

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D91/00

Penalty tax – incorrect return – no dishonest intent – sections 80(2)(b) and 82A of the Inland Revenue Ordinance (‘IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), Charles Chiu Chung Yee and David Li Ka Fai.

Date of hearing: 8 August 2000.

Date of decision: 15 November 2000.

The taxpayer included in her return a claim for dependent parent allowance of \$10,077 in respect of her father which was incorrect. It is accepted that the error was attributable to her grief arising from the death of her father.

Additional tax was assessed at \$10,000 which amounts to 99% of the allowance claimed.

Held:

1. This case belongs to the category of cases where the return is incorrect but the error is not attributable to any dishonest intent.
2. The Board found an assessment of additional tax in the sum of \$2,500 is reasonable in the circumstances.

Appeal allowed in part.

Tong Cheng Yuet Kiu for the Commissioner of Inland Revenue.

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Taxpayer in person.

Reasons for decision

1. At the hearing before us on 8 August 2000, we reduced the additional tax levied on the Taxpayer from \$10,000 to \$2,500. These are our reasons for so doing.
2. The Taxpayer submitted her return for the year of assessment 1998/99 on 28 May 1999. She included in her return a claim for dependent parent allowance in respect of her father Mr A. Mr A passed away on 1 January 1998. There is no doubt therefore that the Taxpayer's return is incorrect.
3. In response to the Commissioner's notice under section 82A of the Inland Revenue Ordinance ('IRO'), the Taxpayer submitted on 22 December 1999 that her error was attributable to her grief arising from the death of her father. We have the benefit of seeing the Taxpayer in person. We accept that the Taxpayer is still taking her father's demise to heart.
4. The medical history of the Taxpayer was also placed before us. On 3 March 1999 the Taxpayer was admitted into Hospital B due to prolonged vaginal bleeding. She was discharged from hospital on 7 March 1999. She told us that the bleeding was still intermittent. It remained a concern when she filled in the relevant tax return.
5. Mrs Tong from the Revenue drew our attention to a number of cases before the Magistracies in relation to false claims for dependency allowances prosecuted under section 80(2)(b) of the IRO. Mrs Tong has helpfully summarised those cases as follows:

Case No	Date of ruling	Penalty \$	Tax undercharged \$	Relationship between penalty and tax undercharged
TWS009114/ 1999	4-8-1999	5,000	6,300	79.36%
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FLS 4821/ 1999	10-9-1999	8,000	5,937	134.75%
FLS 4822/ 1999	10-9-1999	8,000	5,909	135.39%
WSS 5639/ 1999	9-5-2000	2,000 + 6,300	6,300	131.74%

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2000				
WSS 5640/ 2000	9-5-2000	500 + 10,200	10,200	104.9%

6. The amount of tax that could have been undercharged by virtue of the Taxpayer's erroneous claim of dependency allowance is \$10,077. The additional tax assessed of \$10,000 amounts to 99% of \$10,077.

7. We are perturbed by the reference to penalties imposed under section 80(2)(b). Those are cases where there was dishonesty on the part of the taxpayers involved. It is well recognised by the Revenue that cases under section 82A fall into a wholly different category. Section 82A cases are those where the return is incorrect but the error is not attributable to any dishonest intent. Given this fundamental distinction, we see no justification that the penalties under section 82A should be on par with penalties under section 80(2)(b).

8. Whilst we are sympathetic to the Taxpayer's physical complaints, we are not convinced that her discomfort at the date of her return was so significant as to prevent her from exercising care in dealing with her return. We also view the demise of her father in the same light. Whilst we respect her attachment to her deceased father, we do not accept that such attachment (bearing in mind the date of death of her father) constitutes a reasonable excuse for her error. These two factors do, however, weigh heavily in mitigating her unintentional violation of the IRO. Bearing in mind the level of penalties for section 80(2)(b) cases, we are of the view that an assessment of additional tax in the sum of \$2,500 is reasonable in the circumstances of this case.

9. We allow the appeal in part and reduce the assessment of additional tax to \$2,500.