

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D72/89

Profits tax – closure of business – deduction of losses – sale of capital assets – section 17(1)(c) of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Philip Fu Yuen Ko and Gordon M MacWhinnie.

Date of hearing: 5 October 1989.

Date of decision: 8 November 1989.

The taxpayer carried on an import and export business. He purchased office premises which he subsequently sold at a loss. When the taxpayer closed his business, he claimed deduction of the loss on the sale of the office premises against his taxable profits.

Held:

The loss was of a capital nature and accordingly could not be deducted from the trading profit of the business of the taxpayer. No ruling was made with regard to whether or not a loss incurred after the closure of a business can be deducted.

Appeal dismissed.

Chiu Kwok Kit for the Commissioner of Inland Revenue.

Taxpayer in absentia.

Decision:

This is an appeal by a taxpayer against a determination by the Deputy Commissioner that certain losses were not tax deductible when the Taxpayer closed his business.

The facts are as follows:

1. The Taxpayer carried on business of import and export. He ceased carrying on business in February 1988 when he was in the process of emigrating to USA.
2. The Taxpayer purchased office premises in July 1981 at a price of \$557,920. Subsequently and until the date of cessation of business the office premises were used by

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the Taxpayer as part of the business. The office premises were sold in March 1988 for \$345,000 resulting in a loss of \$212,920.

3. In the accounts of the business for the period ended in February 1988 (the date of cessation of business) the Taxpayer deducted the amount of the loss on the sale of the office premises against the taxable income of the business and claimed the loss as tax deductible.

4. The assessor did not accept the Taxpayer's claim that the loss was deductible against the profits and assessed the Taxpayer accordingly.

5. The Taxpayer objected to the assessment raised by the assessor and in his determination dated 28 January 1989 the Deputy Commissioner of Inland Revenue upheld the assessment and gave the following reasons therefor:

‘Insofar as relevant, section 17(1)(c) of the Inland Revenue Ordinance excludes from deduction any expenditure of a capital nature or any loss or withdrawal of capital. In the present case, the loss on sale of the office, a capital asset of the business, is clearly a loss of a capital nature which is not deductible for profits tax purposes. The Taxpayer's objection therefore fails and the assessment is hereby confirmed.’

6. The Taxpayer duly appealed this decision to the Board of Review.

The Taxpayer was unable to attend the hearing of his appeal by the Board of Review. He wrote in to the Board of Review informing the Board that he had emigrated to USA since March 1988 and was unable to attend the hearing. He requested that the Board of Review hear his appeal in his absence.

Section 68 of the Inland Revenue Ordinance makes provision for such cases where the taxpayer is unable to appear before the Board. However so far as the Board of Review is aware there have been no formal rulings as to the appropriate manner in which to handle such appeals as the present one. Accordingly it is appropriate to set out in this decision the procedure which the Board adopted in this appeal. The Board of Review through its chairman proposed to the representative for the Commissioner that the Chairman should read the notice of appeal and papers and representations filed by the Taxpayer on his behalf. The representative for the Commissioner agreed with this proposal. Accordingly the Chairman proceeded to read the following documents and papers:

1. Notice of appeal dated 21 February 1989;
2. Deputy Commissioner's determination dated 28 January 1989;
3. Financial statements of the business of the Taxpayer for the year ended 29 February 1988 (date of cessation);

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4. Letter dated 20 March 1989 from the Taxpayer to the Clerk to the Board of Review;
5. Letter dated 28 August 1989 from the Taxpayer to the Clerk to the Board of Review together with its enclosure.

The Chairman of the Board then summarised the Taxpayer's case saying that the Taxpayer had suffered a loss when an asset of his business namely, the office premises, was sold and the Taxpayer claimed the loss as a deduction from the profits of his business in the final year of assessment of his business.

A question was asked by one member of the Board as to whether or not the tax representative for the Taxpayer had lodged any written representations when filing objection to the assessment prior to the Deputy Commissioner's determination. It was noted that no representations had been made other than the filing of the objection on the ground that it was excessive. A letter dated 27 June 1988 addressed by the tax representative for the Taxpayer when filing notice of objection to the assessment was produced by the representative for the Commissioner and read by the Chairman.

By adopting the foregoing procedure the entire case for the Taxpayer was before the Board of Review and the representative for the Commissioner was able to proceed with his representations and submissions.

The representative for the Commissioner submitted that it was clear that the loss suffered by the Taxpayer when he sold the office premises was a loss of a capital nature and was not a loss which was incurred by the Taxpayer in the course of carrying on his import and export business. Accordingly the representative for the Commissioner submitted that the loss, being of a capital nature was not capable of being deducted against the profit made by the Taxpayer on his trading business. He pointed out that the business of the Taxpayer was not the business of trading in property.

The Board is in complete agreement with the representations made by the representative for the Commissioner and with the determination of the Deputy Commissioner. It is clear that the loss in question was of a capital nature and accordingly cannot be deducted from the trading profit of the business of the Taxpayer.

It was not argued before the Board and accordingly it is not necessary for the Board to make any ruling with regard to whether or not a loss which occurs after the date of cessation of business can be deducted against trading profits made prior to the date of cessation. Because the loss which was suffered was of a capital nature it is immaterial as to whether it occurred before or after the date of cessation. It is clearly not deductible against the Taxpayer's profits of his business.

For the foregoing reasons the appeal is dismissed.

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In dismissing the appeal the Board also directed that a transcript of the proceedings should be sent to the Taxpayer so that he will be fully aware of the proceedings held in his absence.