

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D69/02

Salaries tax – onus of proof – section 68 of the Inland Revenue Ordinance ('IRO') – no legitimate expectation that the Inland Revenue Department ('IRD') would anticipate what the tax representative might say shortly before the hearing of the appeal – whether or not required to identify the employer concerned – grounds to challenge assessment based on assets betterment statement – frivolous and vexatious appeal.

Panel: Kenneth Kwok Hing Wai SC (chairman), Ho Kai Cheong and Tse Tak Yin.

Dates of hearing: 26 and 27 August 2002.

Date of decision: 22 October 2002.

The appellant was a shareholder and director of a limited company earning salaries and bonuses therefrom as a director or managing director. In March 1993, IRD commenced an investigation into the tax affairs of the appellant. In the course of investigation, the assessor raised on the appellant additional salaries tax assessments for the years of assessment 1987/88 to 1993/94.

The appellant, through an accountants' firm, lodged objections against the assessments. The communications from the appellant sent through her tax representatives were long on accusations and abuse and short on facts or data.

By a letter dated 28 November 1996, the chief assessor sent to the appellant an assets betterment statement and the appellant was asked to consider the correctness of the statement and to indicate the items and quantum in dispute with supporting evidence. The appellant submitted an assets betterment statement covering the years from 1987 to 1994 for the assessor's comments. The assessor invited the appellant and her tax representative to attend an interview to discuss the case. The appellant had failed by the date of the determination to respond to the assessor's invitation for an interview to discuss the subject case, nor did she supply further information to substantiate her claims for deductions from the discrepancy quantified by way of the assets betterment statements.

Held:

1. Section 68(4) of the IRO provides that the onus of proving that the assessment appealed against is excessive or incorrect is on the appellant. The appellant could

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have no legitimate expectation that IRD would plough through the massive documentation, unaided, to anticipate what her tax representative might say shortly before the hearing of the appeal.

2. The contention that IRD is required to identify the employer concerned is rejected. No authority was cited in support of this contention; no provision in the IRO was pointed to show the requirement of the identification of the employer for the validity of a salaries tax assessment and the appellant even conceded that there was no entry for the name of the employer in the salaries tax assessment and demand for tax. It would seem to be implicit from the determination that the Commissioner considered the limited company to be the employer. As the appellant had not alleged any other source of employment or trade, the appellant had not begun to discharge the onus of showing that the assessments appealed against are incorrect or excessive on the ground of the identity of the employer.
3. Where an assessment is based on an assets betterment statement, such an assessment may be challenged on a number of grounds, including: (a) whether assets betterment statements have any place at all in an assessment; (b) whether the use of an assets betterment statement is appropriate in all the circumstances of a particular case; (c) whether the figures on the assets betterment statement are correct; (d) whether, and if so, the extent to which and the ground on which any item on the assets betterment statement is disputed; and (e) whether, and if so, the extent to which adjustments should be made to the assets betterment statement by taking into account further items not on the statement.
4. The use of assets betterment statements has been approved in a number of Board of Review decisions over the years. While IRD should not harass taxpayers by indiscriminate use of assets betterment statements, IRD would be failing in its duties if it had not thoroughly investigated the appellant's tax affairs in this case.
5. The Board rejected the testimony of the appellant and her challenge of the assets betterment statement. The appellant had not discharged the onus under section 68(4) of the IRO of proving that any of the assessments appealed against is excessive or incorrect.
6. The Board was of the opinion that the appellant continued to waste public funds and resources by this frivolous and vexatious appeal. Significantly, the appellant lied to the Board. Her appeal was hopelessly unarguable and the Board did not find it necessary to call on the respondent. Pursuant to section 68(9) of the IRO, the Board ordered the appellant to pay the sum of \$5,000 as costs of the Board, which \$5,000 shall be added to the tax charged and recovered therewith.

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Appeal dismissed and a cost of \$5,000 charged.

