

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D90/00

Penalty tax – omission to include transportation allowance – unblemished record – whether assessment excessive.

Panel: Ronny Wong Fook Hum SC (chairman), Kenneth Leung Kai Cheong and Ng Ching Wo.

Date of hearing: 7 August 2000.

Date of decision: 14 November 2000.

The taxpayer omitted to include transportation allowance as part of her income for the year of assessment 1998/99. She was assessed additional tax in the sum of \$4,000. She appealed against the assessment.

The taxpayer explained that she had difficulty in working out the precise figure of the allowance and she left this part pending confirmation with her employer. This is the first violation of the taxpayer after years of unblemished record.

Held:

Taking into account the unblemished record of the taxpayer, the Board is of the view that an assessment of additional tax in the sum of \$1,000 is appropriate.

Appeal allowed in part.

INLAND REVENUE BOARD OF REVIEW DECISIONS

Go Min Min for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

1. By her return dated 3 June 1999, the Taxpayer reported to the Revenue her earnings for the year of assessment 1998/99. She furnished information for each section of the return save for section D in respect of her income. That section was left completely blank.
2. By a notice of assessment dated 25 August 1999, the Taxpayer was assessed in respect of her income in that year of assessment amounting to \$553,746. The Taxpayer duly paid the amount so assessed on 5 January 2000 and 3 April 2000.
3. In response to a notice under section 82A of the Inland Revenue Ordinance dated 7 December 1999, the Taxpayer wrote to the Revenue on 15 February 2000 stating that ‘ I had sent you the tax returns for year 1998/99, for a total income of \$553,746. And, I paid the 1st instalment ...’ . It would appear from this submission that, even by that stage, the Taxpayer did not realise her omission.
4. By a notice of assessment dated 28 March 2000, the Taxpayer was assessed additional tax in the sum of \$4,000. This is her appeal against such assessment.
5. At the hearing before us, the Taxpayer frankly admitted her omission. She explained that she received transportation allowance from her employer. It was difficult to work out the precise figure of such allowance. She completed all sections of the return upon receipt of the same from the Revenue. She left the income column pending confirmation with her employer. She had been submitting returns since the year of assessment 1979. No error had ever been committed by her before the year of assessment 1998/99. She drew our attention to the fact that she was suffering from a kidney ailment ten years ago. She is still visiting her physician about once every three months.
6. The Revenue submitted that the penalty in question was computed after considering previous decisions of this Board. It is apparent to us in our exchange with the Revenue’s representative that little or no weight was given to the fact that this is the first violation of the Taxpayer after years of unblemished record.
7. We are not prepared to accept that the Taxpayer has a reasonable excuse for her omission. There is no concrete evidence to demonstrate that she was experiencing any significant degree of discomfort as to affect her ability to fill in her return properly. The care taken vis-a-vis the remaining sections of the return negatives any suggestion in that regard.

INLAND REVENUE BOARD OF REVIEW DECISIONS

8. We are, however, of the clear view that the penalty of \$4,000 is excessive in the circumstances of this case. The Taxpayer appears to us to be an honest person who normally takes her return seriously. Her past record lends weight to this view. In all the circumstances, we are of the view that an assessment of additional tax in the sum of \$1,000 is appropriate for her first violation.
9. We allow the Taxpayer's appeal in part and reduce the assessment to \$1,000.