

Case No. D1/11

Profits tax – failing to respond to issues before the hearing – failing to answer and to deal with the issues raised in respect of appeal – costs order imposed having regard to the way in which the appeal has been conducted – section 68(9) of the Inland Revenue Ordinance (‘IRO’).

Panel: Colin Cohen (chairman), Leung Lit On and Wong Ho Ming Horace.

Dates of hearing: 15 February 2011 and 29 March 2011.

Date of decision: 6 April 2011.

The taxpayer objected to the profits tax assessments for the years of assessment 2003/04 to 2007/08. Apart from the ground of appeal, the taxpayer’s representative has not responded to any of the communications and correspondence which they have received from the Inland Revenue Department in respect of the various issues that were dealt with in the Determination before the first hearing on 15 February 2011.

At that hearing, the taxpayer’s representative applied for an adjournment to enable her to answer and to deal with the issues raised in respect of the appeal. The Board granted an adjournment and gave directions to filing of documents and witness statements and a new hearing date was fixed for 29 March 2011.

On 4 March 2011, the taxpayer’s representative requested a further adjournment for dates to be fixed to enable Counsel to appear before the Board. The Board refused such an application. On 25 March 2011, the taxpayer wrote to the Clerk to the Board of Review that the taxpayer did not wish to pursue the appeal and asked for leave to withdraw.

At the hearing on 29 March 2011, the taxpayer’s representative confirmed that they did not wish to pursue the appeal.

Held:

The Board gave the taxpayer’s representative the opportunity to put forward as to why a costs order in the sum of HK\$5,000 should not be made against the taxpayer pursuant to section 68(9) of the Inland Revenue Ordinance having regard to the way in which the appeal has been conducted. The taxpayer’s representative confirmed that she would not contest such an order.

Appeal dismissed and costs order in the amount of \$5,000 imposed.

Taxpayer's representative for the taxpayer.

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

Decision:

Introduction

1. The Taxpayer has objected to the Profits Tax assessments for the years of assessment 2003/04 to 2007/08. By a notice of appeal dated 6 August 2010, the Taxpayer's Representative appealed against the Determination dated 7 July 2010 on the following ground:

‘ [The Taxpayer] derived profits of USD67,499, USD99,913, USD33,636 and USD56,465 during the accounting period/years ended 31 December 2004, 2005, 2006 and 2007 respectively from trading profits derived entirely outside Hong Kong. The trading profits are not chargeable to profits tax under section 14 of the IRO.’

2. Apart from the ground of appeal, the Taxpayer's Representative has not responded to any of the communications and correspondence which they have received from the Inland Revenue Department ('IRD') in respect of the various issues that were dealt with in the Determination before the first hearing on 15 February 2011.

3. At that hearing, the Taxpayer's Representative applied for an adjournment to enable her to put together the relevant documents, correspondence, etc. that would answer and deal with the issues raised in respect of the appeal. With some reluctance, the Board granted an adjournment and gave directions with regard to filing of documents, witness statements, etc. A new hearing date was fixed for 29 March 2011.

4. On 4 March 2011, the Taxpayer's Representative requested a further adjournment for dates to be fixed to enable Counsel to appear before the Board.

5. The Board refused such an application by way of a written direction.

6. On 25 March 2011, the Taxpayer's Representative wrote to the Clerk to the Board of Review advising that the Taxpayer did not wish to pursue the appeal and asked for leave to withdraw.

7. At the hearing on 29 March 2011, the Taxpayer's Representative confirmed that they did not wish to pursue the appeal. The Board gave the Taxpayer's Representative the opportunity to put forward as to why a costs order in the sum of HK\$5,000 should not be made against the Taxpayer pursuant to section 68(9) of the Inland Revenue Ordinance ('IRO') having regard to the way in which the appeal has been conducted. The Taxpayer's Representative confirmed that she would not contest such an order.

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8. Therefore, the Board dismissed the appeal and made an order that the assessment be increased by a further sum of HK\$5,000 in accordance with section 68(9) of the IRO.