Cases referred to:

Chanway Investment Co Ltd v Commissioner of Inland Revenue [1998] 1 HKC 712
Mok Tsze-fung v CIR (1962) 1 HKTC 166
Agrosy Co Ltd v CIR (Guyana) (1971) ATC 49
D28/88, IRBRD, vol 3, 312
D30/89, IRBRD, vol 4, 346
D20/89, IRBRD, vol 4, 285
Murphy v Elders 49 TC 135
Hudson v Humbles 42 TC 380

Wu Lee Sui Lan for the Commissioner of Inland Revenue.

Liu Kwong Sang of Messrs K S Liu & Company CPA Limited for the taxpayer.

Decision:

1. This is an appeal against the determination of the Commissioner of Inland Revenue dated 16 November 2001 whereby:
 - (a) Additional salaries tax assessment for the year of assessment 1987/88 under charge number 8-8467541-88-7, dated 17 March 1994, showing additional assessable income of \$500,000 with additional tax payable thereon of \$88,860 was increased to additional assessable income of \$678,891 with additional tax payable thereon of \$118,377.
 - (b) Additional salaries tax assessment for the year of assessment 1988/89 under charge number 8-8469115-89-3, dated 21 December 1994, showing additional assessable income of \$500,000 with additional tax payable thereon of \$84,020 was increased to additional assessable income of \$862,654 with additional tax payable thereon of \$140,231.
 - (c) Additional salaries tax assessment for the year of assessment 1989/90 under charge number 8-8472548-90-8, dated 16 February 1996, showing additional assessable income of \$1,500,000 with additional tax payable thereon of \$229,100 was decreased to additional assessable income of \$1,389,708 with additional tax payable thereon of \$212,556.

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- (d) Additional salaries tax assessment for the year of assessment 1990/91 under charge number 8-8475466-91-0, dated 10 July 1996, showing additional assessable income of \$3,500,000 with additional tax payable thereon of \$531,150 was decreased to additional assessable income of \$3,175,128 with additional tax payable thereon of \$482,419.
- (e) Additional salaries tax assessment for the year of assessment 1991/92 under charge number 8-8475467-92-5, dated 10 July 1996, showing additional assessable income of \$4,500,000 with additional tax payable thereon of \$675,000 was decreased to additional assessable income of \$4,310,249 with additional tax payable thereon of \$646,537.
- (f) Additional salaries tax assessment for the year of assessment 1992/93 under charge number 8-8475468-93-A, dated 10 July 1996, showing additional assessable income of \$2,800,000 with additional tax payable thereon of \$420,000 was decreased to additional assessable income of \$2,785,151 with additional tax payable thereon of \$417,772.
- (g) Additional salaries tax assessment for the year of assessment 1993/94 under charge number 9-2338271-94-0, dated 10 July 1996, showing additional assessable income of \$3,200,000 with additional tax payable thereon of \$480,000 was increased to additional assessable income of \$3,624,690 with additional tax payable thereon of \$543,703.

The background facts

2. The determination was issued after about eight and a half years of investigation by IRD into the tax affairs of the Appellant. The determination was based on an assets betterment statement (‘ the ABS’) issued by the chief assessor under cover of a letter dated 28 November 1996. The background facts of this case, as we find them, are as follows.

3. The Appellant objected to the additional salaries tax assessments for the years of assessment 1987/88 to 1993/94 raised on her, claiming that the assessments were estimated and excessive.

4. At all material times, the Appellant was a shareholder and director of a limited company (‘ the Employer’) earning salaries and bonuses therefrom as a director or managing director.

5. In the salaries tax returns submitted for the years of assessment 1987/88 to 1992/93 and the tax return - individuals filed for the year of assessment 1993/94, the Appellant returned her income from the Employer as follows:

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Year of assessment	Returned income
	\$
1987/88	84,000
1988/89	104,000
1989/90	130,000
1990/91	130,000
1991/92	260,000
1992/93	305,920
1993/94	433,500

6. On divers dates, salaries tax assessments for the years of assessment 1987/88 to 1993/94 were raised on the Appellant in accordance with the income figures declared in the above returns. No objection was lodged against these assessments.

