

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D11/89

Appeals – extension of time to give notice of appeal – whether taxpayer had been ‘prevented’ from giving notice – whether taxpayer had ‘reasonable cause’ – s 66(1A) of the Inland Revenue Ordinance.

Panel: William Turnbull (chairman), Chan Pang Fee and Francis Jerome Law.

Date of hearing: 14 March 1989.

Date of decision: 5 May 1989.

The IRD issued estimated assessments to the taxpayer with respect to property trading activities, after twice having compounded failures by the taxpayer to provide information. The taxpayer objected to the assessments, and submitted returns in which he claimed deductions for expenses. He did not supply supporting information or vouchers with respect to these expenses, and claimed that he had lost the relevant receipts. The IRD disallowed some of the claimed expenses.

After the statutory time limit for lodging an appeal to the Board had expired, the taxpayer applied to the Board for an extension of the period within which he could give a notice of appeal. He claimed that he was not able to obtain copies of relevant cheques from his bank until after the statutory period had expired and that he had been unable to trace the person to whom he had allegedly paid expenses.

Held:

No extension of time would be granted.

- (a) The taxpayer had not been ‘prevented’ from filing a notice of appeal within the statutory period. He could have appealed notwithstanding the lack of evidence.
- (b) In any case, the taxpayer did not have ‘reasonable cause’ because he had had plenty of time to arrange his affairs properly but had failed to do so.

Application dismissed.

Wong Chi Wah for the Commissioner of Inland Revenue.

Taxpayer in person.

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Decision:

The Taxpayer is applying for an extension of time for lodging a notice of appeal under section 66(1A) of the Inland Revenue Ordinance and, subject to such extension of time being granted, to appeal against a determination of the Deputy Commissioner which refused to allow the Taxpayer to deduct certain alleged commission expenses from a profits tax assessment for the year of assessment 1980/81. It is appropriate that we should first deal with the application for an extension of time under section 66(1A). The facts are as follows:

1. Between 16 September 1980 and 15 October 1981, the Taxpayer carried out five property trading transactions which were as follows:

	<u>Date of Purchase</u>	<u>Purchase Price</u> \$	<u>Date of Sale</u>	<u>Selling Price</u> \$	<u>Surplus on Sale</u> \$
Property A	16 Sep 1980	450,810	31 Jan 1981	621,116	170,306
Property B	13 Mar 1981	910,404	17 Mar 1981	1,903,480	993,076
Property C	25 Jul 1981	823,284	7 Aug 1981	923,948	100,664
Property D	28 Jul 1981	3,334,954	30 Jul 1981	3,789,720	454,766
Property E	16 Sep 1981	566,280	15 Oct 1981	696,960	130,680

The Taxpayer was aware of the fact that these five transactions constituted property trading but did not notify the Commissioner with regard thereto.

2. On 21 May 1982, a letter was sent by the Inland Revenue Department to the Taxpayer asking for details of transactions in land which the Taxpayer had conducted. The Taxpayer replied to this letter through his tax representative by letter dated 6 April 1983, but failed to give the Inland Revenue Department the information which they had requested to their satisfaction.
3. There was apparently a dialogue or exchange of letters between the Inland Revenue Department and the tax representative of the Taxpayer which included the Commissioner offering, on 28 April 1983, to compound two failures by the Taxpayer to provide information requested. The Taxpayer agreed to accept the compounding of the two offences by letter dated 20 December 1983.
4. Having become aware of the transactions or some of the transactions, the Inland Revenue Department issued to the Taxpayer on 3 September 1984 two profits tax returns for the years of assessment 1980/81 and 1981/82. The Taxpayer failed to complete or file these two tax returns as required therein.

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5. On 23 April 1986, two estimated assessments were issued for the years 1980/81 and 1981/82 assessing profits of \$1,500,000 and \$900,000 respectively.
6. The Taxpayer objected to these two estimated assessments as being excessive and, on 9 June 1986, the Inland Revenue Department issued two tax returns which were duplicates of those which had been previously issued on 3 September 1984 and which the Taxpayer had failed to return.
7. On 11 July 1986 the Taxpayer filed the two duplicate returns which attached thereto simple statements of account setting out the gross profit which he had received from his property trading transactions and claiming deductions in lump sum figures without supporting information or vouchers. The account for 1980/81 was in the following form:

Year of Assessment 1980/81

Basis Period: Year ended 31 March 1981

Surplus on disposal of Property A and Property B		\$1,163,382
<u>Less: Commission Paid*</u>	\$380,000	
Legal fee and Stamp Duty	50,000	
Entertainment and Travelling	<u>30,000</u>	<u>460,000</u>
Profits		<u>\$ 703,382</u>

