

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D93/89

Assets betterment statement – whether section 70A can apply.

Panel: Howard F G Hobson (chairman), Robert Kwok Chin Kung and Peter C White.

Dates of hearing: 2, 3, 4, 7 and 8 August 1989.

Date of decision: 17 January 1990.

The taxpayer received a number of assessments to tax following an assets betterment statement procedure. Some time after the assessments had become final and conclusive he sought to re-open the same under section 70A of the Inland Revenue Ordinance.

Held:

An assets betterment statement is not a return or statement for the purposes of section 70A of the Inland Revenue Ordinance and accordingly those appeals based on the re-opening of the assessments out of time were dismissed.

Appeal dismissed.

[Editor's note: The taxpayer has filed an appeal against this decision.]

Cases referred to:

D5/71, IRBRD, vol 1, 30  
Dr CHANG Liang Jen v CIR 1 HKTC 975

Wong Chi Wah for the Commissioner of Inland Revenue.  
Stanley So of Stanley So & Co for the taxpayer.

Decision:

The Taxpayer was at all material times the sole proprietor of X Company, which has carried out piling, caisson and building construction work since its inception in 1970. He was represented at the hearing by his accountant, Mr So.

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### 1. RECITAL OF ASSESSMENTS

The following twenty assessments were raised upon the Taxpayer in respect to the undernoted six years of assessment. Those assessments issued on and after 18 February 1987 were made in consequence of an Inland Revenue Department investigation, which gave rise to an assets betterment statement ('ABS') being prepared and submitted to the Taxpayer on 12 December 1986. By the standard covering letter the Taxpayer was required to comment upon or sign the ABS within thirty days: he did neither of these things.

In the following recital of assessments the reference to sections are to those in the Inland Revenue Ordinance.

#### Year of Assessment: 1980/81

- (a) In response to a return, an original profits tax assessment was issued on 19 March 1982 under section 59(2)(a) showing assessable profits of \$150,000. No objection under section 64(1) was taken to this assessment and it is not the subject of this appeal.
- (b) A personal assessment was issued sometime in 1983 under part VII based on a net chargeable income of \$105,560 to which no objection was taken under section 64(1).
- (c) An additional profits tax assessment was issued on 18 February 1987 under section 60(1) based on additional assessable profits of \$101,733 to which no objection was taken under section 64(1).
- (d) An additional personal assessment was issued on or shortly after 18 February 1987 under section 60(1) based on additional total income of \$109,893 to which no objection was taken under section 64(1).

#### Year of Assessment: 1981/82

- (a) In response to a return, an original profits tax assessment was issued on 31 January 1983 under section 59(2)(a) showing assessable profits of \$116,531 to which no objection was made under section 64(1) and it is not the subject of this appeal.
- (b) A personal assessment was issued sometime in 1983 under part VII based on a net chargeable income of \$76,636 to which no objection was taken under section 64(1).
- (c) An additional profits tax assessment was issued on 18 February 1987 based on additional assessable profits of \$625,908 to which no objection was taken under section 64(1).

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- (d) An additional personal assessment was issued on or shortly after 18 February 1987 under section 60(1), based on additional total income of \$659,988 to which no objection was taken under section 64(1).

### Year of Assessment: 1982/83

- (a) In response to a return, an original profits tax assessment was issued on 5 January 1984 under section 59(2)(a) showing assessable profits of \$140,000 to which a section 64(1) objection was lodged.
- (b) A personal assessment was issued on 22 December 1987 under part VII based on a net total income of \$173,647, to which a section 64(1) objection was lodged on 11 January 1988.
- (c) The following two property tax assessments:
- (i) Property A based on net assessable value of \$34,080;
  - (ii) Property B based on net assessable value of \$40,205.

No objection was taken under section 64(1) to these property tax assessments. However the Revenue conceded that the net assessable value for Property B, should be reduced from an original amount of \$50,257 to the said \$40,205.

