

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D105/99

**Salaries Tax** – deductions claimed in respect of certain payments – notice of appeal not filed in time – whether time for filing ought to be extended – discretion of the Board – section 66(1A) of the Inland Revenue Ordinance.

Panel: Ronny Wong Fook Hum SC (chairman), Karl Kwok Chi Leung and Ronald Tong Wui Tung.

Dates of hearing: 8 October and 4 December 1999.

Date of decision: 11 January 2000.

Notice of appeal was filed some four months after the Commissioner's determination was delivered to the taxpayer. The taxpayer's reason for his lateness in filing was that he did not have confirmation of certain relevant payments from a Mr A, who had been doing all the taxpayer's work for him after the latter was injured in an accident. He had tried to locate Mr A but only after some time and only after he secured Mr A's consent to assist the taxpayer, did the taxpayer file the notice of appeal.

#### **HELD** by the Board:

- (1) 'If the Appellant is prevented from filing the notice of appeal because of illness or absence from Hong Kong, then the Board had jurisdiction to extend time. This was not the case where the appellant was able to file but failed to do so' : D9/79 IRBRD, vol 1, 354 applied;
- (2) 'Even if the Taxpayer had been prevented, he had no reasonable excuse because he had had more than sufficient time to put his house in order' : D11/89 IRBRD, vol 4, 230 applied;
- (3) 'Time limits are imposed and must be observed. Anyone seeking to obtain the exercise of the discretion of a legal tribunal must demonstrate that they are "with clean hands" and that there are good reasons for the extension of time' : D3/91 IRBRD, vol 5, 537.

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Nothing prevented the taxpayer from filing the notice of appeal. Further, no convincing reason had been advanced for the delay. Hence, there was no proper appeal before the Board. The determination would stand.

### **Appeal dismissed.**

Cases referred to:

D9/79, IRBRD, vol 1, 354

D11/89, IRBRD, vol 4, 230

D3/91, IRBRD, vol 5, 537

Yip Chi Yuen for the Commissioner of Inland Revenue.

Taxpayer in person.

### **Decision:**

1. The Taxpayer appeals against the determination by the Commissioner rejecting his claim for deduction in respect of alleged payments he made in favour of one Mr A in the year of assessment 1995/96. During the year in question, the Taxpayer received \$167,355.6 from Company B for marketing Company B's products. The sum was credited into the Taxpayer's account with Bank C. According to the Taxpayer, he was injured in an accident on 17 January 1995 and Mr A was doing all the work on his behalf. Once he was paid by Company B, he withdrew like amount from his Bank C account in favour of Mr A.

2. We have to consider 2 issues:

- (a) whether we should extend time in favour of the Taxpayer for the purpose of this appeal and
- (b) whether the determination is correct in law.

### **Extension of time**

3. The Commissioner issued his determination on 26 February 1999. It was delivered to the Taxpayer on 1 March 1999. No notice of appeal was received by this Board till 29 June 1999.

4. The Taxpayer contends that he refrained from filing his notice of appeal as he did not have in hand confirmation from Mr A of the payments he received from the Taxpayer. Mr A did not have a fixed abode. The Taxpayer tried contacting Mr A via his portable telephone number and at his mother's address. There was no response to message that he left for the attention of Mr A.

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The Taxpayer eventually found out from one Ms D, the girl friend of Mr A, that Mr A was arrested and detained in the reception centre. The Taxpayer visited Mr A on 2, 12 and 18 June 1999. After securing Mr A's consent to assist, the Taxpayer filed his notice on 29 June 1999.

5. In D9/79, IRBRD, vol 1, 354, the Board pointed out that:

*'... 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 excuse from giving the requisite notice of appeal ... 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 ...'*

6. In D11/89, IRBRD, vol 4, 230, a differently constituted Board further pointed out that:

*'... The provisions of section 66(1A) are very clear and restrictive. As was pointed out by the Commissioner's representative, an extension of time can only be granted where the Taxpayer has been "prevented" from giving notice of appeal within the prescribed period of one month. In this case, it cannot be said that the Taxpayer was prevented from appealing. He could well have appealed with the time prescribed. He was in no way prevented from so doing by the fact that he did not have evidence to prove his case.*

*Furthermore, even if he had been prevented, he had no reasonable excuse because he had had more than sufficient time to put his house in order.'*

7. In D3/91, IRBRD, vol 5, 537, the taxpayer was 1 day late. The Board emphasised that:

*'The delay in filing the second notice of appeal was only one day but that is not the point. Time limits are imposed and must be observed. Anyone seeking to obtain the exercise of the discretion of a legal tribunal must demonstrate that they are "with clean hands" and that there are good reasons for the extension of time.'*

8. In the light of these authorities, we are not prepared to extend time in favour of the Taxpayer. There was nothing to prevent the Taxpayer from filing the necessary notice of appeal. Statements of his Bank C account would be highly supportive of his case. He first visited Mr A in the reception centre on 3 June 1999. No convincing reason has been advanced for the delay till 29 June 1999.

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### **The merits**

9. As we are not disposed to extend time in favour of the Taxpayer, it is unnecessary for us to discuss in depth the Taxpayer's claim for deduction. Were the position otherwise, we would have found that the Taxpayer failed to discharge his burden in proving the payments to Mr A. Despite strong suggestions from this Board that he should tender in evidence all relevant documents in support of his case, the Taxpayer made no effort to place before us important contemporaneous evidence. His passbook with Bank C is the most notable example. The Revenue has demonstrated significant discrepancies between the amounts evidenced by the receipts signed by Mr A and the amounts paid by Company B. We would not have been prepared to act on the receipts produced by the Taxpayer well after the alleged events.

10. For these reasons, we hold that there is no proper appeal before us. The assessment must therefore stand.