7. In March 1993, IRD commenced an investigation into the tax affairs of the Appellant.

8. On 29 April 1993, the assessor interviewed the Appellant in the presence of Accountants' Firm A, the Employer's auditors, for the years ended 31 December 1990, 31 December 1991, 31 December 1992, and 31 December 1993. According to the note of interview, as interpreted by Mr B of Accountants' Firm A to the Appellant and amended by the Appellant:

- (a) she was one of the directors and shareholders of the Employer which was formed in the year 1984. She received director's fees from the Employer;
- (b) she was the true owner of a sole-proprietorship business ('the Appellant's Firm'), the name of which was the same as the Employer except that 'Limited' was replaced by 'Company', and of which the registered owner, her sister, was her nominee. The Appellant's Firm was engaged in the business of arranging manufacture orders received from the Employer;
- (c) both the Appellant's Firm and the Employer were involved in the manufacturing of doll dresses;
- (d) 'No loans had been obtained from others'; and
- (e) she had lent monies to the Employer for payment of sub-contractor fees in China and the monies were sourced from her joint venture business with a named person in China.

9. By a letter dated 20 May 1993, the assessor requested the Appellant to provide information and records in connection with the period from 1 January 1986 to 31 March 1992.

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10. In the course of investigation, the assessor requested the Appellant to supply certain information, and accounting books and records in respect of the Appellant's Firm in connection with the period from 1 April 1986 to 31 March 1994.

11. The assessor also requested the Employer to supply certain information, and accounting books and records in connection with the period from 1 January 1986 to 31 March 1994.

12. In the course of examining the bank accounts maintained by the Appellant, the assessor requested the Appellant to supply information and records in connection with certain bank withdrawals.

13. In the course of investigation, the assessor raised on the Appellant the following additional salaries tax assessments:

Year of assessment	Date of issue	Additional assessable income
		\$
1987/88	17-3-1994	500,000
1988/89	21-12-1994	500,000
1989/90	16-2-1996	1,500,000

The Appellant, through Accountants' Firm A, lodged objections against the above assessments on the grounds that they were estimated and were not in accordance with the salaries tax returns previously submitted.

14. On 8 May 1996, the assessor interviewed the Appellant in the presence of Accountants' Firm A to discuss the progress of the investigation and a draft assets betterment statement (' the Draft ABS') compiled by the assessor for the Appellant covering the period from 1 April 1987 to 31 March 1994.

15. Based on the discrepancy as revealed in the Draft ABS, the assessor raised on the Appellant the following additional salaries tax assessments:

Year of assessment	Date of issue	Additional assessable income
		\$
1990/91	10-7-1996	3,500,000
1991/92	10-7-1996	4,500,000
1992/93	10-7-1996	2,800,000
1993/94	10-7-1996	3,200,000

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The Appellant, through Accountants' Firm A, lodged objections against the above assessments on the grounds that they were estimated and not in accordance with the salaries tax returns and tax return - individuals previously submitted.

16. The investigation into the Appellant's tax affairs took a turn for the worse in about August 1996 when the Appellant appointed one 'K.S. Liu c/o' and subsequently Messrs K S Liu & Company CPA Ltd as her tax representatives. On the whole, communications from the Appellant sent through these tax representatives of hers were long on accusations and abuse and short on facts or data.

17. By a letter dated 3 August 1996, the Appellant lodged objections against the additional assessments referred to in paragraph 15 above through one 'K.S. Liu c/o' who signed as follows (written exactly as it stands in the original except the PO Box number):

' K.S. Liu c/o
Tsim Sha Tsui
P.O. Box [number given]
Kowloon
Hong Kong'

18. By a letter dated 5 November 1996, the assessor requested, inter alia, the Appellant to provide details together with supporting documents in support of her allegation that the discrepancy was related to income chargeable to profits tax. No reply was received from the Appellant despite the issue of a reminder by the assessor on 27 November 1996.

19. By a letter dated 28 November 1996, the chief assessor sent to the Appellant an assets betterment statement, that is, the ABS, compiled from the bank passbooks and bank statements of the Appellant and from other relevant information covering the period from 1 April 1987 to 31 March 1994. The ABS showed a total discrepancy of \$16,826,471 for the years of assessment 1987/88 to 1993/94 with breakdown as follows:

Year of assessment	Amount of discrepancy
	\$
1987/88	678,891
1988/89	862,654
1989/90	1,389,708
1990/91	3,175,128
1991/92	4,310,249
1992/93	2,785,151
1993/94	<u>3,624,690</u>
Total	<u><u>16,826,471</u></u>

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The Appellant was asked to consider the correctness of the statement and to indicate the items and quantum in dispute with supporting evidence.