### Year of Assessment: 1983/84

- (a) In the absence of a return, an estimated profits tax assessment was issued on 23 April 1985 under section 59(3), of \$250,000 to which no objection was taken under section 64(1).
- (b) An additional profits tax assessment was issued on 18 February 1987 under section 60(1) based on additional assessable profits of \$2,820,284 to which no objection was taken under section 64(1).
- (c) A personal assessment was issued on 22 December 1987 under part VII based on a net total income of \$3,140,449. The Taxpayer purported to object to this assessment on 11 January 1988.
- (d) The following property tax assessments:
- (i) Property A premises \$44,240;
  - (ii) Property B premises \$52,240;

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(iii) Property C premises \$14,720.

No objection was taken under section 64(1) to these property tax assessments.

Year of Assessment: 1984/85

- (a) In the absence of a return, an estimated profits tax assessment was issued on 18 February 1987 under section 59(3) of \$459,423 to which no objection was taken under section 64(1).
- (b) A personal assessment was issued on 22 December 1987 under part VII based on a net total income of \$526,826 to which the Taxpayer purported to object on 11 January 1988.
- (c) The following property tax assessments:
  - (i) Property A premises \$16,676;
  - (ii) Property B premises \$67,200;
  - (iii) Property C premises \$14,720.

No objection was taken under section 64(1) to these property tax assessments.

Year of Assessment: 1985/86

- (a) In the absence of a return, an estimated profits tax assessment was issued on 18 February 1987 under section 59(3) of \$2,000,000, to which no objection was raised under section 64(1).
- (b) A personal assessment was issued on 22 December 1987 under part VII based on a net total income of \$2,028,493, to which the Taxpayer purported to object under section 64(1).

## 2. COMMISSIONER'S DETERMINATION

2.1 In regard to those assessments which the Taxpayer's tax representative objected to under section 64(1) or sought to re-open under section 70A, the Commissioner made the following determination (the notes are ours):

- '(1) Profits tax assessment for the year of assessment 1982/83 dated 5 January 1984 showing net assessable profits of \$140,000 is hereby increased to assessable profits of \$3,037,203.

[Note: This refers to the year of assessment 1982/83 (a) above.]

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- (2) The assessor's notice of refusal, dated 6 July 1987, to correct the additional profits tax assessments for the years of assessment 1980/81, 1981/82 and 1983/84 and the profits tax assessment for the year of assessment 1984/85 is hereby upheld and the assessments per facts 6 and 7 are hereby confirmed.  
[Note: This refers to the years of assessment 1980/81 (c), 1981/82 (c), 1983/84 (b), 1984/85 (a) and 1985/86 (a) above].
- (3) The assessor's notice of refusal, dated 6 July 1987, to correct the additional personal assessments for the years of assessment 1980/81 and 1981/82, is hereby upheld and the additional personal assessments per fact 19 are hereby confirmed.  
[Note: This refers to the years of assessment 1980/81 (d) and 1981/82 (d) above.]
- (4) Personal assessment for the year of assessment 1982/83 dated 22 December 1987 showing net chargeable income of \$117,647 with tax payable thereon of \$24,411 is hereby increased to net chargeable income of \$3,060,798 with tax payable thereon of \$459,119.  
[Note: This refers to the year of assessment 1982/83 (b) above – The figure of \$117,647 appears to be an error for \$173,647.]
- (5) Personal assessment for the year of assessment 1983/84 dated 22 December 1987 showing net chargeable income of \$3,140,449 with tax payable thereon of \$471,067 is hereby confirmed.  
[Note: This refers to the year of assessment 1983/84 (c) above.]
- (6) Personal assessment for the year of assessment 1984/85 dated 22 December 1987 showing net chargeable income of \$526,826 with tax payable thereon of \$89,560 is hereby confirmed.  
[Note: This refers to the year of assessment 1984/85 (b) above.]
- (7) Personal assessment for the year of assessment 1985/86 dated 22 December 1987 showing net chargeable income of \$2,028,493 with tax payable thereon of \$344,843 is hereby reduced to net chargeable income of \$2,014,945 with tax payable thereon of \$342,540.  
[Note: This refers to the year of assessment 1985/86 (b) above.]

