

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D50/93

Penalty tax – salaries taxpayer – omission of income from part-time job – foreign national – whether ignorance of language and law an excuse – section 82A of Inland Revenue Ordinance.

Panel: Robert Wei Wen Nam QC (chairman), Benjamin Kwok Chi Bun and Edwin Wong.

Date of hearing: 3 November 1993.

Date of decision: 11 January 1994.

The taxpayer was a Japanese national who filed an incorrect salaries tax return omitting part of her income. She submitted that she should not be penalized under section 82A because she was unfamiliar with Chinese or English and did not understand Hong Kong Taxation.

Held:

Illiteracy or ignorance is no excuse and likewise linguistic difficulties are no excuse. A penalty of \$2,200 was not excessive and if anything was low. It was equivalent to approximately 10% of the tax undercharged.

Appeal dismissed.

Case referred to:

D24/84, IRBRD, vol 2, 136

Tang Chan Wai Yee for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. In this appeal a taxpayer of Japanese nationality (the Taxpayer) is appealing against the additional tax assessment for the year of assessment 1991/92 raised on her by way of penalty under section 82A of the Inland Revenue Ordinance.

2. For the best part of the year of assessment 1990/91 (that is, from 1 April 1990 to 31 March 1991) the Taxpayer had two jobs, but in her salaries tax return for that year she only declared the particulars of the principal job. She was, however, assessed to salaries tax

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in respect of her total income from both jobs, but was not assessed to additional tax by way of penalty under section 82A in respect of the omission of any mention of the part-time job from her salaries tax return.

3. During the year of assessment 1991/92 the Taxpayer had three jobs; one of them lasted throughout the year while the other two were taken one after the other. In her salaries tax return for the year of assessment 1991/92, she left the entire 'income' section blank, although she filled in her personal particulars and signed and dated the return. She was assessed to salaries tax in respect of her total income from all the three jobs and was also assessed to additional tax in the sum of \$2,200 by way of penalty under section 82A for having omitted all her income from the return. She has paid the penalty.

4. In this appeal the Taxpayer asks for the return of the sum of \$2,200 on grounds contained in a notice of appeal in the Chinese language which she said had been written by a friend. A translation of the notice of appeal was prepared by the Inland Revenue Department for use at the hearing; the following extracts from the notice of appeal appear to be relevant:

'... I have to raise an appeal to get back this amount of money, as it was not the first time for me to pay tax and I had also omitted some tax items when I submitted the tax returns for the first time. Since I am a Japanese, I am not familiar with the Chinese characters and my English standard is not high; therefore, I am not clear about the procedure in reporting tax. Besides, the companies in which I had worked in the past also had not helped me to file the information, hence, in case there was any omission, it was indeed not my intention to evade tax. However, nobody had ever informed me of the omission when I reported tax in the first time and your department had not sent me the letter IR973 according to the Inland Revenue Ordinance section 82A(4) like this time either. On the other hand, I did not know that I had to send a reply back to your department. I just checked the amount of the tax to be paid against the amount omitted and I did not care about it any more. It was not until recently when I received the IR48B(3/89) (notice of assessment and demand for additional tax) from your department and inquired my friends about it, was I told of the seriousness of the whole matter.'

5. The Taxpayer conducted the appeal in person. She did not give or call any evidence, but preferred to speak as her own representative. She said that no mention was made of the part-time job in the 1990/91 return because her friend who was filling in the return for her said that it was not necessary. Later when she received the 1990/91 notice of assessment which showed that the assessment included the income from the part-time job, she realised that she had made a mistake by omitting that income from the return. As to why she did not fill in any income in the 1991/92 return, she first said that she thought it was not necessary; then she said that she did not dare to write one income and not the other incomes, so in the end she did not write any income. She did not know how to make an enquiry with the Inland Revenue Department about filling in the return, although she was aware that the Inland Revenue Department's telephone number was shown in the return form; she could

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not get her friend to telephone the Inland Revenue Department because her friend was busy; she was aware that in the notes accompanying the return form, there was a statement inviting taxpayers to write to or telephone the Inland Revenue Department if they had any difficulty in completing the return.

6. We fail to see any merit in this appeal. The Taxpayer's main point is that she is unfamiliar with the Chinese or the English language and therefore that she had difficulties in filling in her tax returns. Illiteracy or ignorance does not provide a reasonable excuse for a taxpayer's failure to fulfil his obligation to furnish a correct tax return (see D24/84, IRBRD, vol 2, 136). By the same token, nor do we think a taxpayer's linguistic difficulties can provide any reasonable excuse. Is the penalty of \$2,200 excessive? We think not; in fact we think it is on the low side. She was aware of the Inland Revenue Department's invitation to make enquiries; yet all she did was to file a blank return. One of her explanations was that she asked her friend to help, but that her friend was busy. We are unable to accept that explanation: we do not believe that she tried to get help; alternatively, if she did, we do not believe that she tried hard enough; after all, she was able to get somebody to write a notice of appeal for her. Nor do we accept her earlier explanations that she thought it was not necessary to fill in any income or that she dared not fill in just one income and not the others: she simply failed to do what she must have realised was the obvious thing to do – to fill in all the incomes. If we understand correctly the grounds contained in the notice of appeal, she was saying that the Commissioner of Inland Revenue did not take any action in respect of the omission in the 1990/91 return, so she never thought that her omissions in the 1991/92 return would have any serious consequences. That does not in our view raise any mitigating factor. A taxpayer must perform his obligation to furnish a correct tax return in respect of each and every year of assessment for which he is liable to pay tax; if he flouts the law by filing a blank return and is penalised for doing so under section 82A, he cannot be heard to say that he honestly did not expect the Commissioner of Inland Revenue to take action against him. The amount of the penalty, \$2,200, is equivalent to 10% of the tax undercharged, which is in our view clearly not excessive.

7. It follows that this appeal is dismissed and that the additional tax assessment in question is hereby confirmed.