

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D63/88

Penalty assessment – whether penalties excessive – relevance of ignorance of obligations and financial hardship – s 82A of the Inland Revenue Ordinance.

Panel: T J Gregory (chairman), Michael Choy Wah Ying and Robert Gaff.

Date of hearing: 7 December 1988.

Date of decision: 12 January 1989.

The taxpayer had understated her profits in her returns by up to 83%. The Commissioner assessed penalties equal to an average of 31% of the maxima permitted. The taxpayer appealed.

Before the Board, the taxpayer cited the facts that her staff had failed to keep proper records; that her business was not big enough to justify employing an accountant; that she had little knowledge of bookkeeping; that records had been lost when the business had moved; that the business was no longer generating sufficient profits to enable her to pay the penalties; and that she had three children to support.

Held:

The penalties were not excessive.

(a) A taxpayer's lack of awareness of the provisions of the IRO and of his or her duties under the IRO do not constitute any justification in an appeal against penalties.

(b) Nor were the taxpayer's financial difficulties relevant.

Appeal dismissed.

Raymond Ng for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. NATURE OF THE APPEAL

INLAND REVENUE BOARD OF REVIEW DECISIONS

The Taxpayer's appeal was against penalty assessments imposed upon her under section 82A of the Inland Revenue Ordinance with respect to incorrect profits tax returns submitted for the years of assessment 1983/84, 1984/85 and 1985/86.

2. THE APPEAL

2.1 The Taxpayer appeared in person.

2.1.1 The Taxpayer acknowledged her liability to tax and her agreement to pay what tax she had not paid. However, she wished the penalty assessments to be revoked.

2.1.2 The Taxpayer stated that:

2.1.2.1 she was operating her business with little knowledge of bookkeeping and accounts and with insufficient turnover to justify the employment of a full-time accountant;

2.1.2.2 the loss of records, as a result of moving the location of her business, and the failure by staff to keep proper records of transactions, had resulted in the making of the incorrect returns;

2.1.2.3 the business is no longer generating sufficient profits to enable the penalty assessments to be discharged; and

2.1.2.4 she has three children to support without financial assistance from any third party.

2.1.3 the Taxpayer volunteered that the penalties were reasonable.

2.2 The Revenue, in a written submission, drew attention to the fact that the Taxpayer's return included an understatement of assessable profits as large as 83%. Further, from the quantum of the penalties, it was apparent that the Commissioner had taken into account the Taxpayer's responsibilities to her children.

3. REASONS FOR DECISION

3.1 The Board is unable to accept as justification for any appeal against penalty assessments the lack of awareness either of the provisions of the Inland Revenue Ordinance or of the duties imposed by that Ordinance on each person conducting a business.

3.2 Although the Taxpayer may presently be in financial difficulties and may have responsibilities to her children, the fact of the matter is that the business was

INLAND REVENUE BOARD OF REVIEW DECISIONS

profitable and, had correct returns been made, the Taxpayer would not be in the position in which she now finds herself.

- 3.3 The penalties assessed are not unreasonable. The total penalties amount to 31% of the maximum amount permitted by the Ordinance. The Board is satisfied that the Commissioner has imposed penalties which are not in the least bit excessive.

4. DECISION

For the reasons given the Board dismisses this appeal.