

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D69/90

Profits tax – sole proprietor of professional business – whether proprietor's medical expenses can be deducted as expenses.

Panel: William Turnbull (chairman), Sydney Leong Siu Wing and Yu Yui Chiu.

Date of hearing: 4 December 1990.

Date of decision: 13 February 1991.

The taxpayer was carrying on business in providing professional advice and services to his clients. During the year in question the taxpayer suffered an accident and as a result he had spent time in hospital, undergone surgery, and received other ancillary medical treatment. The medical expenses included the use of a private room in a hospital, food, and the use of a telephone. The taxpayer claimed that the medical expenses should be allowed against his taxable profits. This was disallowed by the assessor and the taxpayer appealed to the Board of Review.

Held:

The expenses could not be deducted against the assessable profits as they were not incurred for the purpose of producing taxable profits and were of a domestic and private nature.

Appeal dismissed.

[Editor's note: The taxpayer has filed an appeal against this decision.]

Case referred to:

Norman v Golder 26 TC 293

Ng Kwok Yin for the Commissioner of Inland Revenue.

Taxpayer in person.

INLAND REVENUE BOARD OF REVIEW DECISIONS

Decision:

This is an appeal by a taxpayer against a profits tax assessment in which the assessor refused to allow the Taxpayer to deduct certain expenses. The facts are as follows:

1. The Taxpayer was carrying on business in providing professional advice and services to his clients.
2. In respect of the year of assessment 1988/89, the Taxpayer claimed deduction against his assessable profits of certain expenses which were his own medical expenses.
3. During the year in question the Taxpayer had suffered an accident and as a result he had to spend time in hospital, undergo surgery, and receive other ancillary medical treatment. The total expenses incurred by the Taxpayer in relation to these medical expenses amounted to \$103,710.
4. The medical expenses included the use of a private room in the hospital, food, and the use of a telephone in the private room.
5. The Taxpayer was the sole proprietor of the business and it was necessary when he was in hospital for a member of his staff to visit him periodically for the purpose of signing documents and papers and obtaining instructions. It was also necessary for the Taxpayer to use the telephone to communicate with his office and on at least one occasion a client of the business of the Taxpayer visited him in hospital for business purposes.
6. The Taxpayer claimed as a deduction from the assessable profits of his business the amount of his medical expenses. This was not allowed by the assessor as being a deductible expense. After objection, the Deputy Commissioner upheld the assessment as raised by the assessor. The Taxpayer duly appealed to this Board.

At the hearing of the appeal, the Taxpayer appeared on his own behalf and called two witnesses, one being a client of him who gave evidence to the effect that he visited the Taxpayer when he was in hospital for business purposes. The second witness was a senior employee of the Taxpayer who gave evidence to the effect that he periodically visited the Taxpayer when the Taxpayer was in hospital for the purposes of receiving instructions and obtaining the Taxpayer's signature on various documents and papers relating to the business.

The Taxpayer submitted that the medical expenses should be an allowable deduction against his assessable business profits because it was essential for him to earn his profits that he should go to hospital and receive treatment. He said that he was not able to

INLAND REVENUE BOARD OF REVIEW DECISIONS

move without the medical treatment and it was essential that he be mobile and able to attend his office if he was to earn the assessable profits. He went on to say that he had used the room in the hospital for his business purposes whilst he was in hospital. He submitted that his medical expenses had been incurred in order to earn his assessable profits and that the medical expenses were not expenses of a domestic or private nature.

The representative for the Commissioner submitted that the medical expenses were not deductible and based his submission on a number of United Kingdom cases, Australian cases and a United Kingdom textbook. With due respect to the Commissioner's representative, we find little help from most of the cases which he cited to us as they were decided on different laws which have significantly different wording to those of our own Inland Revenue Ordinance. Much of what the representative said revolved round words such as 'wholly and exclusively' which do not form part of our profits tax law.

However, unfortunately for the Taxpayer, this is of no help to his case and we can find no substance in his submissions. We find against the Taxpayer on two separate and distinct grounds, either of which would be fatal to his claim.

Section 16(1) of the Inland Revenue Ordinance provides that outgoings and expenses can be deducted from assessable profits 'to the extent to which they are incurred ... in the production of profits in respect of which he is chargeable to tax under this Part ...'. This theme is repeated in section 17(1)(b) which disallows expenses not being expended for the purpose of producing the taxable profits. The medical expenses which the Taxpayer is claiming were not incurred by him for the purpose of producing the profits which are taxable in this case but were incurred for the purpose of restoring the Taxpayer himself to full health. Such expenses are far too remote to be capable of being claimed as a deduction from the taxable profits.

This claim is also expressly disallowed under section 17(1)(a) of the Inland Revenue Ordinance because medical expenses are of a domestic and private nature. Section 17(1)(a) expressly excludes all expenses which are either domestic or private. In this case, the expenses are both domestic and private. If authority is required for this then it can be found in one sentence in the judgment of Lord Greene, MR in Norman v Golder 26 TC 293 at 299 where he says:

'Paragraph (b) of the rule equally would exclude doctor's bills, because they are, in my opinion, expenses of maintenance of the party, his family, or a sum expended for a domestic or private purpose, distinct from the purpose of the trade or profession.'

For the reasons given, we dismiss this appeal.