

Case No. D26/13

Extension of time – practice and procedure – hearing and disposal of appeals – absence – section 68 of the Inland Revenue Ordinance.

Panel: Lo Pui Yin (chairman), Fong Sui Yi Andrea and Ha Suk Ling Shirley.

Date of hearing: 7 January 2014.

Date of decision: 7 January 2014.

The issues for this Board were whether the notice of appeal was lodged within the relevant time period and if not, whether this Board should exercise its power under section 66(1A) to extend time.

By an email on 1 January 2014 to the Clerk to the Board of Review, the Taxpayer indicated his belief that he would not have the matter resolved in a fair and reasonable way in the absence of legal aid in that he would not attend the scheduled hearing on 7 January 2014.

There has been no notice in writing from the Taxpayer to withdraw his appeal between 1 January 2014 and 7 January 2014.

On 7 January 2014, the Taxpayer did not attend the hearing at the scheduled time.

Held:

1. The Taxpayer failed to attend the scheduled hearing either in person or by his authorized representative.
2. The Taxpayer's failure to attend was not due to illness or other reasonable cause.
3. Lack of legal aid or inability to obtain legal representation is not a reasonable cause.

Appeal dismissed.

Appellant in absentia.

Ng Sui Ling, Louisa for the Commissioner of Inland Revenue.

Decision:

Introduction

1. This is the appeal by the Appellant, Mr A ('the Taxpayer'), against the assessment of the Respondent, the Commissioner of Inland Revenue ('the Revenue'), of salaries tax for the year of assessment 2011/12. Given that the Taxpayer's appeal appears to have been lodged with the Clerk to the Board of Review (Inland Revenue Ordinance) on a date after the expiry of the period of one month after the transmission of the Revenue's Determination of the Taxpayer's objection, the issues of whether the notice of appeal was lodged within the relevant time period and if not, whether this Board should exercise its power under section 66(1A) of the Inland Revenue Ordinance (Chapter 112) to extend time also arise.

2. The Taxpayer's appeal was originally scheduled to be heard on 13 November 2013. However, on 7 November 2013, the Taxpayer requested this Board to postpone the hearing of his appeal to allow him to seek legal advice from the Free Legal Advice Scheme of the Duty Lawyer Service. This Board decided on 11 November 2013 to postpone the hearing and reschedule the hearing to 7 January 2014, commencing at 9:30 a.m.

3. On 7 January 2014, the Taxpayer did not attend the hearing at the scheduled time. Earlier, on 1 January 2014, the Taxpayer sent an email to the Clerk to the Board of Review (Inland Revenue Ordinance) to indicate that he would not attend the hearing of this Board on 7 January 2014.

4. The email of the Taxpayer of 1 January 2014 did not constitute a withdrawal of the appeal by notice in writing. The Clerk to the Board of Review (Inland Revenue Ordinance) has not received any notice in writing from the Taxpayer to withdraw his appeal between 1 January 2014 and 7 January 2014. Accordingly, section 68(1A) of the Inland Revenue Ordinance does not apply to the Taxpayer's appeal.

5. Section 68(2) of the Inland Revenue Ordinance requires the appellant to attend the meeting of the Board of Review at which the appeal is heard in person or by an authorized representative. Section 68(2B) provides for what the Board of Review may do if on the date fixed for the hearing of the appeal, the appellant fails to attend at the meeting of the Board of Review either in person or by his authorized representative. It states:

' (2B) If, on the date fixed for the hearing of an appeal, the appellant fails to attend at the meeting of the Board either in person or by his authorized representative the Board may-

(a) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;

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(b) *proceed to hear the appeal under subsection (2D); or*

(c) *dismiss the appeal.*'

6. Section 68(2B) of the Inland Revenue Ordinance applies in the Taxpayer's appeal since the Taxpayer has failed to attend the scheduled hearing of this Board for the hearing of his appeal either in person or by his authorized representative.

7. This Board finds that the Taxpayer's failure to attend was not due to illness or other reasonable cause. The Taxpayer's email of 1 January 2014 stated that following the session with the duty lawyer, the Taxpayer understood that he may not obtain legal aid for his appeal before this Board; that the government may appoint a lawyer in private practice to attend the hearing; and that substantial legal costs would be involved. He then expressed the view that he did not believe that in the absence of legal aid he would have the matter resolved in a fair and reasonable way. And as a result, he indicated that he would not attend the scheduled hearing of 7 January 2014. None of the above matters plainly suggest illness or other reasonable cause for not attending the hearing of this Board. In particular, this Board wishes to make it clear that this Board is under a common law duty to hear and determine the appeals fairly and this duty operates whether or not an appellant is legally represented or acts in person. Therefore, this Board does not consider that lack of legal aid or inability to obtain legal representation can constitute, without more, a reasonable cause for not attending a scheduled hearing of the appeal.

8. There was no notice in writing given pursuant to section 68(2D) of the Inland Revenue Ordinance. Therefore this Board may not proceed to hear the appeal under that provision.

9. The only available option for this Board under section 68(2B) of the Inland Revenue Ordinance is to dismiss the Taxpayer's appeal.

10. This Board accordingly dismisses the Taxpayer's appeal.