

Case No. D55/06

Salaries tax – whether or not expenses and outgoings should be deducted – section 68(4) of the Inland Revenue Ordinance ('IRO') – whether or not the taxpayer has incurred the alleged expenses and outgoing

Panel: Kenneth Kwok Hing Wai SC (chairman), Chow Wai Shun and Duncan Ho Hung Kwong.

Date of hearing: 16 October 2006.

Date of decision: 14 November 2006.

The taxpayer told the Board that he had incurred the following expenses and outgoings which should be deducted in the salaries tax assessment of his income: -

- (a) telephone expenses in excess of the amounts reimbursed by his former employer;
- (b) queue jumping expenses in excess of the amounts reimbursed by his former employer;
and
- (c) expenses to settle a traffic accident.

Held:

1. Section 68(4) provides that the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.
2. Having considered the evidence, the Board is not satisfied on a balance of probabilities that the taxpayer did incur any telephone expense and queue jumping expenses in excess of the total amount. The Board is not satisfied on a balance of probabilities that the taxpayer has incurred any expenses to settle traffic accident.

Appeal dismissed.

Taxpayer in person.

Chan Tak Hong for the Commissioner of Inland Revenue.

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Decision:

Introduction

1. This case was heard by a differently constituted panel of the Board of Review in the evening of 4 May 2004. Before producing any draft decision for the consideration of the other panel members, the panel chairman resigned on 7 July 2006.
2. Another panel has since been convened to hear the case starting anew.
3. By a Determination dated 29 November 2002, the Acting Deputy Commissioner of Inland Revenue reduced the salaries tax assessment for the year of assessment 1999/2000 under charge number 9-1277649-00-A, dated 27 October 2000, showing net chargeable income of \$94,053 with tax payable thereon of \$6,036 to net chargeable income of \$64,053 with tax payable thereon of \$2,733.
4. The Determination was sent under cover of a letter dated 29 November 2002. The covering letter quoted section 66(1), (1A) and (2) of the Inland Revenue Ordinance, Chapter 112, and gave the address of the Clerk to the Board of Review.
5. The covering letter and the Determination were posted on 4 February 2003 to the appellant.
6. By letter dated 2 November 2003, the appellant wrote to the Inland Revenue Department quoting the Revenue's reference as stated on the covering letter dated 29 November 2002. The appellant enclosed a document purporting to be a statement dated 15 March 2003 by a former colleague of his. The appellant also enclosed a document dated 28 September 2003.
7. The Revenue responded by letter dated 25 November 2003 drawing attention to the fact that the time limit for appeal had already elapsed and that the appellant's letter to the Revenue was not a notice of appeal within the meaning of section 66.
8. By letter dated 18 February 2004, received by the Clerk to the Board of Review on 21 February 2004, the appellant gave notice of appeal to the Clerk.

Issues on the merits of the appeal

9. On the merits of the appeal, the appellant told us that he had incurred the following expenses and outgoings which should be deducted in the assessment of his income:

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- (a) telephone expenses in excess of the amounts reimbursed by his former employer;
- (b) queue jumping expenses in excess of the amounts reimbursed by his former employer; and
- (c) \$15,702, being 27% of \$58,155, the Hong Kong dollar equivalent of RMB65,823 paid to settle a traffic accident.

10. He confirmed his assertions on oath.

11. Section 68(4) provides that the onus of proving that the assessment appealed against is excessive or incorrect shall be on the appellant.

Telephone charges

12. Whether the appellant did incur any telephone expense in excess of the total amount of \$10,400 (\$800 x 13) in the 1999/2000 year of assessment is a question of fact.

13. No telephone bill or receipt has been produced.

14. He has put forward different versions and has made no attempt to reconcile or explain the discrepancies.

- (a) In his letter sent with his tax return for 1999/2000 dated 28 August 2000, he asserted that the sum on this item was \$3,600 (\$300 x 12).
- (b) In his letter received by the Revenue on 12 December 2000 objecting to the salaries tax assessment, he asserted that monthly contract sum for telephone charges was \$1,300 (‘香港大陸電話費合約一仟 佰元’) and that the actual expenses should be \$1,000 plus.
- (c) In his letter dated 15 February 2001, he asserted that the monthly telephone charges amounted to \$1,000 plus.
- (d) At the hearing of the appeal, he said that the sum on this item was \$500 per month. When confronted by Ms CHAN Tak-hong with the letter referred to in (a) above, he reduced it to \$300 per month.

15. For the reasons given above, the Board is not satisfied on a balance of probabilities that the appellant did incur any telephone expense in excess of the total amount of \$10,400 (\$800

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x 13) in the year of assessment 1999/2000. Having failed on the factual basis, his appeal on this item fails.

Queue jumping expenses

16. Whether the appellant did incur any queue jumping expenses in excess of the amounts reimbursed by his former employer is a question of fact.

17. The appellant's pay for 1999/2000 amounted to \$310,053. His former employer reimbursed expenses (including \$10,400 telephone charges and \$6,000 queue jumping fees) totalling \$159,991.50. Viewed against such pay package, the Board would require some convincing that if the monthly queue jumping fee were \$1,000, the former employer would and did only reimburse half of it. The Board is not convinced.

18. The Board attaches no weight to the document dated 28 September 2003 which the appellant submitted to the Revenue under cover of his letter dated 2 November 2003. This is not a contemporaneous document. It purported to be issued by a transport company. The appellant said that the maker was a customers officer but did not explain why the document purported to be issued by a transport company. There is no explanation on how the alleged transport company came to have anything to do with the queue jumping fee.

19. The Board also attaches no weight to the document purporting to be a statement dated 15 March 2003 by a former colleague of the appellant. This is not a contemporaneous document. Assuming the maker of the document is a former colleague of the appellant, the maker had no personal knowledge of the factual question in issue, i.e. whether the appellant, not his former colleague, did in fact incur any queue jumping expenses in excess of the amounts reimbursed by his former employer.

20. For the reasons given above, the Board is not satisfied on a balance of probabilities that the appellant did incur any queue jumping expenses in excess of the amounts reimbursed by his former employer. Having failed on the factual basis, his appeal on this item fails.

Traffic accident expenses

21. In submitting his 1999/2000 tax return, the appellant enclosed a copy of a document in support of his claim for deduction of traffic accident expenses.

22. The document contained words to the effect that 'all penalties and expenses totalled RMB80,994 less RMB 4,000 entertainment expenses not to be paid for by driver' ('所有罰款及費用共人民幣 80994 減人民幣 4,000.00 應酬費不用司機支付').

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23. The Board drew the appellant's attention to the above words and asked if he wished to say anything about it. He said he did not wish to answer. The Board said that the words could mean that, apart from entertainment expenses of RMB4,000, the driver, that is, the appellant, did not have to pay any of the penalties or expenses totalling RMB80,994. Again, the appellant declined to respond.

24. In the absence of any response from the appellant, the Board is not satisfied on a balance of probabilities that the appellant has incurred any expense under this item. Having failed on the factual basis, his appeal on this item fails.

Decision on the merits of the appeal

25. For the reasons given above, the appeal fails on its merits and must be dismissed.

Whether to extend time for appeal

26. The question of whether to extend time for appeal should have been dealt with first. However, in view of the Board's decision on the merits of the appeal, the Board's decision on whether to extend time has little or no practical effect and the Board will say no more about it. If time is extended, the appeal must be dismissed on the merits. If time is not extended, the appeal must also be dismissed.

Disposal of appeal

27. The Board dismisses the appeal and confirms the assessment appealed against as reduced by the Acting Deputy Commissioner.