

INLAND REVENUE BOARD OF REVIEW DECISIONS

Case No. D4/99

Profits Tax – application for an extension of time to appeal against the determination of the Commissioner – meaning of ‘other reasonable cause’ under section 66(1A) of the Inland Revenue Ordinance.

Panel: Ronny Wong Fook Hum SC (chairman), Edmund Leung Kwong Ho and Anthony So Chun Kung.

Date of hearing: 8 April 1999.

Date of decision: 27 April 1999.

This was an application under section 66(1A) of the IRO for extension of time to appeal against the determination of the Commissioner dated 17 May 1995. The extension of time sought was in respect of the period between 17 June 1995 to 6 February 1999 – a period over 3 years. The taxpayer’s illness and absence from Hong Kong only accounted for part of that period. No evidence had been tendered as to the taxpayer’s whereabouts between mid-1996 to early 1999. The only excuse for that period related to the taxpayer’s lack of actual knowledge of the relevant determination and her low standard of education. The issue in this appeal was whether these fall within the meaning of ‘other reasonable cause’ under section 66(1A) of IRO.

Held:

- (1) In exercising our jurisdiction under section 66(1A), the Board had borne in mind a number of factors:
 - (a) Time requirements laid down by the IRO are intended to be observed.
 - (b) The Revenue and the taxpayer are entitled to have their difference resolved with reasonable expedition. Non-compliance with time limits can cause prejudice and is not conducive to an efficient administration of our tax system.
 - (c) A ‘reasonable cause’ required more than a mere statement that the taxpayer forgot about it, or was too busy to get on with it. An omission caused by neglect is unlikely to receive sympathetic consideration from the Board.

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- (d) Whether a cause was reasonable must be assessed in the light of the personal attribute of the taxpayer. Factors such as illiteracy or old age must be given due weight but those factors did not constitute a general licence for non-compliance with the time limits under the IRO.
- (2) Although the Board was prepared to assume that the relevant determination and the letter dated 31 October 1995 (the reply made by the Commissioner regarding the taxpayer's objections raised on 17 October 1995) did not come to the actual notice of the taxpayer, the Board was of the view that there was neglect on the part of the taxpayer leading to the long delay in this matter. There was no doubt that she received the demands of 14 September 1995. The matter was pressing. She should not have left the matter in abeyance throughout 1996. She faced with the District Court proceeding in 1997. She wrote to this Board for assistance but was totally disinterested in any response from this Board leading to vacation of the December 1997 hearing date. The Board had no explanation as to her position in 1998. In these circumstances, the Board was of the view that it would not be just to accede to the taxpayer's application for an extension of time.

Appeal dismissed.

Tang Yiu Fai for the Commissioner of Inland Revenue.
Taxpayer represented by Mr Francis So.

Decision:

1. This is an application under section 66(1A) of the Inland Revenue Ordinance (Chapter 112)(the IRO) for extension of time to appeal against the determination of the Commissioner ('the Determination') dated 17 May 1995.
2. The Taxpayer was hitherto the proprietress of Company A, a butcher business selling beef at District B. Company A commenced operation on 1 June 1977 but ceased trading on 31 March 1992.
3. The Revenue conducted investigations into the affairs of Company A and its profits for the years of assessment 1982/83 to 1987/88. The Taxpayer was interviewed on 13 December 1988.
4. On 9 March 1989, the assessor raised on the Taxpayer an estimated assessment for the year of assessment 1982/83. By letter dated 27 March 1989, the Taxpayer raised an objection against that assessment on the ground that it was excessive.

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5. On 23 March 1989, based on the returns submitted, the assessor raised on the Taxpayer 5 profits tax assessment for the years of assessment 1983/84 to 1987/88. The Taxpayer did not object to these assessments.

6. In the course of investigation, the assessor raised on the Taxpayer the following additional profits tax assessments:

Year of assessment	Date of issue	Additional assessable profits
1983/84	15-2-1990	\$200,000
1984/85	25-3-1991	\$300,000
1985/86	26-3-1992	\$200,000
1986/87	23-2-1993	\$300,000
1987/88	3-3-1994	\$300,000

The Taxpayer lodged objections against these additional assessments on the ground that the additional assessable profits were estimated and excessive.

7. By a letter dated 19 January 1994, the chief assessor sent to the Taxpayer an assets betterment statement covering the period between 1 April 1982 to 31 March 1988. It shows a total discrepancy of \$4,646,744 for the years of assessment 1982/83 to 1987/88. The Taxpayer did not respond to the assets betterment statement. All subsequent attempts made by the assessor to contact the Taxpayer failed.

