

**Case No. D54/05**

**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' from giving notice of appeal to the Board of Review promptly.

Panel: Jat Sew Tong SC (chairman), Stephen Liu Ling Hong and George Lo Kwan Wong.

Date of hearing: 31 August 2005.

Date of decision: 26 October 2005.

By a determination dated 25 February 2005, the Deputy Commissioner upheld a salaries tax assessment against the taxpayer. The determination, together with a notification letter, was received by the taxpayer on 28 February 2005.

The notification letter, which was in standard form, contained a reminder that any appeal against the determination to the Board must be lodged within one month of the date of receipt of the determination. However, the Notice of Appeal did not reach the Board until 18 May 2005, and was hence out of time for over 50 days. The issue before the Board was whether an extension of time should be granted.

**Held:**

1. The burden is on the taxpayer to satisfy the Board that he was prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal under section 66(1A) of the IRO. It is well established that the section must be strictly construed: see D96/99; D19/01.
2. The only explanation given for the delay was that the taxpayer was too busy with work and although he disagreed with the determination he did not wish to pursue the matter further. It was only on 11 May 2005, when he received the revised assessments, that he decided to appeal. In these circumstances, the Board held that the taxpayer had failed to discharge his burden in proving prevention by reasonable cause from lodging the appeal in time, and hence dismissed the appeal.

**Appeal dismissed.**

Cases referred to:

D96/99, IRBRD, vol 14, 614

D19/01, IRBRD, vol 16, 183

Taxpayer in person.

Tang Hing Kwan and Chan Siu Ying for the Commissioner of Inland Revenue.

**Reasons for decision:**

**Introduction**

1. In this appeal the Appellant taxpayer objected to his salaries tax assessment for the year of assessment 2001/02.

2. The appeal was lodged out of time. At the hearing of the appeal, the Board first considered whether an extension of time to appeal should be granted to the Appellant pursuant to section 66(1A) of the Inland Revenue Ordinance, Chapter 112 ('IRO'). Having heard evidence from the Appellant and considered the relevant materials, the Board came to the clear view that no extension of time should be granted and the appeal was accordingly dismissed. We now give our written reasons for our decision.

**Relevant facts**

3. The relevant facts could be briefly stated. The Appellant was employed by a Hong Kong company as a Sales Supervisor with effect from 1 December 2000. His remuneration package included a 'basic salary', 'commissions' and 'incentive bonuses'.

4. The substance of the dispute concerned whether deductions on account of expenses allegedly incurred by him exclusively in relation to his employment should be allowed in assessing his taxable income.

5. In his tax returns for the assessment year, the Appellant claimed 20% deduction over his total income of \$352,570. That sum consisted of 'basic salary' of \$142,140, 'commission' of \$144,572 and 'incentive bonus' totalling \$65,858 (all figures). The Inland Revenue Department ('IRD') originally did not accept any deductions, but after making enquiries with the Appellant's employer, the IRD determined that a 10% discretionary deduction would be allowed in respect of expenses in accordance with established practice, but it was considered that the 10% deduction

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would be applicable only to the 'commission' of \$144,572, and not to the 'incentive bonus' of \$65,858.

6. That assessment was upheld by the Deputy Commissioner in a determination dated 25 February 2005 ('the Determination').

7. From the materials before the Board, it would appear that the Determination together with a notification letter in standard form were delivered to the Appellant's residential address on 28 February 2005. At the hearing the Appellant did not dispute that he had received the Determination and the notification letter on 28 February 2005. We therefore found that the same were in fact delivered to the Appellant on that date.

8. The standard form notification letter contained a reminder that any appeal against the Determination to this Board must be lodged within one month of the date of receipt of the Determination. However, the Appellant did not file any appeal within that time. Instead, his notice of appeal did not reach the Clerk to the Board until 18 May 2005. Hence the appeal was out of time for over 50 days.

**No extension of time could be granted**

9. Section 66 of the IRO provided (in so far as material) as follows:

*'(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*

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*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) ...*

- (3) *Save with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds contained in his statement of grounds of appeal given in accordance with subsection (1).'*

10. The burden was on the Appellant to satisfy the Board that he was '*prevented by illness or absence from Hong Kong or other reasonable cause from giving notice of appeal*'. It is well established that the section must be strictly construed: see, for example, Case No D96/99, IRBRD, vol 14, 614 (decision 18 November 1999) and Case No D19/01, IRBRD, vol 16, 183 (decision 26 April 2001).

11. The only explanation given by the Appellant as to why he had failed to lodge his appeal within time was that he was too busy with work, and although he disagreed with the Determination he did not wish to pursue the matter further. It was only on or about 11 May 2005 when he received revised assessments for the years of assessment 2000/01 and 2002/03 that he decided to appeal against the Determination out of time.

12. In the circumstances, although we were very sympathetic to the Appellant, we were unable to accept that the Appellant had discharged the burden of proving that he was prevented by any reasonable cause from lodging the appeal within time.

### **Conclusion**

13. Accordingly, the appeal must be dismissed, and we see no useful purpose in us going into the substantive merits of the appeal.