### 2.2

The main reason for his determination was that, save for the 1982/83 profits tax assessment ((a) of the year of assessment 1982/83: he dealt with the personal assessment at (b) of the year of assessment 1982/83 separately) all of the assessments had become final and conclusive by virtue of section 70. He rejected the Taxpayer's argument that section 70A could be invoked because in

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the case of the years of assessment 1983/84 to 1985/86 no return was submitted and as to the other assessments there was neither error nor omission nor any arithmetical miscalculation.

### 3. GROUNDS OF APPEAL

The following grounds (with our annotations) were put forward by the Taxpayer's representative:

- (1) The profits tax assessment for the year of assessment 1982/83 above is excessive.  
[Note: This refers to (a) of the year of assessment 1982/83 above. For the reasons for claiming the assessment was excessive, see the opening paragraph of 6 below.]
- (2) The additional profits tax assessments for the years of assessment 1980/81, 1981/82 and 1983/84 and the profits tax assessment for the year of assessment 1984/85 are excessive by reason of errors in the assets betterment statements submitted in respect thereof and the assessor shall correct such assessments.  
[Note: This refers to the years of assessment 1980/81 (c), 1981/82 (c) and 1983/84 (b) above.]
- (3) The additional personal assessments for the years of assessment 1980/81 and 1981/82 are excessive by reason of errors and omissions in the returns and statements submitted in respect thereof and the assessor shall correct such assessments.  
[Note: This refers to the years of assessment 1980/81 (d) and 1981/82 (d) above.]
- (4) Personal assessments for the years of assessment 1982/83, 1983/84, 1984/85 and 1985/86 are excessive.  
[Note: This refers to the years of assessment 1982/83 (b), 1983/84 (c), 1984/85 (b) and 1985/86 (b) above.]
- (5) Because of the incomplete statement of facts, the Commissioner did not consider all the facts and arguments pertaining to the case and thus his determination is misled (sic).

### 4. SUMMARY OF OBJECTIONS

- 4.1 Of the twenty assessments referred to in paragraph 1.1 above, (a) of the year of assessment 1980/81 and (a) of the year of assessment 1981/82 are not the subject of this appeal.

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- 4.2 That leaves eighteen assessments. Although the Taxpayer's representative objected in general terms to the determination it will be seen at ground (2) of paragraph 3 above that no grounds of appeal were given for (a) of the year of assessment 1985/86 as required by section 66(1). We shall not therefore deal with that particular assessment.
- 4.3 That leaves seventeen assessments. The objections to (a) and (b) of the year of assessment 1982/83 were in time and will be dealt with in the normal way. (c) of the year of assessment 1982/83 (the property tax assessment for that year) is dealt with as a preliminary issue.
- 4.4 That leaves fourteen assessments. In the case of the three personal assessments, the years of assessment 1983/84 (c), 1984/85 (b) and 1985/86 (b), although the Taxpayer raised timely objections, the effect of the objections depends upon section 64(7).
- 4.5 That leaves eleven in respect to which the Taxpayer sought to invoke section 70A.
- 4.6 We propose to deal with paragraphs 4.4 and 4.5 above as preliminary issues.

### 5. PRELIMINARY ISSUES

- 5.1 The Taxpayer's representative, Mr So, in his opening address produced an exhibit in which are identified certain items which he maintained showed errors in the ABS. However in our view the starting point for this appeal must be a decision upon the validity of the objections referred to at paragraph 4.5 above.