8. By the Determination of 17 May 1995, the Commissioner rejected the Taxpayer's objections and made the following assessment:

Year of assessment	Revised assessable/Additional assessable profits
1982/83	\$228,119
1983/84	\$387,445
1984/85	\$863,397
1985/86	\$1,384,188
1986/87	\$967,354
1987/88	\$849,336

9. By notices dated 14 September 1995, the Commissioner demanded payment from the Taxpayer in accordance with the Determination. By letter dated 17 October 1995, the Taxpayer voiced her objection against those demands. The Commissioner responded by letter dated 31 October 1995. The Commissioner pointed out that the demands were made in accordance with the Determination. The Taxpayer's attention was drawn to the provisions of section 66 of the Inland Revenue Ordinance. The Taxpayer was further informed of the steps required to be taken in order to lodge a late appeal before this Board.

10. The Determination; the notices of 14 September 1995 and the letter of 31 October 1995 were all sent by the Revenue to the Taxpayer at District C ['the Old Address'].

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11. The Taxpayer's failure to pay in accordance with the notice of 14 September 1995 resulted in proceedings being taken by the Commissioner in the District Court for recovery of the tax overdue. The Taxpayer wrote to this Board on 17 May 1997. The Taxpayer made no reference to the Determination in this letter but explained that 'I was delay to reply the letter to you because I was still in China and subsequent suffer the illness for the period for 10 October 1995 ...'. This Board was invited to cancel the District Court proceedings and to contact the Commissioner in relation to her case. She also provided this Board with her new address in District B.

12. By letter dated 10 November 1997, this Board fixed 20 December 1997 to consider whether there is any proper appeal from the Taxpayer for its consideration. The notice was sent to the Taxpayer's new address in District B but was returned unclaimed. Other attempts to contact the Taxpayer proved unsuccessful.

13. By letter dated 29 January 1999, the Taxpayer appointed Mr Francis So ('Mr So') to be her tax representative. By further letter dated 6 February 1999, the Taxpayer gave notice to this Board of her wish to appeal against the Determination.

14. Mr So appeared before us on behalf of the Taxpayer. Mr So submitted that:

- (a) The Taxpayer was suffering from heart disease since 1994.
- (b) For health and financial reasons, the Taxpayer stayed in China during the following periods:
 - (i) 24 April 1995 to 3 June 1995;
 - (ii) 8 June 1995 to 18 June 1995;
 - (iii) 24 June 1995 to 11 August 1995;
 - (iv) Early October 1997 to 24 October 1997.
- (c) The Taxpayer did not have actual notice of the Determination as she did not visit the Old Address when she returned from China. In any event, the Taxpayer would not appreciate the significance of the Determination as she does not read English or Chinese.
- (d) The Taxpayer was not wholly indifferent to her tax affairs. She objected by letter of 17 May 1997.

15. Section 66 of the IRO provides:

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(1) Any person ... who have validly objected to an assessment but 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 authorised representative give notice of appeal to the board ...

(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) ...'

16. Mr So contends that the Taxpayer did not have actual notice of the Determination until early this year. The extension of time sought is in respect of the period between 17 June 1995 to 6 February 1999 – a period over 3 years. The Taxpayer's illness and absence from Hong Kong only accounted for part of that period. No evidence has been tendered as to the Taxpayer's whereabouts between mid-1996 to early 1999. The only excuse for that period relates to the Taxpayer's lack of actual knowledge of the Determination and her low standard of education. The issue is whether these fall within the meaning of 'other reasonable cause' under section 66(1A).

17. In exercising our jurisdiction under section 66(1A), we have borne in mind the following factors:

- (a) Time requirements laid down by the IRO are intended to be observed.
- (b) The Revenue and the Taxpayer are entitled to have their differences resolved with reasonable expedition. Non compliance with time limits can cause prejudice and is not conducive to an efficient administration of our tax system.
- (c) A 'reasonable cause' requires more than a mere statement that the Taxpayer forgot about it, or was too busy to get on with it. An omission caused by neglect is unlikely to receive sympathetic consideration from the Board.

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- (d) Whether a cause is reasonable must be assessed in the light of the personal attributes of the Taxpayer. Factors such as illiteracy or old age must be given due weight but those factors do not constitute a general licence for non-compliance with the time limits under the IRO.

18. We are prepared to assume (without deciding) that the Determination and the letter of 31 October 1995 did not come to the actual notice of the Taxpayer. We are however of the view that there was neglect on the part of the Taxpayer leading to the long delay in this matter. There is no doubt that she received the demands of 14 September 1995. The matter was pressing. She should not have left the matter in abeyance throughout 1996. She was faced with the District Court proceeding in 1997. She wrote to this Board for assistance but was totally disinterested in any response from this Board leading to vacation of the December 1997 hearing date. We have no explanation as to her position in 1998. In these circumstances, we are of the view that it would not be just to accede to the Taxpayer's application for an extension of time. We therefore disallow the application for extension and hold that there is no proper appeal before us.

19. We would like to record the assistance given to us by Mr So. He had said all that can be said on behalf of the Taxpayer.