

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D26/04

Salaries tax – extension of time for appeal – whether appellant established a proper case for an extension of time to file a notice of appeal under section 66(1A) of the Inland Revenue Ordinance ('IRO') – whether appellant was prevented by 'reasonable cause' other than illness from giving notice of appeal to the Board of Review promptly.

Panel: Kenneth Kwok Hing Wai SC (chairman), Archie William Parnell Jr and William Thomson.

Date of hearing: 12 June 2004.

Date of decision: 7 July 2004.

By a determination dated 26 January 2004, the Deputy Commissioner reduced the salaries tax assessment of the appellant from HK\$442,801 to HK\$438,001. The written determination was sent to the appellant by registered post on 26 January 2004 and was delivered to the appellant's address on the next day.

Subsequently, intending to appeal against the determination, the appellant filed a notice of appeal dated 25 March 2004 which was received by the Clerk to the Board of Review on 8 April 2004. This was more than three months after the one month time limit for filing a notice of appeal under section 66(1)(a) of the IRO had expired.

The appellant submitted that for a number of reasons that he was prevented from filing the notice of appeal within time for reasonable cause and accordingly sought a time extension under section 66(1A) of the IRO.

Held:

1. None of the reasons advanced by the appellant constituted 'other reasonable cause' within the meaning of section 66(1A) of the IRO to justify the Board of Review to grant a time extension for the filing of the notice of appeal.
2. The following reasons were rejected by the Board as either unsupported by the evidence and/or insufficient to amount to 'other reasonable cause':
 - (i) the appellant travelled extensively to China at the material time;

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- (ii) the appellant sought to telephone the Deputy Commissioner to ascertain his reasons for objections;
 - (iii) the fact that the appellant might have overlooked the deadline;
 - (iv) the time taken by the assessor to respond to the appellant's inquiries;
 - (v) the assertion that the appellant concentrated on helping his clients; and
 - (vi) the assertion that the appellant concentrated on looking after his family members who depended upon him.
3. In the premises, the Board refused to extend time since it was not satisfied that the appellant was prevented by any reasonable cause from giving notice of appeal within the one month time limit under section 66(1) of the IRO.

Appeal dismissed.

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

Decision:

1. By his determination dated 26 January 2004, the Deputy Commissioner of Inland Revenue reduced salaries tax assessment for the year of assessment 2001/02 under charge number 9-1080196-02-5, dated 9 September 2002, showing assessable income of \$2,952,010 with tax payable thereon of \$442,801 to assessable income of \$2,940,010 with tax payable thereon of \$438,001.
2. The determination was sent under cover of a letter dated 26 January 2004 from the Deputy Commissioner to the appellant, drawing attention to section 66 subsections (1), (1A) and (2) of the Inland Revenue Ordinance, Chapter 112, quoting these subsections in full and giving the address of the Clerk to the Board of Review.
3. The covering letter and the determination was sent by registered post on 26 January 2004 and delivered to the appellant's address on 27 January 2004.
4. The appellant's notice of appeal was dated 25 March 2004, more than one month after the transmission to him of the determination.

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5. The appellant's notice of appeal, although dated 25 March 2004, was not received by the Clerk to the Board of Review until 8 April 2004.

6. The appellant's notice of appeal was clearly out of time under section 66(1). The question for our decision is whether the appellant has made out a case for us to extend time for appeal under section 66(1A). Subsections (1) & (1A) of section 66 provide that:

'(1) Any person (hereinafter referred to as the appellant) who has validly objected to an assessment but with whom the Commissioner in considering the objection has failed to agree may within-

(a) 1 month after the transmission to him under section 64(4) of the Commissioner's written determination together with the reasons therefor and the statement of facts; or

(b) such further period as the Board may allow under subsection (1A),

either himself or by his authorized representative give notice of appeal to the Board; but no such notice shall be entertained unless it is given in writing to the clerk to the Board and is accompanied by a copy of the Commissioner's written determination together with a copy of the reasons therefor and of the statement of facts and a statement of the grounds of appeal.