Section 70A reads in material part as follows:

‘ If ... it is established ... that the tax charged ... is excessive by reasons of an error or omission in any return or statement submitted in respect thereof, or by reason of any arithmetical error or omission in the calculation of the amount of the assessable income or profits assessed or in the amount of the tax charged, the assessor shall correct such assessment ... ’

- 5.2 There are therefore two possibilities:
- (a) an error or omission in a return or statement submitted in respect thereof, or
  - (b) an arithmetical error or omission in the calculation of the amount of assessable profits.

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5.3 The Taxpayer's representative acknowledged that paragraph 5.2(b) above has no application consequently we need not concern ourselves with that possibility.

5.4 As regards paragraph 5.2(a) above no returns were submitted for the years of assessment 1983/84 to 1985/86. However the Taxpayer's representative argued that the ABS was itself a 'statement submitted in respect of a return'.

5.5 The Revenue's representative drew our attention to the following passage in the decision D5/71, IRBRD, vol 1, 30:

'There is no doubt in our mind that in all these provisions, the words "return" and "statement" refer to any return or statement submitted by a taxpayer or private individual required to furnish the same and that they cannot possibly mean any return or statement submitted by an assessor to a Board of Review. It follows, therefore, that errors and omissions of the first type which can be rectified under section 70A, must be confined to errors or omissions contained in any return or statement submitted by a taxpayer to an assessor. No other returns or statements could have been contemplated by the legislature.'

5.6 Although there is no definition of the word 'return' in the Ordinance, it is reasonable to infer from section 51(1), which is the main initial provision dealing with returns, that it is a document which the taxpayer or potential taxpayer is himself required to complete and furnish to the assessor. Section 51(5) for obvious evidential reasons, provides that 'a return, statement or form purporting to be furnished ... by or on behalf of any person shall ... be deemed to have been furnished by that person or by his authority'.

It follows rather obviously that a return is something which the Taxpayer himself produces: the same is also true of a statement since grammatically the 'in respect thereof' in section 70A must mean in respect of a return. As the ABS was neither submitted by nor even signed by the Taxpayer we reject the submission that it is a 'return or statement' for the purposes of section 70A.

5.7 Accordingly we dismiss those appeals which depend upon the application of that provision, which is to say the appeals against the eleven assessments referred to at paragraph 4.5 above namely –

Year of assessment 1980/81 (b), (c) and (d)  
Year of assessment 1981/82 (b), (c) and (d)  
Year of assessment 1983/84 (a), (b) and (d)  
Year of assessment 1984/85 (a) and (c)



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5.8 We have next to decide whether valid appeals have been made in respect to the personal assessments referred to at paragraph 4.4 above.

Section 64(7) at the material time read as follows:

‘64(7) No objection by a person to a personal assessment on his total income under part VII shall –

(a) extend the time for making any objection under any other provision of this Ordinance;

(b) make valid any objection which is otherwise invalid; or

(c) authorize the revision of any amount which has been included in the total income of an individual pursuant to the provisions of section 42(1), where such amount has been the subject of, or formed a part of, any assessment made under part II, III, IV or V which has become final and conclusive under section 70:

Provided that ...’

5.9 The personal assessments 1983/84 (c) and 1984/85 are based upon both the profits and property tax assessments for that year whilst the 1985/86 personal assessment is based upon the profits tax assessment for that year. As we have ruled at paragraph 5.7 above that those profits and property tax assessments are final and conclusive no objection can be taken under section 64(7)(c) against these personal assessments.

We therefore dismiss the appeals in relation to the personal assessments for 1983/84(c), 1984/85(b) and 1985/86 (b). In passing we note that section 64(7)(a) and (b) prevent the time for objection to the substantive objections dealt with at paragraph 5.7 above being extended and prevents the validation of those invalid objections.

5.10 We also rule that so much of the objection to the 1982/83 (b) personal assessment as depends upon the 1982/83 (c) property tax assessment is incapable of appeal by the same reasoning expressed in paragraph 5.9 above.