20. On 20 January 1997, copies of the Appellant's current accounts with China Partners and the Employer for each of the accounting year end from 31 March 1989 to 31 March 1994 were submitted. By a letter dated 14 February 1997, the assessor requested the Appellant to explain the purpose of submissions of the copies of the current accounts. No reply was received from the Appellant.

21. By a letter dated 1 April 1997, the assessor requested, inter alia, the Appellant to provide information and evidence to substantiate her claim that the ABS was wrong.

22. By a letter dated 30 April 1997, 'K.S. Liu c/o' submitted an 'Assets Betterment Statement' ('the K.S. Liu c/o ABS') compiled for the Appellant covering the years from 1987 to 1994 for the assessor's comments. The K.S. Liu c/o ABS showed only the assets and liabilities of the Appellant with a total decrease in net assets of \$7,484,836. The assets and liabilities in the K.S. Liu c/o ABS were the same as those shown in the ABS issued by the chief assessor except a small difference of cash in hand as at 31 March 1989 and the inclusion of two current accounts in the K.S. Liu c/o ABS, details of which were as follows:

Assets	The ABS	The K.S. Liu c/o ABS	Liabilities	The ABS	The K.S. Liu c/o ABS
	\$	\$		\$	\$
Cash in hand					
31-3-1989	2,000	2,500			
China Partner current account			The Employer/Appellant's Firm current account		
31-3-1987	Nil	50,000	31-3-1987		(475,962)(asset)
31-3-1988	Nil	390,032	31-3-1988	Nil	797,329
31-3-1989	Nil	50,033	31-3-1989	Nil	2,257,669
31-3-1990	Nil	50,033	31-3-1990	Nil	3,424,226
31-3-1991	Nil	50,033	31-3-1991	Nil	4,990,126
31-3-1992	Nil	150,032	31-3-1992	Nil	7,217,765
31-3-1993	Nil	375,032	31-3-1993	Nil	10,132,255
31-3-1994	Nil	375,032	31-3-1994	Nil	11,894,429

23. By a letter dated 26 May 1997, 'K.S. Liu c/o' requested on behalf of the Appellant to re-open the assessments under section 70A of the IRO and contended, inter alia, that the assessor had failed to exclude the income which should not be assessable, and that the assessments issued under the salaries tax head were wrongly raised.

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24. By a letter dated 9 October 1997, the assessor stated that the claim under section 70A of the IRO was not accepted.
25. By a letter dated 19 March 1998, the assessor invited Messrs K S Liu & Company CPA Ltd and the Appellant to attend an interview to discuss the case. No reply was received.
26. By a letter dated 23 October 1998, the assessor invited the Appellant to attend an interview to discuss the case and, in particular, the claims for deductions from the ABS discrepancy. No response was received from the Appellant despite the issue of a reminder by the assessor on 4 January 1999.
27. The Appellant had failed by the date of the determination to respond to the assessor's invitation for an interview to discuss the subject case, nor did she supply further information to substantiate her claims for deductions from the discrepancy quantified by way of the ABS.

The determination and the appeal

28. The Commissioner revised the assessments on the basis of the discrepancy shown in the ABS.
29. By letter dated 12 December 2001, the Appellant gave notice of appeal through Messrs K S Liu & Company CPA Ltd.
30. At the hearing of the appeal, the Appellant was represented by Mr Liu Kwong-sang, certified public accountant, of Messrs K S Liu & Company CPA Ltd and the Respondent was represented by Mrs Wu Lee Sui-lan, senior assessor.
31. Mr Liu Kwong-sang submitted a list of authorities which reads as follows:
1. Overview
 2. Extracts from Basic Law
 3. Inland Revenue Ordinance (s.8, s.9)
 4. Chanway Investment Co Ltd v Commissioner of Inland Revenue
 5. Mok Tsze-fung v CIR Supreme Court (1962) 1 HKTC 166, 182-184
 6. Agrosy Co Ltd v CIR (Guyana) Privy Court (1971) ATC 49'

