

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D58/95

Penalty tax – incorrect tax return – whether merely indicating ‘Other office or employment’ but not income incorrect – whether lack of precise figures of earnings reasonable excuse.

Panel: Ronny Wong Fook Hum QC (chairman), Christopher Chan Cheuk and Lam Bing Lun, Philip.

Date of hearing: 14 June 1995.

Date of decision: 13 September 1995

The taxpayer reported to the Revenue the income of his principal office of employment but merely indicated ‘Other office or employment’ in respect of his other employment without indicating his income thereof. The taxpayer explained that upon receipt of the tax return, he did not have precise figures in respect of such of his earnings.

Held:

The tax return was incorrect. It was the duty of every taxpayer to order his tax affairs so that he was in a position to make a correct return. The taxpayer had no reasonable excuse for the incorrect return submitted. The additional assessment amounting 9.84% of the tax under charged was reduced.

Appeal partly allowed.

Case referred to:

D46/94, IRBRD, vol 9, 282

Nip Cheng Wing Suet for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

I. THE BACKGROUND

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1. On or about 2 May 1994, the Commissioner requested the Taxpayer to complete within 1 month a return of his income. On 31 May 1994 the Taxpayer reported to the Revenue his income for the year of assessment 1993/94 as follows:

- (a) His principal office of employment was with Company A and his income from that source for the period between 1 April 1993 to 31 March 1994 was \$70,000.
- (b) He had 'Other office or employment' with Company B. The Taxpayer did not indicate in the return his income from Company B.

2. By a return also dated 31 May 1994, Company B reported to the Revenue the Taxpayer's earnings as editor for the period 1 April 1993 to 31 March 1994 as follows:

Particulars	Amount \$
Salary/Wages	125,088
Bonus	10,610
Local contribution fee	<u>300</u>
	135,998

3. By an assessment dated 8 September 1994, the Revenue assessed the Taxpayer on the basis of total income amounting to \$205,998. This figure was the sum total of the Taxpayer's income from Company B and Company A. The total amount of tax payable by the Taxpayer was \$34,196.

4. In a letter dated 16 December 1994, the Commissioner expressed the opinion that the Taxpayer had made an incorrect return by omitting to state his income from Company B amounting to \$135,998 resulting in an undercharge of \$25,419. The Taxpayer was invited to submit representation by 16 January 1995 for the Commissioner to consider whether to exercise his power to assess additional tax under section 82A.

5. The Taxpayer made no representation and on 28 February 1995, the Commissioner levied against him an additional assessment of \$2,500. This sum is 9.84% of the tax undercharged.

6. The Taxpayer appeals against that additional assessment.

II. IS THE RETURN INCORRECT?

1. The Taxpayer submitted that the return is not incorrect as he had indicated therein his employment with Company B.

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2. We reject this submission. Under section 51(1) of the Inland Revenue Ordinance (the IRO), the assessor may require any person to furnish any return containing 'such particulars as may be specified by the Board of Inland Revenue'. The amount of income from Company B is one head of particulars required by the assessor. By omitting to state such income, the return filed by the Taxpayer is incorrect.

III. REASONABLE EXCUSE?

1. The Taxpayer explained that upon receipt of the return, he did not have precise figures in respect of his earnings from Company B. His monthly salaries, revised in about September/October 1993, were paid by automatic transfers. Sometimes the transfers would include payments for his medical expenses. He also received editorial fees from Company B. Those would be paid by cheques. Company B did not supply him with any pay slip. He was awaiting the employer's return of Company B so as to obtain the precise figures. He did not want to insert any figure that is incorrect. He therefore contacted the Revenue and was told that provided he identifies his employment, the Revenue would be able to trace the figures. He acted accordingly in submitting his return.

2. Our attention has been drawn to the decision of this board in Case No D46/94. We agree with the comment made by that panel

'It is the duty of every taxpayer to order his tax affairs so that he is in a position to make a correct return'.

What the Taxpayer sought to do was to shift this duty onto his employer. Had the Taxpayer observed this duty diligently, he would have been in a position to make an accurate return. His conversation with the Revenue did not have the effect of negating this duty. The conversation was no more than an attempt to remedy a situation created by the Taxpayer's own breach.

3. We therefore conclude that the Taxpayer has no reasonable excuse for the incorrect return that he submitted.

IV. ADDITIONAL TAX ASSESSMENT

1. We accept that the Taxpayer had no intention of evading his tax liability and this case arose as a result of his misunderstanding of his basic duty.

2. We are of the view that an additional assessment amounting to 9.84% of the tax under charged is on the high side. We would reduce the penalty to \$1,270. Subject thereto, this appeal is dismissed.