

Case No. D79/06

Penalty tax – assessment of additional tax for understating profits chargeable to tax – whether there was any reasonable excuse – whether the additional assessment was excessive – section 82A(4) of the Inland Revenue Ordinance ('IRO').

Panel: Benjamin Yu SC (chairman), Simon Lai Sau Cheong and Stephen Liu Ling Hong.

Date of hearing: 3 March 2006.

Date of decision: 2 February 2007.

The taxpayer was a sole proprietor carrying on business as an air-conditioning installation contractor. He made incorrect tax returns for the years of assessment 1999/2000 and 2000/01 by understating profits chargeable to tax in the total sum of \$2,062,990 (\$895,400 for 1999/2000 and \$1,167,590 for 2000/01). The Commissioner made an assessment of additional tax in the total sum of \$65,500 (\$26,500 in respect of 1999/2000 and \$39,000 in respect of 2000/01). The taxpayer appeals against the additional assessment.

Held:

1. It is the duty of the taxpayer to satisfy the Board that there was reasonable excuse for the filing of the incorrect return. The amounts which were omitted were substantial. The omission did not occur only once. In the end, the taxpayer has not really been able to explain how the omission came about. In his evidence, the taxpayer put the blame for the omissions entirely on a Mr E, whom he had retained to deal with his accounting and tax affairs. On the other hand, he has, in a notice to the Board, asserted a different reason for the problem. In the circumstances, the taxpayer has not shown a reasonable excuse merely by asserting that he relied completely on Mr E.
2. The amounts of additional tax levied on the taxpayer was \$26,500 and \$39,000 for the years of assessment 1999/2000 and 2000/01 respectively. They represented 34.4% and 30.81% of the respective amounts of tax which would have been undercharged had the omission not been detected. Having taken into account all the circumstances of the present case, the amounts of additional tax are not excessive.

Appeal dismissed.

Taxpayer in person.

Yue Wai Kin and Tang Wai Min for the Commissioner of Inland Revenue.

Decision:

The appeal

1. This is an appeal by Mr A ('the taxpayer') against an assessment of additional tax in the total sum of \$65,500 (\$26,500 in respect of 1999/2000 and \$39,000 in respect of 2000/01) made by the Commissioner of Inland Revenue on 12 January 2005. The additional tax was levied under section 82A(4) of the Inland Revenue Ordinance on the ground that the taxpayer has, without reasonable excuse, made incorrect tax returns for the years of assessment 1999/2000 and 2000/01 by understating profits chargeable to tax in the total sum of \$2,062,990 (\$895,400 for 1999/2000 and \$1,167,590 for 2000/01).

The facts

2. The following facts are not in dispute and we find them proved:

- (1) During the relevant years of assessment, the taxpayer carried on business as an air-conditioning installation contractor. He was the sole proprietor of the business.
- (2) In November 2000, the taxpayer submitted his tax return for the year 1999/2000 to the Inland Revenue Department. He reported his turnover as \$7,569,499 and his net income as \$184,980.
- (3) In February 2001, the assessor assessed the taxpayer's taxable income at \$188,630. By reason of a set-off against the accumulated loss of the business in the previous years, the taxpayer was then not required to pay any profits tax for the year of assessment 1999/2000.
- (4) In October 2001, the taxpayer submitted his tax return for the year of assessment 2000/01. In that return, he reported the turnover of his business to be \$10,287,933, but according to the accounts submitted by him, his business suffered a loss of \$153,606 for that year of assessment.

(2007-08) VOLUME 22 INLAND REVENUE BOARD OF REVIEW DECISIONS

- (5) Based on the accounts submitted by the taxpayer, the assessor assessed the loss for the business during that year of assessment to be \$85,309.
- (6) On 15 November 2002, the Inland Revenue Department wrote to the taxpayer to inquire whether he had received the following income during the relevant years of assessment:

Name of Company	1999/2000	2000/01
Company B	7,569,499	9,792,562
Company C	1,305,400	2,526,875

- (7) The taxpayer responded in May 2003 by a letter of Messrs D, a firm of Certified Public Accountants, admitting that there was omission of income and produced an appendix to the letter setting out the discrepancies in the accounts. The letter ended by inviting the Department to issue assessments to the taxpayer.
- (8) In June 2003, the Inland Revenue Department issued an additional assessment based on the taxpayer's admitted omission as set out in Messrs D's letter. Under this additional assessment, the taxpayer was assessed to be liable to pay profits tax in the sum of \$77,038 for the year of assessment 1999/2000 and in the sum of \$126,567 for the year of assessment 2000/01. The taxpayer did not object to the additional assessment.
- (9) On 7 June 2004, the Deputy Commissioner issued a section 82A(4) notice informing the taxpayer that he was of the opinion that the taxpayer had, without reasonable excuse, made incorrect tax returns for the relevant years of assessment and proposed to assess additional tax against him. The taxpayer was offered the opportunity to make representations to the Deputy Commissioner.
- (10) In a letter dated 10 June 2004, Messrs D submitted on behalf of the taxpayer to the effect that the taxpayer had no full time accounting staff and the income was omitted inadvertently. It was also said that the taxpayer was in financial difficulty, and that an additional tax would place further burden on him.
- (11) On 12 January 2005, the Deputy Commissioner issued the additional tax assessments which are the subject of this appeal.

The Evidence

3. The taxpayer gave evidence before us. His evidence was that during the relevant years of assessment, he retained a Mr E to deal with his accounting and tax affairs. Mr E has apparently been engaged by him for over 10 years. He said he had given everything including all receipts and evidence of expenses to Mr E. He trusted Mr E's work and signed his name on the tax return without himself checking the figures. After the omission was discovered, he did ask why Mr E what was the reason for the omission, and was only told that certain receipts had not been included. He told the Board that since then he had done his own calculations and checked the figures.

Was there reasonable excuse?

4. It is the duty of the taxpayer to satisfy the Board that there was reasonable excuse for the filing of the incorrect return. We are not so satisfied. The amounts which were omitted were substantial. The omission did not occur only once. In the end, the taxpayer has not really been able to explain how the omission came about. The Board noted that whilst during his evidence, the taxpayer put the blame for the omissions entirely on Mr E, he has, in a notice to the Board dated 5 September 2005, asserted a different reason for the problem. In the circumstances, we are not prepared to accept that the taxpayer has shown a reasonable excuse merely by asserting that he relied completely on Mr E.

Whether additional tax excessive

5. The amount of additional tax levied on the taxpayer was \$26,500 for the year of assessment 1999/2000 which was 34.4% of the amount of tax which would have been undercharged had the omission not been detected. The amount of additional tax for the year 2000/01 was \$39,000 or 30.81% of the tax undercharged if the omission for that year had not been detected.

6. Having taken into account of all the circumstances of the present case (including the fact that the Revenue accepted that the omission was not deliberate and that the taxpayer has promptly admitted the omissions after inquiry by the Revenue), we do not find the amounts of additional tax to be excessive.

Disposal of the appeal

7. Accordingly, we dismiss this appeal and confirm the assessments appealed against.