(1A) 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).'

7. The appellant has made no assertion of any illness.

8. In his notice of appeal, the appellant alleged that:

'I also travelled extensively in China last few months to seek job opportunities and some advisory works.'

9. This assertion of extensive travel was demonstrated by Ms Chan Siu Ying who represented the respondent at the hearing to be untrue. According to the records kept by the Immigration Department, the appellant's periods of absence from Hong Kong from 27 January 2004 to 8 April 2004 were as follows:

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Departure date	Departure time	Day of week	Arrival date	Arrival time	Day of week
28-1	14:13	Wednesday	29-1	11:46	Thursday
1-2	17:58	Sunday	1-2	23:20	Sunday
5-2	14:46	Thursday	5-2	20:11	Thursday
25-2	07:44	Wednesday	28-2	16:58	Saturday
14-3	17:25	Sunday	15-3	22:42	Monday
16-3	20:17	Tuesday	17-3	03:00	Wednesday
27-3	16:12	Saturday	27-3	23:50	Saturday

10. We are not satisfied that the appellant was prevented by illness or absence from Hong Kong from giving notice of appeal within the time limit laid down by section 66(1). It remains for us to consider whether the appellant was prevented by other reasonable cause from giving notice of appeal timeously.

11. The appellant asserted in his notice of appeal and at the hearing that he tried to telephone the Deputy Commissioner 'to understand his reasons for objection better'. The Deputy Commissioner had already made his determination and given his reasons in writing. If the appellant has read the covering letter and the determination and if he has taken statutory time limits with the seriousness which such limits demand, he should have lodged his appeal in time and then continued his alleged attempt to contact the Deputy Commissioner 'to understand his reasons for objection better'.

12. At the hearing, the appellant repeated himself a number of times saying that he might have overlooked the date. That is clearly not a reasonable cause within the meaning of section 66(1A).

13. The appellant alleged that the assessor took time to respond to him. This is a bare assertion which we reject based on the correspondence placed before us. We set out below the dates of the correspondence between the appellant and the assessor:

- (a) 20 January 2003 – the appellant's objection notice;
- (b) 29 January 2003 – the assessor's enquiry letter;
- (c) 27 March 2003 – the assessor's reminder;
- (d) 10 April 2003 – the appellant's request for extension;
- (e) 10 April 2003 – the appellant's reply received by the Revenue on 14 April 2003;
- (f) 3 July 2003 – the assessor's settlement proposal;
- (g) 10 July 2003 – the appellant's reply, transmitted by fax on 17 July 2003;
- (h) 12 August 2003 – the assessor's enquiry;

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- (i) 26 September 2003 – the assessor’s reminder; and
- (j) 18 November 2003 – the appellant’s reply.

In any event, an assessor’s slow response time does not constitute reasonable cause within the meaning of section 66(1A). Following receipt of the Commissioner’s determination, a taxpayer’s remedy is to lodge and pursue his appeal in accordance with the provisions of the Ordinance, in particular section 66(1) thereof.

14. The appellant asserted that he concentrated on helping clients. Like most of his assertions, this allegation is devoid of particulars. We are not satisfied that the appellant’s work, if any, had any material effect on his ability to give notice of appeal within the statutory time limit of one month.

15. Lastly, the appellant asserted that he concentrated on looking after his family members who depended on him. The amount of income in dispute is \$975,000. If the appellant was unemployed and if he was concerned about the financial welfare of his family members, that is a reason for giving notice of appeal promptly, instead of taking almost 2 ½ times of the statutory time limit.

16. We are not satisfied that the appellant was prevented by any reasonable cause from giving notice of appeal within the time limit laid down by section 66(1).

17. We are not satisfied that the appellant has made out any basis for extension of time and we decline to extend time for appeal.