

Case No. D36/11

Procedure – Appellant absent from appeal hearing – no information as to reason of absence – dismissal of the appeal – sections 68(2), (2B), (2C) and (2D) of the Inland Revenue Ordinance ('the Ordinance').

Panel: Kenneth Kwok Hing Wai SC (chairman), Diana Cheung and Mak Wai Piu Paul.

Date of hearing: 28 October 2011.

Date of decision: 28 November 2011.

The Deputy Commissioner of Inland Revenue assessed the Appellant to additional tax. The Appellant appealed against the additional tax assessment. At the scheduled appeal hearing, neither the Appellant nor his representative appeared. Apart from the notice of appeal, the Appellant did not file any written submissions, nor was there any evidence to show the reason of his absence.

Held:

Section 68(2) of the Ordinance provides that the Appellant or his representative must attend the appeal hearing. The Board of Review may postpone the hearing under section 68(2B)(a) if it was satisfied that an appellant's absence at the hearing was due to sickness or any reasonable cause. But there was no evidence to show the Appellant was absent because of sickness or any reasonable cause. There was also no application by the Appellant under section 68(2D) for the Board to hear the appeal in his absence under section 68(2B)(b). Thus, the only course available to the Board was to dismiss the appeal under section 68(2B)(c).

Appeal dismissed.

Taxpayer in absentia.

Mui Tsz Ling, Wu Man Fai Raymond and Poon Oi Yi for the Commissioner of Inland Revenue.

Decision:

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1. By an assessment dated 19 May 2011, the Deputy Commissioner of Inland Revenue assessed the Appellant to additional tax under section 82A of the Inland Revenue Ordinance, Chapter 112 ('the Ordinance'), in the sum of \$12,000.
2. By a notice of appeal dated 8 June 2011, the Appellant gave notice of appeal against the additional tax assessment.
3. By letter dated 26 August 2011, the Clerk informed the Appellant that its case was scheduled to be heard on 28 October 2011.
4. Apart from the notice of appeal, the Clerk's Office had not received any oral or written communication from the Appellant by the time of the hearing on 28 October 2011.
5. The Appellant failed to attend the hearing on 28 October 2011, whether in person or by its authorized representative.
6. Sections 68(2), (2B), (2C) and (2D) of the Ordinance provide that:
 - '(2) *Subject to subsection (2B), an appellant shall attend at the meeting of the Board at which the appeal is heard in person or by an authorized representative.'*
 - '(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;*
 - (b) *proceed to hear the appeal under subsection (2D); or*
 - (c) *dismiss the appeal.*
 - (2C) *If an appeal has been dismissed by the Board under subsection (2B)(c) the appellant may, within 30 days after the making of the order for dismissal by notice in writing addressed to the clerk to the Board, apply to the Board to review its order and the Board may, if satisfied that the appellant's failure to attend at the meeting of the Board for the hearing of the appeal was due to sickness or any other reasonable cause, set aside the order for dismissal and proceed to hear the appeal.*
 - (2D) *The Board may, if satisfied that an appellant will be or is outside Hong Kong on the date fixed for the hearing of the appeal and is unlikely to be*

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in Hong Kong within such period thereafter as the Board considers reasonable on the application of the appellant made by notice in writing addressed to the clerk to the Board and received by him at least 7 days prior to the date fixed for the hearing of the appeal, proceed to hear the appeal in the absence of the appellant or his authorized representative.'

7. There is no material to satisfy us, and we are not satisfied, that the Appellant's failure to attend was due to sickness or other reasonable cause.
8. Thus, sub-section (2B)(a) does not apply.
9. There is no application by the Appellant under sub-section (2D) to hear the appeal in its absence and sub-section (2B)(b) does not apply.
10. Since neither paragraph (a) nor paragraph (b) applies, that leaves us with paragraph (c) in sub-section (2B) and the appeal must be dismissed.
11. We dismiss the appeal under section 68(2B)(c).