

Case No. D48/08

Extension of time – notice of appeal – extension of time – section 66(1) and (1A) of the Inland Revenue Ordinance ('IRO').

Panel: Colin Cohen (chairman), Peter R Griffiths and Paul Harris SC.

Date of hearing: 25 November 2008.

Date of decision: 12 January 2009.

In early September 2008, the Taxpayer gave notice to appeal against a determination of the Deputy Commissioner of Inland Revenue made in May 2008. The notice was approximately 2½ months out of time. The reason put forward by the Taxpayer was that he had been plagued by the damage to his house in a heavy rain in June 2008. He gave evidence that he had been fully aware as to the time limits that were imposed on him but that he had been very frustrated over the damage caused to his house. He however confirmed that he had not taken any time off work and that he was exceptionally busy at his office. He applied for an extension of time under section 66(1A) of the IRO.

Held:

1. The word 'prevented' as set out in section 66(1A) of the IRO is best understood to bear the meaning of the term 'unable to'. The word 'prevented' cannot be used in a situation where a taxpayer is able to give notice but has failed to do so. The time limits imposed must be observed.
2. It is quite clear that the Taxpayer had every opportunity to file his appeal in time. He was not prevented from doing so and put forward no good reason as to why the Board should exercise the discretion in his favour. There was nothing exceptional in his case.

Application refused.

Cases referred to:

Chow Kwong Fai v Commissioner of Inland Revenue 4 HKLRD 687

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D2/04, IRBRD, vol 19, 76
D11/89, IRBRD, vol 4, 230
D3/91, IRBRD, vol 5, 537
D14/05, (2005-06) IRBRD, vol 20, 307
D9/79, IRBRD, vol 1, 354

Taxpayer in person.

Chan Wai Lin and Chan Man On for the Commissioner of Inland Revenue.

Decision:

1. This is an application by the Taxpayer for the Board to exercise its discretion under section 66(1A) of the Inland Revenue Ordinance ('IRO') to allow an extension of time in favour of the Taxpayer to give notice of appeal to the Board.
2. On 14 May 2008, the Deputy Commissioner of Inland Revenue (the Deputy Commissioner) sent a Determination with reasons along with a covering letter of the same date. The Determination and reasons were sent to the Taxpayer's home address by registered post.
3. On 21 May 2008, the Determination was collected by the Taxpayer in person at the Post Office.
4. On 4 September 2008, the Clerk to the Board received a letter dated 31 August 2008 in which the Taxpayer gave notice to appeal against the Deputy Commissioner's Determination. On the same date, the Clerk to the Board advised the Taxpayer that his letter of the 31 August 2008 could not be accepted as a valid notice of appeal because it was lodged after the statutory period of one month as required by under section 66(1)(a) of the IRO. In turn, the Clerk advised the Taxpayer that he would be informed of a hearing date in due course and if the Board accepted his reasons for being late in lodging his appeal, it would then proceed to hear the appeal in the usual way.
5. It can be seen from the above that the Taxpayer's notice of appeal is approximately 2½ months out of time.
6. Therefore, the issue for us to consider is whether or not we should allow the extension of time in favour of the Taxpayer.
7. By his letter dated 31 August 2008, the Taxpayer stated:

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‘.... I am so sorry about being late for appeal as I have been plagued by the damage to my house in a heavy rain since June this year. Please accept my apology for my lateness.’

8. At the hearing before us, the Taxpayer gave evidence and he provided us with some further information as to the reasons for his late appeal. He accepted that he received the Determination on 21 May 2008. He confirmed that he opened the letter, read it, took it home and placed it on a bookcase in his living room.

9. He also confirmed to us that he was fully aware as to the time limits that were imposed upon him. However, he then drew to our attention the fact that in early June and approximately around the 6th, heavy rains resulted in damage to his bedroom.

10. He informed us that due to the strong wind, the window in his bedroom leaked. Water seepage caused damage to his furniture and an electric fan.

11. He also told us that for a few weeks he was forced to sleep in his living room pending resolution of the water seepage and damage to his bedroom.

12. However, he informed us that he did not take any time off work. He was exceptionally busy at his office.

13. In short, he indicated to us that he was very frustrated over the damage caused to his bedroom, he had difficulty in finding contractors (which in the end of the day he did not use) and he himself fixed the window. Again, he apologized to us and asked us to exercise our discretion to allow him an extension of time to lodge his appeal.

14. The relevant legislation is set out in section 66(1) of the IRO and it provides as follows:

‘Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may within-

(a) 1 month after the transmission to him under section 64(4) of the Commissioner's written determination together with the reasons therefor and the statement of facts; or

(b) such further period as the Board may allow under subsection (1A),

either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the

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clerk to the Board and is accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal.'

15. Section 66(1A) provides as follows:

'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). This subsection shall apply to an appeal relating to any assessment in respect of which notice of assessment is given on or after 1 April 1971.'

16. Ms Chan on behalf of the Inland Revenue Department ('IRD') drew our attention to the following authorities:

- (a) Chow Kwong Fai v Commissioner of Inland Revenue 4 HKLRD 687;
- (b) D2/04, IRBRD, vol 19, 76;
- (c) D11/89, IRBRD, vol 4, 230;
- (d) D3/91, IRBRD, vol 5, 537;
- (e) D14/05, IRBRD, vol 20, 307;
- (f) D9/79, IRBRD, vol 1, 354.

17. The authorities and the past decisions of the Board are clear that the word 'prevented' as set out in section 66(1A) of the IRO is best understood to bear the meaning of the term 'unable to'. It has also been accepted by the various cases that the word 'prevented' cannot be used in a situation where a taxpayer is able to give notice but has failed to do so. Past decisions of the Board show that the time limits imposed must be observed.

18. In D14/05, IRBRD, vol 20, 307, the taxpayer was late in filing his appeal. He indicated to the Board that his home was under renovation and did not have time to prepare the notice of appeal. Again, the Board rejected the application to extend time for appealing and took the view that there was nothing exceptional in the taxpayer's case and that he had not been prevented by any reasonable cause to give notice of appeal within the period set out in section 66(1).

19. Having carefully considered the Taxpayer's arguments and having reviewed all the authorities, we are of the view that there was no good reason put to us as to why we should exercise our discretion to allow an extension of time. It is quite clear that the Taxpayer had every opportunity to file his appeal in time. He was not prevented from doing so and put forward no good reason as to why we should exercise our discretion in his favour.

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20. Again, we repeat that the procedures for lodging appeals are clearly set out in the IRO and as such, the time limits laid down must be observed. Although the Taxpayer may have suffered water damage to his premises during the heavy rains in early June, we accept the submissions put forward by the IRD that there was nothing exceptional in his case.

21. That being the case, we are not prepared to exercise our discretion in favour of the Taxpayer and as such, do not extend time and therefore, we are not prepared to allow the Taxpayer's application.