

Case No. D14/05

Salaries tax – appeal out of time – whether extension of time should be granted – Inland Revenue Ordinance ('IRO') section 66(1A).

Panel: Kenneth Kwok Hing Wai SC (chairman), Benny Kwok Kai Bun and Tse Tak Yin.

Date of hearing: 15 April 2005.

Date of decision: 10 May 2005.

7 February 2005 was the last day for the appellant to give notice of appeal.

By letter dated 4 February 2005 and received by the Clerk to the Board of Review on 8 February 2005, the appellant gave notice of appeal.

The appellant accepted that he was late in filing his appeal. The appellant is saying that his home was under renovation then and he did not have time to prepare the notice of appeal.

Held:

There is no allegation of prevention by illness or absence from Hong Kong from giving the notice of appeal within time. Nor is there any reasonable cause which the Board should extend the time limit.

Appeal dismissed.

Taxpayer in person.

Go Min Min and Leung Wing Chi for the Commissioner of Inland Revenue.

Decision:

1. By his Determination dated 4 January 2005, the Deputy Commissioner of Inland Revenue:

(2005-06) VOLUME 20 INLAND REVENUE BOARD OF REVIEW DECISIONS

- (a) confirmed additional salaries tax assessment for the year of assessment 1997/98 under charge number 9-4095032-98-0, dated 16 March 2004, showing additional net chargeable income of \$82,700 with tax payable thereon of \$14,886 [after giving effect to the Tax Exemption (1997 Tax Year) Order]; and
- (b) increased additional salaries tax assessment for the year of assessment 2001/02 under charge number 9-3311821-02-9, dated 22 September 2003, showing additional net chargeable income of \$64,140 with tax payable thereon of \$10,903 [after giving effect to the Tax Exemption (2001 Tax Year) Order] to additional net chargeable income of \$76,100 with tax payable thereon of \$12,937 [after giving effect to the Tax Exemption (2001 Tax Year) Order].

2. The Determination was sent under cover of the Deputy Commissioner's letter to the appellant dated 4 January 2005. The Deputy Commissioner informed the appellant of the appellant's right to appeal, quoting section 66(1), (1A) & (2) of the Inland Revenue Ordinance, Chapter 112, ('IRO') in full.

3. The Determination and the covering letter were sent by registered post on 4 January 2005 and were delivered on 6 January 2005 to the appellant's address.

4. 6 February 2005 was a Sunday.

5. Section 71(1)(b) of the Interpretation and General Clauses Ordinance, Chapter 1, provides that:

'(1) In computing time for the purposes of any Ordinance-

(a) ...

(b) if the last day of the period is a public holiday or a gale warning day or black rainstorm warning day the period shall include the next following day, not being a public holiday or a gale warning day or black rainstorm warning day;'

6. 7 February 2005 was the last day for an appeal within the one-month time limit under section 66(1) of the IRO.

7. By letter dated 4 February 2005 received by the Clerk to the Board of Review on 8 February 2005, the appellant gave notice of his appeal.

8. The appellant's notice of appeal is outside the one-month time limit.

(2005-06) VOLUME 20 INLAND REVENUE BOARD OF REVIEW DECISIONS

9. Section 66(1A) provides that:

‘If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1).’

10. The appellant accepted that he was late in his appeal. He said that his home was under renovation at the time and that time was needed to prepare his notice of appeal which had to be in writing and accompanied by a copy of the Determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal.

11. There is no allegation of prevention by illness or absence from Hong Kong from giving notice of appeal within time.

12. The requirements of a written notice of appeal accompanied by a copy of the Determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal apply to all cases. In our decision, there is nothing exceptional in the appellant’s case and he had not been prevented by any reasonable cause to give notice of appeal within the section 66(1) time limit.

13. The appellant has not made out any case for extension of time and we reject his application to extend time for appeal.