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32. Mrs Wu Lee Sui-lan submitted a bundle of authorities comprising the following:

- (a) D28/88, IRBRD, vol 3, 312
- (b) D30/89, IRBRD, vol 4, 346
- (c) D20/89, IRBRD, vol 4, 285
- (d) Murphy v Elders 49 TC 135
- (e) Hudson v Humbles 42 TC 380

33. Mr Liu Kwong-sang called the Appellant to give evidence. No witness was called by Mrs Wu Lee Sui-lan.

34. At the end of the Appellant's evidence and submission, we invited Mr Liu Kwong-sang to address us on costs. After Mr Liu Kwong-sang's submission on costs, we told the parties that we were not calling on the Respondent and that we would be giving our decision in writing.

Our decision

Onus of proof

35. Section 68(4) of the IRO provides that the onus of proving that the assessment appealed against is excessive or incorrect is on the appellant.

36. Shortly before the hearing of the appeal, Messrs K S Liu & Company CPA Ltd wrote a number of letters to IRD enclosing various copy documents. In a letter dated 17 August 2002, Messrs K S Liu & Company CPA Ltd complained that (written exactly as it stands in the original):

‘ You still failed to reply to our letters and there was obvious failure or negligence in your part to check the documents on hand for the in/out transactions of the taxpayer.

You, IRD, have kept the vouchers, ledger and books for more than 8 years (the “Documents”). You failed to or avoided to go through a single paper of the Documents which obviously explained the bank transactions of the taxpayer.

The vouchers, receipts and evidence explaining the “Bank-In” should not be “Taxable Income” could be extracted from the Documents easily and directly.

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Enclosed are the finding as Exhibits No. 1 to 10 and Exhibits No. 2001 to 2560.'

37. If, as Messrs K S Liu & Company CPA Ltd contended, the enclosures supported the Appellant's contention that certain sums were not taxable, the Appellant's purpose would have been much better served if she or her tax representative had taken the trouble to send the enclosures with an intelligible explanation in the course of the eight and a half years of tax investigation. She could have no legitimate expectation that IRD would plough through the massive documentation, unaided, to anticipate what her tax representative might say shortly before the hearing of the appeal. While IRD had kept the documents in the course of the tax investigation and the objection, the Appellant had never taken up IRD's offer to allow the Appellant to inspect the documents and make copies. In any event, the documents had been returned to the Appellant and her purpose would have been much better served if the Appellant and her tax representative had addressed their minds to proving to our satisfaction on a balance of probabilities how and to what extent an assessment appealed against is incorrect or excessive.

Identification of the employer

38. Mr Liu Kwong-sang contended that IRD is required to identify the employer concerned.

39. We have no hesitation in rejecting Mr Liu Kwong-sang's contention. Mr Liu Kwong-sang cited no authority in support of his contention; was unable to point to any provision in the IRO requiring the identification of the employer for the validity of a salaries tax assessment; and conceded that there was no entry for the name of the employer in the salaries tax assessment and demand for tax.

40. It would seem to be implicit from the determination that the Commissioner considered the Employer to be the employer. As the Appellant has not alleged any other source of employment or trade, the Appellant has not begun to discharge the onus of showing that the assessments appealed against are incorrect or excessive on the ground of the identity of the employer.

Use of assets betterment statements and the ABS in this case

41. Where an assessment is based on an assets betterment statement, such an assessment may be challenged on a number of grounds, including:

- (a) whether assets betterment statements have any place at all in an assessment;
- (b) whether the use of an assets betterment statement is appropriate in all the circumstances of a particular case;

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- (c) whether the figures on the assets betterment statement are correct;
- (d) whether, and if so, the extent to which and the ground on which any item on the assets betterment statement is disputed; and
- (e) whether, and if so, the extent to which adjustments should be made to the assets betterment statement by taking into account further items not on the statement.

