

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D58/93

Dismissal of Appeal – failure of taxpayer to attend at hearing – section 68(2B)(c) of the Inland Revenue Ordinance.

Panel: Howard F G Hobson (chairman), Foo Tak Ching and Archie William Parnell.

Date of hearing: 1 February 1994.

Date of decision: 21 February 1994.

The taxpayer failed to appear before the Board of Review and the Board of Review was informed that the taxpayer was outside of Hong Kong. No further explanation was given.

Held:

The appeal was dismissed. There was no reasonable cause for the taxpayer failing to appear and no application had been made to have the appeal heard in the absence of the taxpayer.

Appeal dismissed.

Doris Lee for the Commissioner of Inland Revenue.

Taxpayer in absentia.

Decision:

On the morning of the day on which an appeal has been scheduled at 5:15 p.m. of an appeal against additional salaries tax assessments (and an application to extend the time for lodging the grounds of appeal) a member of the staff of an accounting firm telephoned the Clerk to the Board of Review asking for the hearing to be postponed: no reason was given. On being advised of this request the Chairman decided, and the accountants were so advised, that the request should be made before the Board at the hearing.

Shortly before the hearing the Clerk to the Board received a fax from the accountant concerned to the effect that the Taxpayer was outside Hong Kong on business and as they had not been instructed the accounting firm would not appear at the hearing to represent him.

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The material parts of the relevant provisions of section 68 of the Inland Revenue Ordinance read as follows:

- ‘(2B) If, on the date fixed for the hearing of an appeal, the Taxpayer 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 Taxpayer’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.’
- ‘(2D) The Board may, if satisfied that a taxpayer will be or is outside Hong Kong on the date fixed for the hearing of the appeal and is unlikely to be in Hong Kong within such period thereafter as the Board considers reasonable on the application of the taxpayer 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 taxpayer or his authorized representative.’

At the time set for the hearing we considered that the Taxpayer’s failure to attend due to a visit to a country outside Hong Kong on business could not of itself (that is without further elaboration) constitute a ‘reasonable cause’ enabling us to postpone the hearing. We further decided that our right under section 68(2B)(b) to proceed to hear the appeal depended upon the taxpayer giving at least seven days prior notice and, as no such notice had been given that course was not open to us.

Therefore in accordance with section 68(2B)(c) we ordered that this appeal be dismissed. In communicating this order to the Taxpayer, we have requested the Clerk to the Board to advise the Taxpayer of his right under section 68(2C) to apply to set aside this order.