

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D19/01

Profits tax – lodging appeal against Commissioner’s determination – taxpayer seeking extension of time to lodge – taxpayer failing to give reasons for failure to lodge – absent from Hong Kong – no automatic right of extension – burden on taxpayer – section 66(1A) of the Inland Revenue Ordinance (‘IRO’).

Panel: Ronny Wong Fook Hum SC (chairman), Gerard Chung Wai Hung and Karl Kwok Chi Leung.

Date of hearing: 6 March 2001.

Date of decision: 26 April 2001.

By a letter dated 11 October 2000, the taxpayer was informed that, by the Revenue’s determination of 18 May 2000, he had been found liable to pay profits tax. By a letter dated 22 November 2000, the taxpayer requested the Board to grant him an extension of time for lodging the appeal.

Held:

Although the taxpayer had been away from Hong Kong since 11 April 2000, he had not made any representations as to why he had not lodged an appeal on time. He therefore had not discharged the burden imposed upon him. No automatic extension of time was conferred simply by the taxpayer being absent from Hong Kong.

Appeal dismissed.

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Chan Siu Ying for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

Background

1. By an application dated 15 May 1992, the Taxpayer applied to the District Lands Office of District A for permission to build a small house on a lot a lot at Address B (' the Lot'). By a building licence dated 10 December 1993, the Taxpayer was granted permission to erect on the Lot a building of not more than three storeys.
2. By a certificate of compliance dated 20 December 1994, the District Lands Office of District A expressed satisfaction that the Taxpayer had duly complied with his obligations under the building licence in respect of the house (' the House') which he erected on the Lot.
3. By his solicitors' letter dated 7 August 1995, the Taxpayer sought from the District Lands Office of District A modification of the conditions of the building licence so as to enable him to assign various parts of the House erected on the Lot. In consideration of a premium of \$650,800, the District Lands Office of District A granted the modification sought.
4. The Taxpayer disposed of all three storeys of the House.

| Date | Unit | Price \$ |
|------------|--------------|-------------|
| 26-10-1995 | Second floor | 1,600,000 |
| 1-4-1996 | Ground floor | 1,430,000 |
| 8-8-1996 | First floor | 1,398,000 |

5. By a determination dated 18 May 2000, the Revenue took the view that the Taxpayer is assessable for profits tax in respect of the gains that he made from disposal of the units in the House.
6. There are two issues before us:
 - (a) whether we should extend time in favour of the Taxpayer so as to enable him to proceed with his appeal.
 - (b) whether the Taxpayer is assessable to profits tax.

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Extension of time

7. According to records of the Immigration Department, the Taxpayer left Hong Kong on 11 April 2000. There is no further record indicating the Taxpayer's return to Hong Kong.

8. By a letter to the Revenue dated 29 September 2000, the Taxpayer reiterated his stance that he is not liable to profits tax in respect of the gains that he made from disposal of the units in the House. By a letter dated 11 October 2000, the Revenue informed the Taxpayer that the issues raised by him had been decided by the Revenue's determination of 18 May 2000.

9. The Taxpayer sent a further notice of objection to the Revenue on 27 October 2000. The Revenue informed him by a letter dated 15 November 2000 that his appeal should be lodged with this Board.

10. By a letter dated 22 November 2000, the Taxpayer requested this Board to grant him an extension of time.

11. The Taxpayer did not appear before us. His brother Mr C asserts that he is duly authorized by the Taxpayer to handle his appeal on his behalf.

12. The whole basis of the application for extension of time has rested on the Taxpayer's absence from Hong Kong since 11 April 2000. The Revenue's representative did not raise any objection to this application.

13. Our jurisdiction is regulated by section 66(1A) of the IRO which provides:

'If the Board is satisfied that an appellant was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal in accordance with subsection (1)(a), the Board may extend for such period as it thinks fit the time within which notice of appeal may be given under subsection (1).'

14. Absence from Hong Kong does not confer an automatic right for extension of time. It is for the Taxpayer to satisfy us that he was so prevented from giving the requisite notice. The determination was sent to the Taxpayer at Address D. Correspondence before and after the determination were all sent to the Taxpayer at this address. No explanation was furnished to us as to why the determination escaped his attention. We are therefore not prepared to extend time in favour of the Taxpayer.

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The merits of the appeal

15. It is strictly unnecessary for us to express any view on the substantive appeal.
16. We are, however, of the view that the appeal is totally without merits. Mr C argued that the Taxpayer did not make any profit at all as the proceeds of sale went towards acquisition of another piece of land bought with the view of developing the same to provide residence for all male members of his family. Mr C frankly admitted in cross-examination that he did not handle the development of the Lot. That development was handled by the Taxpayer and his father. We do not see how Mr C can assist us as to the Taxpayer's true intention at the time when the Lot was purchased.
17. For these reasons, we refuse to disturb the assessments on the Taxpayer.