

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D6/89

Penalty assessment – whether penalties excessive — s 82A of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Ma Ching Yuk and Yu Yui Chiu.

Date of hearing: 22 February 1989.

Date of decision: 17 April 1989.

The taxpayer carried on business selling electrical appliances. Over the course of six years, he filed profits tax returns which understated his taxable profits by an average of 42%. Finally, the taxpayer agreed to assessments based on an assets betterment statement.

The Commissioner assessed the taxpayer to penalties equal to an average of 22% of the maxima permitted. The taxpayer appealed. He claimed that the effect of the penalties would be to use up all of his savings.

Held:

The penalties were not excessive. Failure to comply with obligations is likely to lead to penalties amounting to at least the amount of tax undercharged.

Appeal dismissed.

Chan Kam Tat for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

This appeal is by the Taxpayer against the quantum of a number of penalty tax assessments imposed on him by the Deputy Commissioner.

The facts are as follows:

1. The Taxpayer was the precedent partner of a family retail business selling electrical appliances which commenced on 19 January 1965. He became the sole proprietor in 1983 when his mother retired from the partnership.

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2. The Taxpayer submitted a number of tax returns for the years of assessment 1980/81 to 1985/86 all of which were accepted by the assessor. The profits disclosed by those tax returns were duly assessed by the assessor.
3. Subsequently, the assessor formed the view that the Taxpayer could have understated his profits and, on 19 March 1987, raised an estimated additional profits tax assessment for the year of assessment 1980/81 in the sum of \$150,000. An objection was lodged by the Taxpayer's tax representative to this assessment on the ground that it was excessive and not in accordance with the profits tax return previously submitted by the Taxpayer.
4. The Taxpayer attended the Inland Revenue Department on 1 September 1987 with his tax representative and, in the course of the meeting, accepted that for the years of assessment from 1980/81 to 1985/86 he had not correctly reported the profits of his business. After further discussions, the Taxpayer agreed to accept additional assessable profits for each of the years in question in the amount of \$110,000. These additional assessable profits were arrived at by reference to an assets betterment statement which had been prepared. Additional assessments were then issued accordingly.
5. The following is a summary of the assessable profits disclosed by the Taxpayer in his tax returns, the amount of the assessable profits as agreed after the inclusion of \$110,000 additional profits for each year in question, and the amount of tax undercharged:

<u>Year of Assessment</u>	<u>Profits before enquiry</u> \$	<u>Profits after enquiry</u> \$	<u>Profits under- stated</u> \$	<u>Tax under- charged</u> \$
1980/81	230,391	340,391	110,000	22,554
1981/82	163,566	273,566	110,000	27,263
1982/83	200,827	310,827	110,000	23,388
1983/84	135,918	245,918	110,000	24,063
1984/85	95,580	205,580	110,000	27,500
1985/86	<u>94,008</u>	<u>204,008</u>	<u>110,000</u>	<u>25,202</u>
	<u>\$920,290</u>	<u>\$1,580,290</u>	<u>\$660,000</u>	<u>\$149,970</u>

6. After due notice had been given to the Taxpayer, additional tax was imposed by way of penalty under section 82A of the Inland Revenue Ordinance as follows:

Year of	Amount of	Percentage of Penalty to Tax
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<u>Assessment</u>	<u>Penalty Tax</u> \$	<u>Undercharged</u>
1980/81	16,000	71%
1981/82	20,000	73%
1982/83	17,000	73%
1983/84	17,000	71%
1984/85	17,000	62%
1985/86	<u>14,000</u>	<u>56%</u>
	<u>\$101,000</u>	<u>67%</u>

At the hearing of the appeal, the Taxpayer appeared and represented himself. He submitted that the penalty was excessive. He said that he and his wife had worked hard and long hours to make the business successful and had been very prudent and careful with their savings. He said that it was unfair to impose such a large penalty which he considered to be excessive. He said that, if it was necessary to pay this penalty, all of the savings of himself and his wife would be used.

With due respect to the Taxpayer, we can find no substance in his argument and have no sympathy with him. The fact is that he under-disclosed the profits of his business. If the Inland Revenue Department had not made enquiries into his affairs, he would have paid less tax than he should have. This is a serious matter and the legislature has provided heavy penalties to be imposed upon those who do not fulfill their obligations under the Inland Revenue Ordinance.

As has been said in a number of Board of Review cases, failure to comply with obligations is likely to lead to penalties amounting to at least the amount of tax undercharged. In this case, the Commissioner, after taking into account all of the relevant and mitigating factors, has decided to impose penalties which are less than the amount of tax undercharged. Whilst the amount in total may seem substantial to the Taxpayer, he must realize that the total represents penalties imposed upon him in respect of six different years of assessment. The maximum amount of any penalty for any one year is only \$20,000. There is no substance in the point which he made relating to the savings of himself and his wife. The fact is that he has had the use of moneys which did not belong to him for many years because he was using money which should have been paid in the form of tax.

Accordingly, we dismiss this appeal.