6. 1982/83 (a) AND, SUBJECT TO PARAGRAPH 5.10 1982/83 (b)

We shall now proceed to deal with the appeals against these assessments.

1982/83 (a) Profits Tax

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In his address to us in relation to the profits tax assessment of \$3,037,203 for 1982/83, the Taxpayer's representative maintained that (a) certain sub-contracting fees, paid by the Taxpayer to Mr Y or D Company, amount to \$600,364 and (b) a depreciation allowance for a motor car and certain overdraft interest were properly deductible.

- 6.1 The first witness was Mr Y. His testimony so far as it relates to the captioned year is as follows:
  - 6.1.1 He carried on business as a sub-contractor mostly for the Taxpayer's company, X Company. He seldom acted for others during the relevant period: we were however left with the impression that he never acted for any other contractor.
  - 6.1.2 He was shown an invoice addressed to X Company by D Company dated 21 June 1982 for \$90,144.70 with respect to 'I' bars. He said he had paid that invoice out of money he had received from X Company.
  - 6.1.3 He identified another invoice issued by E Company for \$2,650 for the hire of cranes in August 1982 where the hirer is shown as F Company. He again said that he paid this from money received from X Company.
  - 6.1.4 He explained that when he was allocated a job by X Company, for which he would have given X Company a quotation, X Company would advance him monies to buy the necessary materials.
  - 6.1.5 He was shown receipts issued by G Company on 11 August 1982 and 9 August 1982 for \$1,200 and \$6,241 for transporting and renting materials for load-testing piles in the first of which he was shown as the payer and in the second F Company was shown as the payer.
  - 6.1.6 He was then referred to three withdrawal entries in his bank account, namely \$90,144.70 on 29 June 1982, \$6,241 on 9 August 1982 and \$1,200 on 11 August 1982 and said that these payments related to sub-contracting work for X Company, the \$6,241 and \$1,200 being the amounts paid to G Company.
  - 6.1.7 He said that between April 1980 and March 1985 he had received between \$550,000 and \$600,000 from X Company and said that quite apart from the invoices and receipts referred to above he made other payments out of monies received from X Company.
  - 6.1.8 He was shown his profits tax return for 1982/83 (the notice for which is dated 31 July 1987, the return itself being dated 15 October 1987) in which he stated he had received \$600,364 from X Company and attributed two-third of that sum to materials and labour and \$200,121 was shown as assessable profits. However in a revised undated statement sent by his tax representative (the same

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firm that acted for the Taxpayer) on 21 March 1989 he showed a loss of \$396,305 after which there was another submission on 12 April 1989 showing a profit of \$60,418.

### 6.1.9 Cross-examination:

6.1.9.1 In cross-examination his attention was drawn to a business registration application made by him in July 1975 under the name of D Company which was cancelled in December 1977. He said he never carried on business under that name though he had had an account with the bank under that name which he closed in about 1984 when he decided to go out of business as he had suffered losses. He then said that after he had cancelled the registration he occasionally used the name to tender for non-X Company business but 'very seldom' was he successful because he was not a licensed sub-contractor.

6.1.9.2 He was shown a business registration application in the name of H Company dated 24 July 1981 signed by him but denied that he had done any business or opened a bank account in that name.

6.1.9.3 His attention was then drawn to his returns for the years of assessment 1981/82 to 1986/87 the notices for which were, like his 1982/83 return, all dated 31 July 1987. He thought he had invited the Inland Revenue Department to send the notices. He agreed he had been interviewed by Inland Revenue Department before 31 July 1987, and acknowledged that he was unsure whether the notices were sent because he had asked for them, or as a result of the interview.

