7 August 2002.

The appellants ('Mr and Mrs A') are husband and wife. On 1 December 1992, the appellants entered into an agency contract with Company B for the procurement of insurance business for the company. The appellants submitted their returns for the years of assessment 1995/96 and 1996/97 on 28 October 1996 and 21 February 1998 respectively. Their earnings comprised the commissions they received from Company B. The Revenue assessed on the basis of the returns so submitted.

By letter dated 20 April 1998, the Revenue asked Mr A to furnish information in respect of various items in the accounts which he submitted for the year of assessment 1996/97. Mr A was asked to provide particulars as to the nature of expense incurred; the date, venue and amount with supporting receipt; the name(s) and address(es) of person(s) entertained and the specific business transactions discussed. In relation to alleged expenditure for local travelling, Mr A was asked to provide particulars of the trips involved. Mr A did not comply with this request. Further requests from the Revenue for information on the year of assessment 1996/97 and other tax years were likewise ignored. Additional assessments were levied on Mr A for the years of assessment 1995/96, 1996/97 and 1997/98.

By letter dated 1 March 2000, Mrs A was asked by the Revenue to provide information in relation to her submitted accounts for the year of assessment 1995/96. This request was not complied with. Additional assessment was levied against Mrs A.

The appellants' case was that Mrs A had been a mental patient for over 18 years and Mr A himself was also receiving treatment in respect of his mental conditions. The appellants duly paid tax as demanded in the notices of assessment. They did not ignore their civic duties. Mr A was heavily in debt. He was trying hard to keep his business afloat. The requests from the Revenue were not reasonable. It was impossible for him to give the particulars as requested by the Revenue.

**Held:**

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1. While the Board was sympathetic to the current circumstances of Mr and Mrs A, the Board was bound to apply the law to every taxpayer alike. At all material times, Mr A carried on a sizeable insurance operation with the benefit of hired staff. There was no reason for Mr A to ignore the requests of the Revenue. Whilst those requests might seem harsh to a layman, they were within the powers of the Revenue. It was no answer to say that tax had been paid pursuant to the initial notice of assessment. If that notice was predicated on an erroneous premise, a citizen would not have discharged his fiscal responsibility by payment pursuant thereto.
2. The Board has not lost sight of the fact that the commission in the case of Mrs A was earned in the year of assessment 1995/96 and the Revenue did not raise any query with her until 1 March 2000. Whilst the Board recognised the harshness arising from the Revenue's belated stance, there was no material before the Board which warranted its intervention.

### **Appeal dismissed.**

Ngan Man Kuen for the Commissioner of Inland Revenue.  
Taxpayer in person and for another taxpayer.

### **Decision:**

1. The Appellants ('Mr and Mrs A' respectively) are husband and wife. On 1 December 1992, Mr and Mrs A each entered into an agency contract with Company B for the procuration of insurance business for the company.
2. On 28 October 1996, Mr and Mrs A submitted their returns for the year of assessment 1995/96 to the Revenue. Their earnings comprised the commissions they received from Company B. By notices dated 27 December 1996, the Revenue assessed each of Mr and Mrs A on the basis of their returns.
3. Mr A submitted his return for the year of assessment 1996/97 on 21 February 1998. By notice of assessment dated 8 April 1998, Mr A was assessed on the basis of the return so submitted.
4. By letter dated 20 April 1998, the Revenue asked Mr A to furnish information in respect of various items in the accounts which he submitted for the year of assessment 1996/97. In relation to the alleged expenditure of \$280,690 for entertainment, Mr A was asked to provide

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particulars as to the nature of expense incurred; the date, venue and amount with supporting receipt; the name(s) and address(es) of person(s) entertained and the specific business transactions discussed. In relation to the alleged expenditure of \$82,330 for local travelling, Mr A was asked to provide particulars of the trips involved. There were similar requests vis-à-vis other items in that account.

5. Mr A did not comply with this request from the Revenue. Further requests from the Revenue dated 9 October 1998, 22 June 1999, 4 August 1999, 24 September 1999, 30 November 1999 and 29 December 1999 for information on the year of assessment 1996/97 and other tax years were likewise ignored. Additional assessments were levied on Mr A for the year of assessment 1996/97 on 24 September 1999 and for the years of assessment 1995/96 and 1997/98 on 3 March 2000. By notice of estimated assessment dated 23 November 1999, Mr A was assessed in respect of his liability for the year of assessment 1998/99.

6. By letter dated 1 March 2000, Mrs A was asked by the Revenue to provide information in relation to her submitted accounts for the year of assessment 1995/96. This request was not complied with. By notice dated 8 March 2000, additional assessment was levied against Mrs A.

7. This is Mr and Mrs A's appeal against the additional and estimated assessments outlined in paragraphs 5 and 6 above.

8. Only Mr A appeared before us. Mr A told us that:

- (a) Mrs A has been a mental patient for over 18 years. He himself is also receiving treatment in respect of his mental conditions.
- (b) He and his wife duly paid tax as demanded in the notices of assessment. They did not ignore their civic duties.
- (c) He is heavily in debt. He pawned his gold chain several days before the hearing. He also borrowed approximately \$40,000 from Bank C shortly before the hearing in order to pay his secretary.
- (d) He is trying hard to keep his business afloat. Despite his mental conditions, he does not want to make any claim for social assistance.
- (e) The requests from the Revenue are not reasonable. It is impossible for him to give the particulars as requested by the Revenue.

9. Whilst we are sympathetic to the current circumstances of Mr and Mrs A, we are bound to apply the law to every taxpayer alike. According to the returns submitted by Company B,

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the amount of commission earned by Mr A was \$762,917 for the year of assessment 1995/96; \$724,471 for the year of assessment 1996/97; \$796,579 for the year of assessment 1997/98 and \$1,006,907 for the year of assessment 1998/99. For the year ended 31 March 1998, he paid \$72,000 for a secretary. At all material times, Mr A carried on a sizeable insurance operation with the benefit of hired staff. There is no reason for Mr A to ignore the requests of the Revenue. Whilst those requests might seem harsh to a layman, they are within the powers of the Revenue. It is no answer to say that tax had been paid pursuant to the initial notice of assessment. If that notice was predicated on an erroneous premise, a citizen would not have discharged his fiscal responsibility by payment pursuant thereto.

10. We have not lost sight of the fact that the commission in the case of Mrs A was the sum of \$100,443 earned in the year of assessment 1995/96 and the Revenue did not raise any query with her until 1 March 2000. Whilst we recognise the harshness arising from the Revenue's belated stance, there is no material before us which warrants our intervention.

11. For these reasons, we dismiss the appeals of Mr and Mrs A.