* Commission Paid:

<u>Name</u>	<u>Amount</u>
Mr X	\$380,000

8. In subsequent correspondence, the Taxpayer informed the Inland Revenue Department that he had lost the receipts in respect of the commission which he had paid.
9. On 20 March 1987, the assessor proposed to the Taxpayer to allow only half of the entertainment and travelling expenses claimed because the Taxpayer was unable to produce any supporting evidence to prove the amount which he claimed; to allow in full the legal fee and stamp duty; and to disallow in full the claim for commission. The Taxpayer did not reply to this proposal.
10. The assessor then referred the objection by the Taxpayer to the Deputy Commissioner for his determination. The Deputy Commissioner's

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determination was in favour of the proposal put forward by the assessor. He allowed the Taxpayer to deduct the full amount of the legal fee and stamp duty and one half of the entertainment and travelling expenses which he had claimed, and disallowed in full the commission which the Taxpayer alleged that he had paid.

At the hearing of the appeal, the Taxpayer said that he had not been able to file an appeal against the Commissioner's determination within the one month period specified by the Inland Revenue Ordinance because he had not been able to obtain copies of the cheques which he had used to pay the commission. He said that he had only received copies of the cheques from the bank recently when he filed his application for an extension of time to appeal against the determination. He said that the reason for the delay by the bank was because the bank had informed him that it would take some time to obtain copies of the cheques because they related to transactions which had taken place many years previously. Copies of the cheques which the Taxpayer alleged related to the commission were tabled before the Board. These cheques referred to payments stated on the face of the cheques, which were written in Chinese, in favour of A Limited. The Taxpayer said that the money had been paid to that company as agent for or on behalf of Mr X but no evidence was adduced to substantiate this.

The Board has no sympathy in this matter with the Taxpayer. It is apparent that the Taxpayer has been reluctant to make a full disclosure of the profits which he made on property trading transactions during the two years when he conducted this business. It was apparent when the Taxpayer appeared before us that he is a man who understands business and understands that tax must be paid on business profits. It is hard to conceive of a simpler set of accounts than those relating to the Taxpayer's property trading transactions.

The gross profit of the Taxpayer is the difference between the purchase price that he paid on five properties only and the gross proceeds of sale received. His net taxable profit is the gross profit less any expenses which he incurred in earning that profit. He has claimed as expenses the legal and stamp duty expenses which have been allowed in full. He has claimed an unsubstantiated sum in respect of entertainment and travelling and, though he has no evidence to support the amount, the Commissioner has accepted half of what the Taxpayer has claimed. This is indeed generous. With regard to the commission, all that the Commissioner has asked the Taxpayer to do is to prove that he paid the commission. The commission was paid to only one person.

This is not a case where the Taxpayer was caught unawares many years after the event. The Taxpayer should have known that he was liable to pay tax on these transactions when they were carried out. The transaction which realized the biggest of the two profits in the year in question was property B. This was purchased on 13 March 1981 and sold on 17 March 1981, a period of only 4 days. The Taxpayer does not dispute that he is liable to pay tax on the transactions as property trading transactions.

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Even if the Taxpayer had 'overlooked' his tax responsibilities, he was reminded of them when he received a letter from the Inland Revenue Department on 21 May 1982 asking for details of his land transactions. He employed a tax representative to handle his tax affairs. All he then had to do was to prepare and submit proper accounts of his property trading transactions and offer them for taxation. Instead, he proceeded to delay and declined to give the information which the Inland Revenue Department requested of him and was even subject to penalty provisions when his failure on two occasions was compounded.

At the hearing, the Commissioner's representative informed us that his Department had been unable to trace the person to whom the Taxpayer alleged he had paid the commission. Though no evidence was given regarding this, we accept the statement made by the Commissioner's representative to us.

The heart of the Taxpayer's submission was that he could not file notice of appeal against the Commissioner's determination within the period specified by the Inland Revenue Ordinance because the bank was unable to provide copies of cheques. However, even now there is no evidence of any money having been paid to Mr X but only to a company. It may well be that the Taxpayer did pay commission and that he did pay it to a Mr X. However, this the Taxpayer has totally failed to prove even though he has been asked for proof for very many years.

Though we have analysed the merits of this case, it is not necessary for us to do so. 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 within 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. Indeed, he had had since March 1981 when the second of the transactions took place or May 1982 when the Inland Revenue Department put him on notice that they were making enquiries into his affairs.

We have no hesitation in dismissing this application and the appeal which the Taxpayer had sought to lodge. As we have stated, the case of the Taxpayer is entirely without any merit whatsoever either legally or as a matter of fact.