

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D13/00

Profits Tax – deductions – compensation for breach of agreement and commission for agent.

Panel: Ronny Wong Fook Hum SC (chairman), William Cheng Chuk Man and Dennis Law Shiu Ming.

Dates of hearing: 9 March and 8 April 2000.

Date of decision: 16 May 2000.

The taxpayer, a company incorporated in Hong Kong, purchased a property. The two shareholders of the taxpayer agreed to sell all the shares in the taxpayer to Company D. Company E acted as agent in the sale and was paid a commission of \$153,000. The shareholders did not complete the sale and Company D was paid \$500,000 as compensation. The property was subsequently sold at a profit. The Commissioner rejected the taxpayer's claim to deduct the two sums on the basis that those sums were not incurred by the taxpayer in the production of its profit.

The taxpayer was notified of the hearing but did not appear.

Held, dismissing the appeal :

1. The Board was of the view that the appeal had no merit whatsoever.
2. The appeal was frivolous which resulted in substantial costs being incurred. The taxpayer was ordered to pay costs in the sum of \$3,000.

Appeal dismissed and a cost of \$3,000 charged.

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Chiu Kwok Kit for the Commissioner of Inland Revenue.

Taxpayer in absentia.

Decision:

1. The Taxpayer is a company incorporated in Hong Kong on 24 September 1996.
2. By a provisional agreement for sale and purchase dated 25 October 1996, the Taxpayer purchased a unit in District A [' the Subject Property'] for \$13,550,000.
3. On 28 October 1998, the Taxpayer allotted 399 and 599 shares in favour of Ms B and Mr C respectively.
4. By an agreement dated 24 November 1996 [' the Share Sale Agreement'], Ms B and Mr C agreed to sell to Company D all the shares in the Taxpayer for \$15,300,000. Company E acted as agent in this sale. By a receipt dated 7 January 1997, Company E acknowledged payment of commission of \$153,000 from Ms B and Mr C.
5. Ms B and Mr C did not complete the Share Sale Agreement. \$500,000 was paid to Company D as compensation for their breach.
6. By an agreement dated 4 December 1996, the Taxpayer sub-sold the Subject Property in favour of Company F for \$16,880,000.
7. By a determination dated 5 November 1999, the Commissioner rejected the Taxpayer' s claim to deduct the two sums of \$500,000 and \$153,000 on the basis that those sums were not incurred by the Taxpayer in the production of its profit.
8. By letter dated 1 December 1999, the Taxpayer appointed one Mr K K Siu as its representative. The Taxpayer gave no correspondence address in this letter. Mr Siu had previously submitted a notice of appeal on behalf of the Taxpayer giving an address in China as his correspondence address.
9. By letter dated 8 December 1999, Mr Siu informed this Board that he was indisposed and would not be prepared to continue acting for the Taxpayer.
10. Mr Siu was notified of the first hearing before us scheduled on 9 March 2000. No one appeared on behalf of the Taxpayer. We directed that the matter be adjourned to a new date so that fresh notices for hearing be sent to the Taxpayer at its registered office.

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11. We resumed hearing on 8 April 2000. Fresh notices of hearing were sent to Mr Siu and to the Taxpayer at its registered office. The Taxpayer did not appear at this resumed hearing.
12. We are of the view that this appeal has no merit whatsoever. It is a frivolous appeal which resulted in substantial costs being incurred by this Board.
13. We dismiss the Taxpayer's appeal and we further order the Taxpayer to pay costs in the sum of \$3,000.