

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D75/88

Appeals– settlement of appeal before the Board – liability of taxpayer to penalties based on terms of settlement – 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: 9 March 1989.

The taxpayer and the IRD had agreed terms for the settlement of an objection and sought to have the proposed assessment confirmed by the Board.

The taxpayer was not aware that she would still be subject to penalties based upon the amount of the assessment which would be approved by the Board.

Held:

The appeal would be adjourned to enable the Commissioner to calculate the penalties which would be imposed upon the taxpayer.

The Board suggested that in settlement cases it would be of assistance if the IRD were to inform the taxpayer of whether a penalty might be imposed and, if yes, the likely amount of such penalty.

Appeal adjourned.

Leung Yiu Hon for the Commissioner of Inland Revenue.

Cheng Tun Nga for the taxpayer.

Decision:

This appeal came before the Board of Review to sanction or approve terms of settlement which would reduce the amount of the profits tax assessment appealed against.

The Board of Review drew the attention of the Taxpayer to the fact that she was not settling the entirety of her tax affairs but was only settling the tax payable on assessable profits. Her attention was drawn to the fact that by so doing she would make herself liable to

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be assessed by way of penalty under section 82A of the Inland Revenue Ordinance to an amount of up to three times the tax which she was now agreeing to pay.

The Taxpayer indicated that she did not accept that she would be liable to such heavy penalties and it was apparent that there was some difficulty and confusion with regard to what was the maximum penalty to which she would be liable and the amount of any penalty which might actually be imposed upon her.

As the figures were not available, it was not possible for the Board of Review to indicate to the Taxpayer the quantum of the tax which she was agreeing to pay or the quantum of the maximum penalties.

In view of the difficulties being encountered, it was ordered that the appeal be adjourned to enable the Commissioner to calculate the amount of tax which the Taxpayer would be required to pay. This would then enable the Board to indicate to her the maximum amount of penalties which might be imposed upon her. The Board also suggested that it would be of assistance in a case of this nature if the Taxpayer were to be informed of whether any penalty might be imposed and, if yes, the likely amount.

For the reasons given the appeal was adjourned.