

The Commissioner of Inland Revenue

(Applicant)

and

Right Margin Limited

(Respondent)

**Court of First Instance
(Inland Revenue Appeal No. 4 of 2016)**

Hon Godfrey Lam J in Chambers

Date of Hearing : 26 September 2017

Date of Judgment : 12 October 2017

Inland Revenue Ordinance (Cap. 112) – section 69 – application for leave to appeal from the decision of the Board of Review’s decision – questions of law involved in the proposed appeal

The Taxpayer’s principal business activity was money-lending, earning interest as income. The Taxpayer made loans to Victory World Limited (“VWL”), the corporate vehicle of a joint venture for a property development involving the Taxpayer’s parent company. The Taxpayer charged interest on the loans which was reported as income on an accrual basis and was taxed even though the interest had not actually been received by the Taxpayer. VWL had made certain repayments to the Taxpayer. The Taxpayer considered that it was unlikely to recover the outstanding principal and interest from VWL and in the year of assessment 1999/2000 claimed deduction for a provision made under section 16(1)(d) of the Inland Revenue Ordinance (“the Ordinance”) for bad debt in the amount of approximately \$220 million of which approximately \$156.6 million representing the accrued outstanding interest.

The Commissioner disallowed the Taxpayer’s claim for doubtful debt of \$220 million in its entirety. The Taxpayer appealed and narrowed down to focus on the provision to the extent of the unpaid accrued interest of \$156.6 million. The Board of Review (“the Board”) allowed the Taxpayer’s appeal holding that the debts were irrecoverable. The Commissioner, pursuant to section 69 of the Ordinance, applied to the Court of First Instance for leave to appeal against the Board’s decision.

Held, dismissing the Commissioner's application, that:

- (1) Section 69(3)(e)(i) of the Ordinance provides that leave to appeal must not be granted unless the court is satisfied that a question of law is involved in the proposed appeal. Therefore, it was crucial to focus on the question of law involved.
- (2) Findings of fact only raised questions of law in very limited circumstances, such as where there was no evidence at all to support the finding. The extent to which a particular piece of evidence should be accepted or rejected, and the weight to be given to it, were matters for the Board and not the court.
- (3) Grounds 1 and 12 are not proper questions of law. Ground 1 merely turned the Board's conclusion into a question. Ground 12, like Ground 1, was a general assertion, questioning the ultimate conclusion of the Board.
- (4) Grounds 2 to 8 raised on whether the Board erred in law in putting no or no sufficient weight on certain facts, *inter alia*, that the Taxpayer made subsequent loan to VWL, the strict/contractual right and obligations between VWL and the Taxpayer, the Taxpayer had not sued VWL or taken any enforcement step to recover the loan, the undertaking given by the shareholders to VWL and the value on the unsold units held by VWL. These grounds did not raise a question of law and there was evidence at all for the Board to come to the conclusion as it did.
- (5) Grounds 9 and 10 criticized the Board erred in law in allowing a deduction for a single provision made for numerous bad debts. Ground 9 was not a proper question of law because it failed to identify precisely the point of law involved. These grounds did not warrant leave to be given for an appeal.
- (6) Ground 11 asserted that the two parts in proviso (i) to section 16(1)(d) of the Ordinance should be read conjunctively and cumulatively so that to be deductible, the taxpayer must show that the debts were both included as trading receipts and lent in the ordinary course of a moneylending business. This ground was rejected. The plain and ordinary meaning

of the words in the proviso was that the debts under both parts were deductible. There was no reason in justice to deny the deduction as in this case.

In the Court of First Instance

Mr John Brewer, instructed by Department of Justice, for the Applicant

Ms Yvonne Cheng SC, instructed by Baker & McKenzie, for the Respondent

Cases referred to in the judgment of the Court of First Instance:

Graham v Commissioner of Inland Revenue (1995) 17 NZTC 12

Aust-Key Co Ltd v Commissioner of Inland Revenue [2001] 2 HKLRD 275

Runa Begum v Tower Hamlets London Borough Council [2003] 2 AC 430

Georgiou v Customs and Excise Commissioners [1996] STC 463

Commissioner of Inland Revenue v Inland Revenue Board of Review [1989] 2 HKLR 40