42. Mr Liu Kwong-sang has advanced no argument against (a) or (b). The use of assets betterment statements has been approved in a number of Board of Review decisions over the years. While IRD should not harass taxpayers by indiscriminate use of assets betterment statements, IRD would be failing in its duties if it had not thoroughly investigated the Appellant's tax affairs in this case. The Appellant returned a total income of \$1,447,420 for the seven years of assessment 1987/88 to 1993/94. Over the same period, she charged a total of \$1,993,128 (137.7% of her reported income) to one of her credit cards. As at 31 March 1987, the Appellant had \$98,076 cash at bank and \$1,500 cash in hand making a total of \$99,576. As at 31 March 1994, the Appellant had \$1,606,892 cash at bank and \$3,500 cash in hand making a total of \$1,610,392. Cash at bank and in hand increased by \$1,512,316 which exceeded her total reported income of \$1,447,420. The above is the tip of the iceberg.

43. As to (c), the Appellant did not dispute the correctness of the figures on the ABS.

44. The ABS showed assets betterment of \$18,273,891 over the seven-year period. Against returned income of \$1,447,420, the discrepancy was \$16,826,471 or 1,162.51% of her reported income.

45. In his final submission, Mr Liu Kwong-sang accepted the figures on the ABS subject to the following adjustments:

Description	Amount on ABS \$	Adjustment \$
(a) Inadmissible items adjusted in returns and tax computations – the Appellant's Firm	72,458	deduct 72,458
(b) Overseas trip (estimated)	99,000	deduct 99,000
(c) Son's overseas education expenses (estimated)	440,000	deduct (440,000 - 184,851)

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(d)	Private and living expenses (estimated)	1,190,000	deduct (1,190,000 - 336,000)
(e)	Settlement of credit card expenses – [a named credit card]	1,993,128	deduct 1,993,128
(f)	Settlement of credit card expenses – [another named card]	249,100	deduct 249,100
(g)	Settlement of credit card expenses – [a third named credit card]	325,076	deduct 325,076
(h)	Margin account with [a named securities company]	393,677	deduct 196,838
(i)	[Schedule 14 withdrawals or payments]	8,883,663	deduct 8,883,663
(j)	Liabilities to a named person	8,095,318	deduct 8,095,318
(k)	Liabilities to the Employer	11,894,429	deduct 11,894,429

46. The Appellant impressed us as an intelligent and experienced business woman. She knew her way round the massive documentation. She understood English sufficiently to answer some of the questions put to her in English before the interpreter could begin to interpret.

47. As a witness, she was totally devoid of credibility and we reject her testimony, including in particular, her challenge of the ABS.

48. Mr Liu Kwong-sang did not tell us the total of the adjustments on the Appellant's case. They totalled \$32,918,159. This wiped out the assets betterment of \$18,273,891 shown by the ABS and the Appellant was left with a net decrease of \$16,091,688 (contrast the amount of \$7,484,836 shown on the K.S. Liu c/o ABS as stated in paragraph 22 above). On her own case, she was hopelessly insolvent. We do not for one moment believe that the Appellant continued in an employment which brought about a net liability of over \$16,000,000 after seven years. She would have been too shrewd to have continued.

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49. Another incredible aspect is this. The Appellant claimed in her testimony that she lent money to the Employer or borrowed money for the use of the Employer. Schedule 14 to the ABS identified withdrawals and payments totalling \$8,883,663 [item (i) above]. The Appellant claimed in her testimony that many of these items were for the benefit of the Employer. The Appellant further claimed that loans from the named person [item (j) above] were borrowed on her behalf or in her name for use in China. On her case, the Employer should be indebted to her and she could not conceivably be indebted to the Employer at all, let alone to the tune of \$11,894,429 [item (k) above]. In her own words, she said:

‘其實我都唔係好搞得清楚。其實，借咗啲錢就係公司度運作，點解掉番轉我會掙公司錢呀。’

She had been given every opportunity to explain the discrepancy, but she offered none. In our decision, she was clearly lying in her testimony in an attempt to avoid her tax liability.

50. Her challenge of the correctness of the amount of discrepancy of \$16,826,471 therefore fails. Nevertheless we will comment briefly on each item of challenge.

