

Case No. D50/11

Case stated – section 69 of the Inland Revenue Ordinance – state a case on question of law – whether the questions formulated were particularized – whether the questions were questions of law.

Panel: Colin Cohen (chairman), Mark Richard Charlton Sutherland and Patrick Wu Yung Wei.

Date of hearing: 4 November 2011.

Date of decision: 9 February 2012.

The Board dismissed the Taxpayer's appeal against the Determination of the Inland Revenue in respect of profits tax assessment raised on the Taxpayer. The Taxpayer submitted an application pursuant to section 69 of the Inland Revenue Ordinance requiring the Board to state a case on a question of law for the opinion of the Court of First Instance.

A hearing was fixed to consider whether a case should be stated.

Held:

The Board considered that the questions that were formulated were unparticularized. They were not proper questions for the Board's consideration and would not, on any reading, be questions of law for the opinion of the Court of First Instance (CIR v Inland Revenue Board of Review and Aspiration Land Investment Ltd (1988) 2 HKTC 575 followed).

Application refused.

Cases referred to:

CIR v Inland Revenue Board of Review and Aspiration Land Investment Ltd
(1988) 2 HKTC 575

Taxpayer represented by its director.

Mike Lui Counsel instructed by William Liu, Government Counsel of Department of Justice for the Commissioner of Inland Revenue.

Decision:

1. On 15 June 2011, the Board dismissed the Taxpayer's appeal against the Determination of the Acting Deputy Commissioner of the Inland Revenue ('the Acting Deputy Commissioner') made on 8 July 2010 in respect of profits tax assessment raised on the Taxpayer for 2004/05.

2. On 14 July 2011, the Taxpayer submitted an application pursuant to section 69 of the Inland Revenue Ordinance (Chapter 112) ('IRO') requiring the Board to state a case on a question of law for the opinion of the Court of First Instance.

3. The 'point of law' put forward by the Taxpayer was:

'whether or not on the evidence before the Board, it could not have reasonably arrived at the findings/observations stated in paragraphs 30 to 38 of the Decision of the Board dated 15 June 2011 and/or whether or not the Board erred in law and/or in fact in coming to the said findings/observations and/or that such findings/observations are contrary to and/or wholly not supported by the evidence.'

4. Extensive communications and correspondence ensued between the Taxpayer and the Department of Justice with regard to whether or not the question formulated was indeed a proper question.

5. The Board then gave various directions with regard to written submissions that should be filed to assist the Board in deciding whether or not a case should be stated.

6. A hearing was fixed to consider whether a case should be stated. The Taxpayer confirmed that he was authorized by his wife (who he says is the liquidator of the Appellant) to attend and make representations at the hearing.

7. At the hearing, the Taxpayer submitted a further question for the Board to consider. This question was as follows:

'The question to be stated for the decision of Court of First Instance is: whether the Board of Review in coming to its conclusion/finding of fact as set out in paragraphs 32, 35 and 38 of the Decision of the Board in respect of D9/11 dated 15 June 2011, erred in law in

a) drawing such inference(s) and/or conclusion(s) as are against and/or not admitted of the evidence, and/or

b) failing to draw the necessary inference(s) which it should have drawn on the evidence; and/or

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- c) *drawing the necessary inference(s) on such primary facts as found by the Board which are against and/or not admitted of the evidence.'*

8. At the hearing, the Taxpayer, having heard the submissions of Counsel for the Acting Deputy Commissioner and having had the opportunity to review the various authorities the latter put forward, accepted that the questions formulated could not be considered to be questions of law. Therefore, after having had the opportunity to consider matters and having regard to observations made by the Board (especially as to the lack of particulars accompanying his proposed questions), the Taxpayer indicated that they did not wish to pursue their application for a case to be stated and that it would be withdrawn.

9. In any event, however, we would state that the questions that were formulated were unparticularized. Therefore, having regard to CIR v Inland Revenue Board of Review and Aspiration Land Investment Ltd (1988) 2 HKTC 575, they were not proper questions for the Board's consideration and would not, on any reading, be questions of law for the opinion of the Court of First Instance.