6.1.9.4 The Revenue's representative asked him why the returns for the years of assessment 1981/82, 1982/83 and 1983/84 all showed a deduction of two-third from the gross income which he alleged he had received from X Company whereas those for the years of assessment 1984/85 and 1985/86 made no deductions. His reply was that in the latter two years he was simply an employee. His explanation for filing profits tax returns when he was an employee was that when jobs were assigned to him by X Company he would be carrying on a business otherwise he was an employee, but his main role was as a sub-contractor. He acknowledged that he neither filed his own salaries tax return nor any employer's returns for the workmen he said he employed.

6.1.9.5 When shown a schedule (no 10) to the Taxpayer's ABS indicating payments said to be made by X Company to the witness, he agreed the figures corresponded, in total for each year for which the witness had filed returns in exactly the same amounts. He said he rarely received cash from X Company when the amounts would be less than \$10,000 per annum.

6.1.9.6 Under further questioning though he said he had kept some records he did not know where they were. At first he said his returns were based on his own

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records though he agreed they did not include cash, only the cheques shown in schedule 10, as to the cash for small bills he said for trivial amounts such as \$300 he had just returned them to X Company. He agreed however that he had checked with the Taxpayer before making out his returns, then subsequently conceded that the returns were based upon the information, in schedule 10, supplied by the Taxpayer.

Although the Revenue's representative questioned this witness in considerably more detail, there is no point in dealing with the results.

### 6.1.10 Motor Car

Mr Y was examined as to the Taxpayer's use of a motor car for the Taxpayer's business which he had claimed as a business expense. He confirmed he had seen the Taxpayer's Mercedes Benz at work sites during both week days and Sundays and said he saw it be used to take engineers and architects to the sites. He had never seen the Taxpayer use any other car.

### 6.1.11 Property C

As there was no property tax assessed in the year of assessment 1982/83 for this property his evidence in this respect is not germane: it was however not particularly convincing.

6.2 The Taxpayer himself gave evidence at considerable length but the only issues which now concern us relate to the grounds of appeal (paragraph 3 above) at (1) and (4) so far as it relates to the year of assessment 1982/83. So far as X Company's business was concerned the real question was whether we believed that Mr Y had acted as its sub-contractor and if so whether we accepted the amounts paid or said to be paid to him were correct. The Taxpayer said that the materials which Mr Y bought for use as a sub-contractor were second hand materials and that the suppliers would only sell through or to a licensed company or firm. X Company was licensed but Mr Y was not. Therefore the sales were shown in the documents produced before us as having been sold to X Company whereas Mr Y was the buyer. Likewise, said the Taxpayer, transportation companies would make out their bills to his firm, X Company, because it was that firm's signboard at the site, though in fact it was Mr Y that was responsible, as sub-contractor, for these bills. Indeed so far as bills produced to the Board for the two years in question were concerned he claimed he had never seen them before, that he had not paid them and if they had been presented to him he would have refused to pay. He claimed he did not authorize Mr Y to use his firm's name when ordering: this despite the fact that he had begun his evidence by stating that it was the usual practice of second hand dealers to invoice licensed companies and firms. He claimed that mostly Mr Y was selected as a sub-contractor on the basis of written tenders made by

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Mr Y. He said he could produce these, but never did so. He also claimed he had receipts for advances he had made to Mr Y but on being asked in cross-examination why he had not produced them he said he did not know that he would need to produce evidence to show the relationship of contractor and sub-contractor. We found this statement to be quite incredible since he had tried unsuccessfully to convince the assessor and then the Commissioner that X Company's profits as calculated in the ABS should be reduced by payments said to be made to Mr Y and that to achieve credibility documentary evidence, if in truth it existed, would obviously be helpful.

The Taxpayer acknowledged that though Mr Y was used as a sub-contractor in cases where second hand materials were to be used he never used him when new materials were used. He did not explain this. He was referred to his bank statements from which it was apparent that cheques had been issued and then returned without being cashed. He said that he used the cheques as prepayments to Mr Y to purchase materials then on finding the materials were unsuitable the cheques would be returned.

