

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D58/94

Penalty tax – late filing of return – return filed without audited accounts – quantum of penalty.

Panel: Howard F G Hobson (chairman), Andrew J Halkyard and Ma Ching Yuk.

Date of hearing: 27 October 1994.

Date of decision: 6 December 1994.

The taxpayer was unable to file its tax return together with its audited accounts. The taxpayer filed its tax return within the extended period granted by the Commissioner and ten days thereafter lodged the audited accounts. The Commissioner imposed a penalty of \$40,000. The taxpayer appealed to the Board of Review.

Held:

The penalty was excessive and should be reduced to \$15,000.

A compromised case.

Tai Chou Yeuk Wai for the Commissioner of Inland Revenue.

K C Cheng of Messrs Chee Kit Chan of the taxpayer.

Decision:

The Taxpayer, a property investor, adopts the tax year as its basis year and was accordingly eligible under the block extension scheme to an extended filing date for its profits tax return for the year of assessment 1992/93 to 15 November 1993. On that day the Taxpayer's tax representative filed a return accompanied by unaudited accounts, a tax computation showing assessable profits of \$1,567,685 and a letter mentioning that the audited accounts would be ready shortly.

On 22 November the assessor concerned rejected the return due to the absence of audited accounts. On 25 November (that is, 10 days after the deadline laid down by the block extension) the audited accounts were filed – the profits returned were the same as mentioned above. Unaware of this filing, an estimated assessment was made on 26 November in the amount of \$1,300,000 which after taking account of the provisional tax already paid pursuant the previous year's assessment, showed a balance of \$38,393 for the year of assessment 1992/93 due on 10 January 1994 and a provisional amount of \$227,500 for the year of assessment 1993/94 payable by two instalments on 10 January 1994 and 11

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April 1994. When it was discovered that the audited accounts had in fact been filed before this estimated assessment the assessor concerned wrote on 28 December 1993 to say that assessment had been cancelled and on 12 January 1994 a fresh assessment was issued, based upon the filed return, to the effect that there was a balance of final tax for the year of assessment 1992/93 of \$85,237 payable by 4 March 1994 and in addition there was a provisional assessment for the year of assessment 1993/94 of \$274,344 resulting in a total tax bill of \$359,581 payable as to \$290,995 by 4 March and \$68,586 by 13 May 1994.

Notwithstanding the cancellation advice and the fresh assessment on 16 January 1994 the Taxpayer paid tax of \$209,018 (part of the tax on the estimated assessment) and a few days later on 24 January it paid a further \$81,977. These two sums equalled the \$290,995 referred to in the fresh assessment. Finally the Taxpayer paid the \$68,586 on 25 April 1994.

The Commissioner raised an additional, or penalty, tax assessment of \$40,000 under section 82A. At the hearing we were advised that in the light of the Taxpayer's representations the Commissioner had agreed to reduce the figure to \$15,000. We have seen the explanation which amongst other points refer to the fact that although strictly speaking the return was lodged 10 days late in fact tax was paid in advance of dates which would have been the due dates. In the explanations the Taxpayer's representative argued that the Taxpayer had a reasonable excuse. At the hearing the Chairman pointed out that that submission could no longer be sustained once it was accepted that a penalty of any amount could be exacted because the right to exact a penalty under section 82A depended upon there being no reasonable excuse. In terms of section 82B(2)(c) we therefore treated the arguments which had been advanced as grounds for mitigating the \$40,000 which amount, in the circumstances, was excessive.

We therefore hereby confirm our approval of the agreement to settle at an assessment of \$15,000 and direct that the section 82A assessment be adjusted accordingly.