

18. The appeal in respect of the disallowance of interest paid by the Bank, paragraph 4(b) above, is dismissed.

19. The case is remitted to the Commissioner for the assessments to be revised in accordance with the opinion of the Board expressed herein.

Case No. D 9/79

Board of Review:

L. J. D'Almada Remedios, *Chairman*; Charles A. Ching, D. Evans & D. J. McIntosh, *Members*.

25 January 1980.

Inland Revenue Ordinance—assessment to additional tax under s. 82A—appeal against assessment—application for extension of time under s. 66(1A)—jurisdiction of Board to grant extension.

The appellant had been assessed to additional tax under s. 82A of the Inland Revenue Ordinance. He failed to file any notice of appeal against the assessment until after the time limit for lodgement of notice of appeal had passed. He filed a late notice but died shortly afterwards. His wife applied for an extension of time within which to appeal to the Board of Review under section 66(1A) of the Ordinance.

In considering the question of jurisdiction to grant the application the Board reached the view that they only had such power when an appellant was 'prevented' by illness or absence from the Colony or other reasonable causes from giving the requisite notice of appeal (section 66(1A)). No evidence had been brought to show that the appellant was so 'prevented' either by his illness or otherwise.

In the absence of full argument (the appellant being unrepresented) the Board declined to express its views as to whether s. 66(1A) was intended to apply to appeals against additional tax.

Decision: Appeal dismissed. If section 66(1A) applies to appeals under section 82A the Board found that it has no jurisdiction to grant the application on the facts before them.

Appellant's wife for the appellant.
Lee Kwok-leung for the Commissioner of Inland Revenue.

Reasons:

Mr. T (now deceased) was assessed to additional tax under section 82A of the Inland Revenue Ordinance on the 22 June 1979. At the time of service of the notice he was informed of his right of appeal and the procedure was explained to him. The notice of assessment also sets out in English and Chinese the steps to be followed, the time within which to appeal and to whom such notice of appeal is to be given. He failed to file any notice of appeal but on the 10 July 1979 he addressed a letter to the Commissioner of Inland Revenue. The letter

does not relate to the assessment against him under section 82A, but entreats the Commissioner not to impose the revised assessments for profits tax that had been adjusted and agreed to by him and which had become final and conclusive.

On the 22 August 1979, which is beyond the time for the lodgment of a notice of appeal he indicated in writing to the Clerk of the Board of Review his wish to appeal against the section 82A assessment. Apart from such notice being out of time it did not set out any grounds of appeal. A few days later, he died. His wife now applies for an extension of time within which to appeal under section 66(1A).

The question that arises is whether we have jurisdiction to grant the application.

Subject to what we have to say in regard to an appeal under section 82A, a Board of Review has jurisdiction to extend time if it is satisfied that an Appellant was 'prevented' by illness or absence from the Colony or other reasonable cause from giving the requisite notice of appeal (section 66(1A)). The word 'prevented', as we see it, is opposed to a situation where an appellant is able to give notice but has failed to do so. In our view, therefore, neither laches nor ignorance of one's rights or of the steps to be taken is a ground upon which an extension may be granted. Although it appears that within the time prescribed for the filing of an appeal the late Mr. T was suffering from a terminal affliction, there is nothing before us to show that because of it he could not file the notice and grounds of appeal. If section 66(1A) applies to appeals under section 82A, we do not find that we have jurisdiction to grant the application for the reasons we have stated.

It was argued on behalf of the Commissioner that in any event section 66(1A) is not apposite and cannot be invoked where additional tax is imposed under section 82A. This is because section 82B deals with appeals under section 82A and specifies the time limit for such appeals. It states that sections 66(2) and (3), 68, 69 and 70 shall "have effect with respect to appeals against additional tax as if such appeals were against assessments to tax other than additional tax." Reference to section 66(1A) is omitted. It was, therefore, argued that the Legislature intended that there should be no late appeal against an additional tax assessment under section 82A. The point is interesting but in the absence of any full argument on the subject (the Appellant being unrepresented) we do not wish to express any views on the matter since we find it unnecessary to do so. Even if section 66(1A) applies the Appellant has failed to satisfy the pre-requisites of that section to entitle us to consider her application for extension. In the circumstances, we have no jurisdiction to entertain the Appellant's appeal against the additional tax.