In contradiction to Mr Y's evidence he denied he had shown Mr Y schedule 10 thereby enabling Mr Y to make up Mr Y's own 31 July 1987 tax return notices.

As to the Mercedes Benz the Taxpayer was categorical at the start of his cross-examination that he had only ever had that car. However he later acknowledged that he had owned both a Toyota and a Honda and conceded the Benz was registered in his wife's name. His explanation for 'overlooking' the two other cars was that one was a jalopy, which he abandoned, though he agreed he had used it before buying the Benz and that the other was passed to him by a family member for \$5,000 which he never paid: he said it was a gift which he never used. He said he never claimed the car as a business expense in those returns which he filed because he was ignorant.

In view of the ruling at paragraph 5.10 above that the 1982/83 property tax assessments on Property B and Property A are unappealable we need not deal with the Taxpayer's evidence on those subjects.

- 6.3 Before dealing with the outstanding matter of the appeal on the 1982/83 (b) personal assessment we think it is convenient to express our views regarding the witnesses. We have no hesitation in saying that Mr Y was an unreliable and unconvincing witness. He came before us to claim he had received large sums of money from the Taxpayer by way of sub-contracting fees, the amounts being culled from schedule 10 to the ABS, that nonetheless he filed no profits tax returns for many years until the enquiry into the Taxpayer's tax affairs was under way. He said this failure was because he lost money, yet when he did file his 1982/83 return in October 1987 it first showed large profits then subsequently adjusted to large losses and then again adjusted to show a small

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profit subject apparently to further adjustment on personal assessment. He said he had kept some records, not all, but produced only documents bearing X Company's name, not his own. He filed no employer's returns nor any salary tax returns for himself. With regard to the Taxpayer himself, he appeared to us to be far from ignorant, in the main he appeared to be clever but we do not believe he was telling us the truth in many respects. We also noticed that he failed to give any plausible explanation for failing to file returns or taking timely objections to estimated or additional assessments. The tax history is such as to suggest to us that he took no objection to estimates because he knew they were less than his true liability.

- 6.4 Accordingly we do not believe that Mr Y was employed as his sub-contractor and we are drawn inevitably to the conclusion that Mr Y had been prevailed upon to pretend to that position. We therefore find that the claimed sub-contracting fees deduction of \$600,364 for the year of assessment 1982/83 is entirely spurious and the appeal on this aspect fails.
- 6.5 The Taxpayer's evidence regarding the Benz is unacceptable and his appeal on this aspect is rejected.
- 6.6 The presentation of evidence regarding the Taxpayer's claim to deduct overdraft interest said to be incurred in the business of X Company was lacking in the clarity required to fulfil the Taxpayer's burden of proof, and his appeal on this subject fails.

### 1982/83 (b) Personal Assessments

- 6.6.1 The Taxpayer contended that the ABS was too great by \$9,500 which he and his wife paid as subscription for shares in H Company. However the Revenue's representative argued that if any adjustment were to be made it would apply to 1981/82 and the 1982/83 figure would remain the same. We accept this argument and reject the appeal on this aspect.
- 6.6.2 It was also contended on his behalf that his estimated living expenses were vastly overstated. As no evidence was adduced on this subject that contention is rejected.
- 6.6.3 The Taxpayer claimed losses on dealing in listed shares were losses in the business of trading shares. He acknowledged that he had not registered himself under the Business Registration Ordinance for such purpose he did not trade on margin, he held some of the shares for quite long periods and he did not study the stock market (some of the hallmarks in Dr Chang Liang Jen judgment – 1 HKTC 975 ). We find therefore that the Taxpayer did not carry on a share-trading business as alleged.

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6.6.4 In his evidence the Taxpayer indicated that the interest (claimed to be incurred with references to properties which were rented out) concerned applied to the Benz. His claim in this respect is therefore rejected.

The appeals herein therefore fail in their entirety. It follows that the assessments as determined by the Commissioner are confirmed.