

**Case No. D55/05**

**Personal assessment** – taxpayer did not receive her share of profit.

Panel: Patrick Fung Pak Tung SC (chairman), Henry Lau King Chiu and Agnes Ng Ka Yin.

Date of hearing: 13 September 2005.

Date of decision: 27 October 2005.

The taxpayer started a business with Madam A under the firm name of Company B (the Firm). Madam A instructed Company C to act as the tax representative of the Firm in doing up the accounts and submitting tax returns to the IRD.

The taxpayer objected to the personal assessment for the year of assessment 2000/01 raised on her on the ground that she had not received her share of the profit allegedly made by the Firm.

**Held:**

The relevant tax return was duly signed by a partner of the Firm, and presented to the IRD by the duly appointed tax representative on behalf of the Firm. The taxpayer has not produced any evidence to challenge the accuracy of the tax return. The only reason put forward by the taxpayer is that she has not received her share of the profit allegedly made by the Firm. It does not affect the right and duty on the part of the IRD to issue an assessment and demand for the tax payable on the profits made by the Firm and its partners.

**Appeal dismissed.**

Taxpayer in person.

## (2005-06) VOLUME 20 INLAND REVENUE BOARD OF REVIEW DECISIONS

Chow Cheong Po and Wong Siu Suk Han for the Commissioner of Inland Revenue.

### **Decision:**

1. This is an appeal by the Appellant ('the Taxpayer') against a determination by the Commissioner of Inland Revenue ('the Commissioner') dated 27 May 2005 whereby she by her deputy substantially rejected the objection by the Taxpayer to an assessment for tax on income on personal assessment for the year of assessment 2000/01 and reduced her assessable income from \$641,029 to \$503,029 and the tax payable from \$98,474 to \$75,014.

### **The facts**

2. The basic facts are not in dispute. In 1998, the Taxpayer started a business with a long-time acquaintance of hers called Madam A under the firm name of Company B ('the Firm'). The Firm ran a factory in Mainland China employing over 200 workers. The main business was to do finishing work for garment manufacturers. The Taxpayer would stay in the Mainland to supervise production work whilst Madam A would remain in Hong Kong to deal with the business and accounts aspects. From the start, Madam A instructed a company by the name of Company C to act as the tax representative of the Firm in doing up the accounts and submitting tax returns to the Inland Revenue Department ('IRD'). She told the Taxpayer about this and the Taxpayer did not raise any objection.

3. According to the Taxpayer who gave sworn evidence, for the early years the Firm made no money and therefore there was no complication about profits tax. She said that, prior to the submission of the profits tax return for the year of assessment 2000/01, she went to the office of Company C and queried the accounts. It is not clear whether she queried the aspect about the profits said to have been made or that about the giving of commission by the Firm or both. In any event, her case is that she never received any part of the profits made by the Firm in the sum of \$1,505,910 although she says that she had received the sum of \$20,000 per month from her partner. She says she did make a complaint to the Independent Commission Against Corruption which refused to handle the matter. Although she also made inquiries with the Legal Aid Department and some lawyers, she has never actually taken legal action against Madam A or Company C.

### **Our decision**

4. The Taxpayer has given the impression to the Board that she is quite ignorant about the business and accounts side of the Firm. We tend to believe that Madam A has probably not given her the full picture or a full accounting of the profits. This however affords the Taxpayer no defence to the assessment and demand by the IRD in question.

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5. The relevant tax return ('the tax return') was duly signed by Madam A, a partner of the Firm, and presented to the IRD by the duly appointed tax representative, Company C, on behalf of the Firm. Tax returns for previous years were made up and presented in the same way. The Taxpayer has not produced any evidence to challenge the accuracy of the tax return. The assessment against the Firm and the personal assessment against the Taxpayer by the IRD were based on the tax return. The only reason put forward by the Taxpayer is that she has not received her share of the profit allegedly made by the Firm. That is a matter between her and Madam A. It does not affect the right and duty on the part of the IRD to issue an assessment and demand for the tax payable on the profits made by the Firm and its partners.

6. Accordingly, although we have some sympathy for the Taxpayer, we have no alternative but to dismiss her appeal and confirm the assessment by the Commissioner in the determination.