

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D52/92

Procedure – failure by taxpayer to appear before Board of Review, procedure to be followed by Board – section 68 of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Philip Fu Yuen Ko and Vincent Liang Wan Sang.

Dates of hearing: 30 April 1992 and 26 October 1992.

Date of decision: 5 February 1993.

The taxpayer appealed against three salaries tax assessments. At the time and date fixed for the hearing of the appeal the taxpayer failed to appear but a few days before the date fixed wrote to the Board stating that the taxpayer was outside Hong Kong and requesting a general adjournment of his appeal. The Board declined to grant a general adjournment but ordered that a new date be fixed which would give the taxpayer ample opportunity either to appoint a representative or to attend in person or make submissions.

A new date was fixed and on the eve of the hearing the taxpayer again wrote to the Board again requesting a general adjournment and again failed to appear in person or by a representative at the time and date fixed for the hearing of the appeal.

Held:

Having reviewed the procedures set out in section 68 of the Inland Revenue Ordinance the Board ordered that the appeal be dismissed.

Appeal dismissed.

J R Smith for the Commissioner of Inland Revenue.
Taxpayer in absentia.

Decision:

This is an appeal by a taxpayer against three salaries tax assessments for the year of assessment 1987/88.

The dates originally fixed for the hearing of the appeal were on 30 April 1992. On that date the Taxpayer failed to appear before the Board either in person or through an authorised representative. After giving the matter due consideration the Board made a

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ruling to the effect that the appeal be adjourned for a new date to be fixed by the Clerk to the Board of Review at some date convenient to the Board after 15 October 1992. The ruling of the Board was in the following form:

'Ruling

This is an appeal by an individual who is currently resident outside Hong Kong against a determination of the Commissioner which confirmed a salaries tax assessment and two additional salaries tax assessments.

The Clerk to the Board of Review fixed the time and the date for the hearing of the appeal. When giving notice of the time and place for the hearing of the appeal the Clerk informed the Taxpayer of his rights under section 68(2D) of the Inland Revenue Ordinance to have the appeal held in absentia.

At the time and place fixed for the hearing of the appeal the Taxpayer failed to appear either in person or through an authorized representative. However by letter dated 23 April 1992 the Taxpayer informed the Board that he would not be in Hong Kong on 30 April 1992 being the date fixed for the hearing of the appeal but informed the board that "it is possible that I shall be in Hong Kong at some time in the future". The Taxpayer then requested the Board for "a general adjournment of my appeal, so that I can notify you when I do intend to be in Hong Kong."

In his letter the Taxpayer went on to say:

"I am not in a position to let you have a written submission as requested because the determination of the Commissioner of Inland Revenue is unclear as to which assessment or assessments he is referring. Please obtain the Board's directions that the Commissioner should provide the Board and me with copies of the assessment or assessments sought to be relied on."

At the time and place set for the hearing of the appeal the representative for the Commissioner invited the Board to dismiss the appeal and he pointed out that it was likely that if the appeal was heard the Commissioner would seek to have the assessments increased because upon a review of the matter it now appeared to the Commissioner that the Taxpayer had been undercharged to salaries tax. The Board then referred to the letter from the Taxpayer dated 14 February 1992 which was accepted to be the notice of appeal in this matter. It was noted that in this letter the Taxpayer had not set out specifically his grounds of appeal but had made the following statement:

"I shall seek to rely on, inter alia, the grounds for my appealing against the assessments in question."

The Board decided that pursuant to section 66 of the Inland Revenue Ordinance the notice of appeal must include a statement of the grounds of appeal. It is not possible or

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permissible for a taxpayer to import unspecified grounds of appeal and that the words “inter alia” has no meaning or application.

The Deputy Commissioner in his determination dated 14 January 1992 set out the grounds of the objection of the Taxpayer as follows:

- “(a) The assessments were premature and an inappropriate exercise of the assessor’s powers.
- (b) Part of his income was attributable to periods spent outside Hong Kong.
- (c) The total amount of assessable income is incorrect.”

In view of the wording of the letter from the Taxpayer dated 14 February 1992, quoted above, the Board ruled that these were the grounds of the appeal of the Taxpayer.

