

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D9/92

Penalty tax – professional practitioner – appeal lodged out of time – section 82B(1).

Panel: William Turnbull (chairman), Eugene Ho and Patricia Loseby.

Date of hearing: 25 March 1992.

Date of decision: 29 April 1992.

The taxpayer was a professional practitioner who wished to appeal against certain penalties imposed upon him under section 82A of the Inland Revenue Ordinance. The taxpayer was a few days late in giving notice of appeal. At the hearing the Commissioner objected to the appeal on the ground that the taxpayer was late in filing his notice of appeal.

Held:

The Board of Review has no power to extend the time limit imposed by section 82B(1) of the Inland Revenue Ordinance.

Appeal dismissed.

Case referred to:

Wong Wing Piu and Wong Wing Piu trading as Tai Yip Glass Co v CIR 2 HKTC
134

Woo Shu Sum for the Commissioner of Inland Revenue.

Taxpayer in person.

Decision:

This is an appeal by a professional practitioner against certain penalties imposed upon him under section 82A of the Inland Revenue Ordinance by the Commissioner of Inland Revenue. When the case first started to be heard by the Board of Review it appeared from the lengthy statement of facts and the voluminous papers tabled before the Board that the facts were of great complexity. However having heard the case and the submissions of both the Taxpayer and the Commissioner, it is in fact a comparatively straight forward case.

INLAND REVENUE BOARD OF REVIEW DECISIONS

First of all an objection was taken by the representative for the Commissioner on the ground that the Taxpayer was late in filing his notice of appeal. Unfortunately for the Taxpayer on the facts before us it is clear that the Taxpayer was a few days late in giving notice of appeal. The notices of assessment which are the subject matter of this appeal were issued on 7 November 1991 and the notice of appeal was not made to the Board until 9 December 1991. The documents which are required to be submitted together with the notice of appeal were not filed until 11 December 1991. Section 82B(1) of the Inland Revenue Ordinance states that any person who wishes to appeal against a section 82A assessment may do so but must do so within one month. In the present case the Taxpayer failed to meet the deadline of one month. The representative for the Commissioner drew our attention to the case of Wong Wing-piu and Wong Wing-piu trading as Tai Yip Glass Co v CIR 2 HKTC 134. That case is the authority for the proposition that the Board of Review has no power to extend the time limit imposed by section 82B(1).

In view of the clear wording of section 82B(1) and the clear interpretation given by the High Court we have no alternative but to hold in the present case that we have no jurisdiction to hear this appeal. Accordingly the appeal is dismissed.

However as the Taxpayer appeared before us and argued his case on its merits and the representative for the Commissioner also made submissions on the merits of the case we feel it appropriate that we should comment on the case at large. It was clear that the Taxpayer had a sense of grievance at the penalties that had been imposed upon him and at the quantum of the penalties. It was also apparent that he did not understand the purpose and meaning of an assets betterment statement and section 82A of the Inland Revenue Ordinance.

Though the statement of facts was lengthy and the papers tabled before us voluminous, the relevant facts are quite simple. The Taxpayer was a dentist carrying on business in Hong Kong. The Hong Kong Government introduced a scheme under which government servants were permitted to seek dental treatment from private dentists with the government undertaking to make payment. The scheme was not a success and encountered major problems. The Taxpayer found himself in a difficult position of performing dental services for patients who were government servants, receiving payment for such services either directly or indirectly from the Government and at a later date being called to account for such fees paid by the Government and in some cases to refund the same to the Government. On some occasions the Taxpayer was unable to obtain payment and eventually wrote off a significant sum of money. It appears clear that the accounting systems of the Taxpayer were not adequate to handle such sophisticated accounts.

The Taxpayer filed a number of profits tax returns and following some queries raised by the Inland Revenue Department his affairs were investigated and he was required to undergo an assets betterment statement procedure.

It is well-known that the assets betterment procedure is imprecise and places a heavy burden upon a taxpayer to try and account for any increase in wealth and to account for receipts and payments where vouchers do not or may not exist. The assets betterment

INLAND REVENUE BOARD OF REVIEW DECISIONS

statement procedure is designed to protect the public revenue. It is a procedure which arises because a taxpayer has failed to maintain adequate and accurate accounts.

A main grievance of the Taxpayer related to his belief that the fees which he was unable to collect from his patients should have been deducted from the total of the assets betterment statement. He likewise contended that the moneys which he refunded to the Government should also have been deducted.

It was apparent from what the Taxpayer said that he did not understand that it is not part of the section 82A procedure to re-open tax assessments which had been levied as a result of the assets betterment statement procedure, especially when, as in this case, the Taxpayer had appealed against the assets betterment statement and had subsequently agreed to compromise the matter before the case was heard by a previous Board of Review.

The Taxpayer had substantially understated his actual profits in his tax returns.

During the period from 1979/80 to 1984/85 the Taxpayer understated his profits by some \$1,631,059 having declared substantially less than 50% of the profits which he actually made. The tax undercharged amounted to \$277,760. The penalties imposed upon the Taxpayer under section 82A totalled \$379,000. In our opinion for a case of this magnitude the penalties imposed by the Commissioner were low rather than high. It is a fundamental part of our low tax system that those who engage in business for their own accounts must keep full and accurate accounts, and promptly file correct profits tax returns. The Taxpayer sought the sympathy of the Board by referring to many personal and family problems which had no relevance to the fact that the Taxpayer had failed to file correct tax returns.

Had we had the power to hear this appeal we would have had no hesitation in dismissing it on its merits. However as stated above we have no jurisdiction to hear the appeal which we have accordingly dismissed.