

B IN THE DISTRICT COURT OF THE B
C HONG KONG SPECIAL ADMINISTRATIVE REGION C
D TAX CLAIM NO.2456 OF 2011 D

E BETWEEN E

G THE COMMISSIONER OF INLAND G Plaintiff
H REVENUE H

I and I

J CHOON NANG ELECTRICAL J Defendant
APPLIANCE MANUFACTORY LTD J

K Before: L Deputy District Judge K. Lo in Chambers L

M Date of Hearing: 30 November 2011 M

N Date of Ruling: 30 November 2011 N

O RULING O

Q 1. This is the hearing of the Plaintiff's application to strike out the defence of Q
R the Defendant on the ground that there is no reasonable defence disclosed. R

S 2. This is a tax recovery case. The Plaintiff had on 22 June 2011 issued a S
T writ of summons against the Defendant and claimed a total sum of \$8,479,365 T
U being the outstanding profits tax payable by the Defendant for the year of U
assessment 2002/2003; additional profits tax payable for the years of assessment V

A 2004/2005, 2006/2007 and 2007/2008, as particularised in the Statement of
B Claim.

C 3. Miss Chan Pik Wan (“Chan”), on behalf of the Plaintiff, in her affirmation
D did set out the history of the issue of tax demand notes as well as the part-
E payment of the tax by the Defendant, the surcharges imposed on the Defendant
and how the figures in the Statement of Claim came about.

F 4. It is said by the Defendant that the said Statement of Claim lacks
G particulars and the Plaintiff is requested to furnish further and better particulars.
H The Defendant submitted that under Order 18, rule 12 of the Rules of the District
Court, the particulars of that need be set out.

I 5. Perusing the affirmations filed by the parties, in the defence filed by the
J Defendant, the objection letters written by the Defendant’s representatives in
K relation to the tax charged, the affirmation of Chan, it is abundantly clear to this
L Court that the Defendant knows exactly the case he has to meet on reading the
M Statement of Claim. I do not find the particulars of further furnishing of
particulars needed in the present case.

N 6. The relevant provisions in this case would be sections 71(1), 71(2), 75(3)
O and 75(4) of the Inland Revenue Ordinance (Cap. 112) (“the Ordinance”). In
O particular, section 75(3), which reads:

P “In proceedings under this section for the recovery of tax the
Q production of a certificate signed by the Commissioner stating the
R name and last known postal address of the defaulter and particulars
of the tax due by him shall be sufficient evidence of the amount so
due and sufficient authority for a District Court to give judgment for
the said amount.”

S 7. 75(4) of the Ordinance reads:

T “In proceedings under this section for the recovery of tax the court
U shall not entertain any plea that the tax is excessive, incorrect,
V

A subject to objection or under appeal, but nothing in this subsection
B shall be construed so as to derogate from the powers conferred by
C the proviso to section 51 (4B)(a) to give judgment for a less sum in
D the case of proceedings for the penalty specified therein.”

E 8. The effect of the above two subsections are such that any defence which
F purports to say that the tax amount certified by the Plaintiff is excessive and/or
incorrect, could not be entertained by the court and therefore the same affords no
defence in law.

G 9. As Briggs CJ said in the case of **Ng Chun-kwan v. CIR** [1976] HKLR 94:

H “*The wording of subsection (4) ...*”

I 10. Previously of section 75,

J “... of ...section [75] wraps up all the objections which can be made
K to the assessment. This is not to say that there is no defence to a
L claim for tax brought by [the Commissioner]. There may be
question as to the identity of the tax-payer for example.”

M 11. In court, the Defendant also submitted that certain facts are not clear. I
N do not see what facts relevant to the present application could still be said to be
O outstanding in view of the operation of section 75(3) and section 75(4) of the
P Ordinance and in view of the certificate from the Plaintiff dated 30 November
2011 now before me.

Q 12. The gist of the defence filed goes to say that the amount of tax demanded
R by the Plaintiff is excessive and/or incorrect. For example, on the issue of
S apportionment as to the Hong Kong source of income of the Defendant and that
of the income from this 惠來縣春南電器製造廠 (defined as “Choon Nang
T Factory”).

A 13. The Defendant also submitted that it might be that the Defendant did not
B receive the relevant Notice of Assessment or the demand note. When one reads
C the defence filed, which appears as an exhibit to the affidavit of Kwok Chi Yin,
D the affirmand for the Defendant, nor is this issue disclosed in any affirmation
E filed on behalf of the Defendant. In any event, if one reads the objection letters
F written by tax representatives for the Defendant in respect of the subject years of
G assessment, then that defence simply could not hold any water.

H 14. As to the argument by the Defendant that the assessment now claimed by
I the Plaintiff, i.e., \$54,683.32, is different from the original amount claimed in the
J Statement of Claim and that therefore the Plaintiff should first amend the
K Statement of Claim. That could not have been right. The reason why the
L Plaintiff is now seeking the lesser sum is due to the fact that there is the
M determination result on 5 September 2011, which reduces the tax liability of the
Defendant. It is an occurrence subsequent to the Statement of Claim and there
could not and should not be any need for any amendment to the Statement of
Claim. In fact, as to how the new figure is arrived at, the same has been
explained in the latest affirmation of Chan, deponent for the Plaintiff.

N 15. Again for the sake of clarity, the Plaintiff has prepared a fresh table, now
O before this court and furnished to the Defendant showing the computation of
P how this figure was arrived at.

Q 16. Considering the defence as filed, there is as submitted by the Plaintiff, no
reasonable defence disclosed.

R 17. Accordingly I now strike out the defence and enter judgment in favour of
S the Plaintiff in the sum of \$5,468,332. There is no reason in this case that costs
T should not follow the event.

U 18. The Defendant therefore is ordered to pay the Plaintiff:

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(a) The sum of \$5,468,332;

(b) Interest thereon at 8% per annum from 22nd June 2011 till today and thereafter at judgment rate till date of payment; and

(c) Costs of the action, including all costs reserved and that of this application.

(Discussion re costs)

19. The costs of this proceedings is summarily assessed at \$86,613.

(K. Lo)
Deputy District Judge

Mr Francis Kwan, Senior Government Counsel of the Department of Justice, for the Plaintiff

Mr Yau Man-fai, of Messrs. Y. S. Lau & Partners, for the Defendant