After giving the matter due consideration the Board ordered that the appeal be adjourned for a new date to be fixed by the Clerk to the Board of Review at some date convenient to the Board after 15 October 1992. This will allow the Taxpayer ample opportunity to either appoint a representative, to attend in person, or to make submissions to the Board and apply for the appeal to be heard in his absence. The Board rejected the application by the Taxpayer for a general or sine die adjournment of the appeal.

With regard to the request by the Taxpayer that the Commissioner should provide the Board and the Taxpayer with copies of the assessment or assessments “sought to be relied on” the Board noted that it was abundantly cleared from the determination of the Deputy Commissioner that the three assessments which were the subject matter of the determination and therefore of the appeal are as set out therein by the Deputy Commissioner in his determination. The representative for the Commissioner tabled before the Board copies of these three assessments and the Clerk to the Board of Review was asked to include copies thereof when forwarding this decision to the Taxpayer.

The representative for the Commissioner informed the Board that when the appeal was heard he would draw attention to three clerical or typographical errors in the determination as follows:

Page 1 fact 4 the description “Quarters (10% of salary less outgoings and commission)” should read “Quarters (10% of salary less outgoings and leave pay)”.

Page 8 fact 18 the first two items should read as follows:

\$

Principal income

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Salary (including leave pay \$8,129)	121,163
Commission	<u>181,129</u>
	\$302,292

Appendix G is an incomplete copy of the Taxpayer's letter of 7 December 1990 because the second page thereof numbered 1B had been omitted therefrom.

The Board duly noted these three points.'

The ruling of the Board was duly sent to the Taxpayer at his address in Country X by letter dated 12 June 1992 and by letter dated 16 June 1992 the Clerk to the Board of Review gave due notice to the Taxpayer again at his address in Country X that Monday, 26 October 1992 commencing at 9:30 am had been fixed for the hearing of this appeal.

By fax letter dated Sunday, 25 October 1992 the Taxpayer informed the Clerk to the Board of Review that in view of his continued absence from Hong Kong he must again request a general adjournment of the appeal. He went on to say that he was prepared to attend the hearing of his appeal in person but could not confirm when he would be in Hong Kong. He said that it was possible that he would be in Hong Kong on or about 29 March 1993 and said that he could attend a hearing of the Board of Review in Country X. The Taxpayer then proceeded to make a number of general requests for further information and documents.

At the time and date fixed for the hearing of this appeal the Board duly convened. The Taxpayer neither appeared in person nor through his authorised representative.

The representative for the Commissioner made formal application to the Board to dismiss this appeal under section 68(2B) of the Inland Revenue Ordinance.

The wording of section 68 of the Inland Revenue Ordinance governs the proceedings of this Board of Review and is quite clear and precise in relation to situations such as the present one. Sub-section (2B) states that if on the date fixed for the hearing of an appeal the taxpayer fails to attend at the meeting of the Board either in person or by his authorised representative the Board may follow one of three specified procedures.

If the Board is satisfied that the taxpayer's failure to attend was due to sickness or other reasonable cause the Board may postpone or adjourn the hearing for such period as it thinks fit. There is no indication that the Taxpayer was sick and in view of the previous ruling made by this Board the Taxpayer is not unable to attend from other reasonable cause. It is clearly specified that the Taxpayer may attend either in person or by his authorised representative and there was no reason why the Taxpayer if unable to attend in person could not have appointed an authorised representative.

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The second specified procedure is for the Board to proceed to hear the appeal under sub-section (2D). This is the provision which has been specifically included in the Ordinance to cover situations such as the present one. Sub-section (2D) states that if the taxpayer is outside Hong Kong on the date fixed for the hearing of the appeal and is unlikely to be in Hong Kong within such period thereafter as the Board considers reasonable, the Board may proceed to hear the appeal in the absence of the taxpayer provided that the taxpayer has made written application at least 7 days prior to the date fixed for the hearing of the appeal. No application has been received from the Taxpayer to have this appeal heard in his absence and accordingly sub-section (2D) can have no application.

The third specified course is for the Board to dismiss the appeal. In the circumstances of this case the Board orders that the appeal be dismissed.