

Case No. D43/11

Profits tax – absence – section 68(2B)(c) of Inland Revenue Ordinance.

Panel: Colin Cohen (chairman), Julia Pui G Lau and Kumar Ramanathan.

Date of hearing: 1 December 2011.

Date of decision: 6 January 2012.

The Taxpayer through its tax representative ('the Taxpayer's Representative') filed a Notice of Appeal in respect of certain profits tax assessments. The Taxpayer's Representative subsequently informed the Board that it had no instruction to act for the Taxpayer and its representation for the Taxpayer in the scheduled appeal was withdrawn. The Clerk to the Board then wrote directly to the Taxpayer at its registered office requesting confirmation that the Taxpayer wished to withdraw the appeal but no reply was received. The Taxpayer's Representative subsequently further informed the Board that it had already resigned as the Taxpayer's tax representative and would not attend the hearing. The Board directed that the hearing for the appeal should take place. At the hearing, the Taxpayer did not attend.

Held:

The appeal was dismissed having regard to section 68(2B)(c) of the Inland Revenue Ordinance.

Appeal dismissed.

Taxpayer in absentia.

Chan Siu Ying and Fung Ka Leung for the Commissioner of Inland Revenue.

Decision:

Introduction

1. Company A ('the Taxpayer') has appealed in respect of the Determination by the Deputy Commissioner of Inland Revenue dated 13 September 2010 ('the Determination'). The Determination was in respect of Profits Tax Assessment for the years of assessment 2001/02 to

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2003/04 and 2005/06 to 2008/09.

2. The Taxpayer through its tax representative, Company B ('the Taxpayer's Representative') filed a Notice of Appeal on 13 October 2010.

3. Their grounds of appeal were that the Taxpayer's profits were profits derived from trading entirely out of Hong Kong.

4. On 9 November 2011, the Taxpayer's Representative wrote at length to the Senior Assessor.

5. On 14 November 2011, the Senior Assessor responded to the Taxpayer's Representative requesting further information.

6. On 15 November 2011, the Clerk to the Board of Review received a letter from the Taxpayer's Representative which stated as follows:

'.....

We write to inform you that we have tried to contact our client without success in relation to the captioned matter. Since we have no instruction from the client to act, we write to notify you of the withdrawal from the appeal scheduled for 1 December 2011.

.....'

7. As can be seen, the Taxpayer's Representative was indicating that they did not have any instructions to act and therefore, the withdrawal was in respect of their representation.

8. In the light of this, the Clerk to the Board wrote directly to the Taxpayer at its registered office requesting confirmation that the Taxpayer wished to withdraw the appeal. No reply was received to this letter from the Taxpayer.

9. On 15 November 2011, the Taxpayer's Representative wrote to the Senior Assessor advising that they had resigned as the Taxpayer's Representative.

10. On 25 November 2011, The Taxpayer's Representative wrote to the Clerk to the Board in the following terms:

'.....

We refer to your letters dated 18 and 23 November 2011 enclosing the first set of the Board's papers (B1) and the Revenue's Document Bundle (R1) and the Revenue's Authority Bundle (R2) in respect of the Company's appeal. We write to inform you that we have already resigned as the Company's tax representative. We therefore will not attend the hearing on the Company's behalf.

.....'

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11. In the light of the communications and correspondence, the Board directed that the hearing on 1 December 2011 should take place.
12. At the hearing, the Taxpayer did not attend.
13. Therefore, having regard to section 68(2B)(c) of the Inland Revenue Ordinance, we dismissed the appeal.