51. On item (a), the Appellant has not begun to show any reason for adjustment of any of the items.

52. On item (b), we do not think the amount is in any way excessive, bearing in mind the fact that the Appellant's son was studying overseas.

53. On item (c), we do not think the amount is in any way excessive. On the contrary, we are satisfied that IRD had taken into account some of the relevant items in the Schedule 14 withdrawals or payments before arriving at what would otherwise have been an inadequate amount here.

54. On item (d), we do not think the amount is in any way excessive.

55. On items (e), (f) and (g), we disbelieve the Appellant's testimony that most of the expenses were for business. Moreover, company expenses should have been charged to the company's credit cards. Even if company expenses had been charged to the Appellant's personal credit cards, the monthly payments should have been made by the company and not the Appellant. If the Appellant had personally paid these credit card expenses and the company had not repaid the Appellant, the company would have been indebted to the Appellant. An indebtedness is an asset which should be taken into account in an assets betterment statement, unless there are grounds (and none is alleged) for writing off or making a provision. If the company had reimbursed the Appellant, the Appellant should identify the reimbursements with full details and tell us what have become of the reimbursements.

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56. On item (h), we do not believe the Appellant's testimony that another person had a 50% interest.

57. We have already dealt with the discrepancy arising from items (i), (j) and (k).

58. On item (i), the Appellant's allegation that substantial amounts in cash were taken from Hong Kong to China was not borne out by any endorsements on any re-entry permit to China. So far as alleged loans by the Appellant are concerned, we repeat what we said above that loans are assets which should be taken into account in an assets betterment statement, unless there are grounds (and none is alleged) for writing off or making a provision. If the loans had been repaid, the Appellant should identify the repayments with full details and tell us what have become of the repayments.

59. The Appellant gave evidence on the 6 July 1987 entry of \$70,299.5 in item (i). She said that it was a transfer from one of her bank accounts to another bank account of hers and produced documents in support. A transfer by a person from one of his bank accounts to another has no effect on the amount of his assets. In cross-examination, she was confronted with a copy of her bank statements which showed two transfers of \$70,299.5 on 6 July 1987. While IRD knew about the transfer referred to by her in her evidence-in-chief, IRD asked the Appellant to tell us about the other. In the event, the Appellant told us nothing about the other transfer. It could have been transferred to another bank account of hers which IRD had not been told about and the balance in such account had thus been omitted from the ABS. It could also have been transferred to a bank account of another customer of the same bank. The cross-examination by Mrs Wu Lee Sui-lan on this point showed up the sloppy preparation on the part of the Appellant, or worse still, an attempt on the Appellant's part to mislead us.

60. On item (j), we disbelieve the Appellant's testimony. Her claim of a loan is contradicted by the note of interview of the meeting on 29 April 1993 [see paragraph 8(d) above]. We do not accept that the named person would advance large sums of money to persons on such persons' mere assertion that they were borrowing on behalf of the Appellant. Unless the Appellant had maintained a good record in repaying earlier loans, it is improbable that the named person or any person in his right mind would have continued to advance large sums without even a written acknowledgement by the Appellant. If the Appellant had repaid from time to time, the appellant would not and could not have been indebted to the tune of over \$8,000,000 as contended by Mr Liu Kwong-sang. In any event, the Appellant alleged that she was still checking if the amount of \$8,095,318.1 asserted to be due in the named person's solicitors' letter dated 17 September 1998 was correct. Three years and 11 months had since elapsed and the Appellant failed or refused to tell us how much she was allegedly indebted to the named person. We reject such wishy-washy evidence.

Disposition

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61. The Appellant has not discharged the onus under section 68(4) of the IRO of proving that any of the assessments appealed against is excessive or incorrect. We dismiss the appeal and confirm the assessments as increased or decreased (as the case may be) by the Commissioner.

Costs order

62. We are of the opinion that the Appellant continued to waste public funds and resources by this frivolous and vexatious appeal. Significantly, she lied to us. Her appeal was hopelessly unarguable and we did not find it necessary to call on the Respondent. Pursuant to section 68(9) of the IRO, we order the Appellant to pay the sum of \$5,000 as costs of the Board, which \$5,000 shall be added to the tax charged and recovered therewith.