

**Case No. D6/07**

**Salaries tax** – practice and procedure – failure to attend appeal hearing – no reasonable cause shown – no application for hearing in absence – Section 68(2),(2B) and (2D) of the Inland Revenue Ordinance (‘IRO’)

Panel: Horace Wong Yuk Lun SC (chairman), Kwong Kok Shi and William Tsui Hing Chuen.

Date of hearing: 16 March 2007.

Date of decision: 16 March 2007.

Date of written decision: 13 June 2007.

Following a determination by the Commissioner dated 11 October 2006, the taxpayer wrote to the Board a letter dated 10 December 2006 asking the Board to reconsider his case again.

By a letter dated 5 February 2007, the Clerk to the Board informed the taxpayer that the appeal was scheduled to be heard on 16 March 2007. The taxpayer replied to the Clerk by a letter dated 9 February 2007 stating that he could not attend the hearing.

The Clerk upon the Board’s direction, wrote to the taxpayer to remind the taxpayer to attend the hearing in person or by an authorized representative and the consequence that his appeal might be dismissed unless his absence is due to sickness or other reasonable cause. His attention was also drawn to his right to apply to the Board to have his appeal heard in his absence but only if it was satisfied that he would be or was outside Hong Kong then.

**Held:**

1. The taxpayer failed to attend the appeal hearing. There was no evidence that his failure to attend was due to sickness or other reasonable cause. There was no application made by him for the hearing in his absence. The Board had no other option but to dismiss the appeal.

**Appeal dismissed.**

Taxpayer in absentia.

(2007-08) VOLUME 22 INLAND REVENUE BOARD OF REVIEW DECISIONS

Poon So Chi and Chan Man On for the Commissioner of Inland Revenue.

**Decision:**

1. On 16 March 2007, upon the failure of the Appellant to attend the appeal hearing scheduled on that date, the Board of Review ('Board') decided to dismiss the appeal of the Appellant.
2. The reasons for the Board's decision are set out below.

**The appeal**

3. Following a determination ('the Determination') by the Deputy Commissioner of Inland Revenue ('the Commissioner') dated 11 October 2006 of an objection raised by the Appellant in respect of his salaries tax assessment for the year of assessment 2004/05, the Appellant wrote to the Board by a letter dated 10 December 2006 asking the Board 'to reconsider the case again'. The Board was prepared to treat the letter as one giving notice of appeal against the Determination.

4. By a letter dated 5 February 2007, the Clerk to the Board ('Clerk') informed the Appellant, inter alia, that the appeal was scheduled to be heard on 16 March 2007 from 5:15 p.m. to 7:15 p.m. at the Office of the Board. The Clerk further drew the Appellant's attention to the provision of section 68(2) of the Inland Revenue Ordinance (Chapter 112), under which the Appellant was required to attend in person or by an authorized representative at the meeting of the Board at which the Appellant's appeal was heard.

5. The Appellant replied to the Clerk by a letter dated 9 February 2007. The post-script of the Appellant's letter stated:

'P.S. Sorry cannot go for your hearing on 16 March 2007'

6. The Clerk referred the Appellant's said letter to the Board for its direction. Upon the Board's direction, the Clerk wrote to the Appellant, by a letter dated 2 March 2007, and reminded the Appellant, inter alia, the following:

'(5) By virtue of s. 68(2) of the Inland Revenue Ordinance, the Appellant is required to attend in person or by an authorized representative at the meeting of the Board at which his appeal is heard. The Board has already fixed the hearing to be held from 5:15 pm to 7:15 pm on 16 March 2007 and the Appellant has been notified by letter dated 5 February 2007.'

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- (6) If the Appellant fails to attend the hearing at the scheduled time, the Board may dismiss the appeal under s.68(2B)(c) of the Inland Revenue Ordinance. The Board may however adjourn the hearing to another date but only if it is satisfied that the Appellant's failure to attend the hearing is due to sickness or other reasonable cause.
- (7) The Appellant's attention is drawn to s. 68(2D) of the Inland Revenue Ordinance which provides that the Appellant may apply to the Board to have his appeal heard in the absence of the Appellant or his authorized representative. However the Board may do so only if it is satisfied that the Appellant 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. If the Appellant wishes to make such an application, the application will have to be 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.'

7. Despite the correspondence mentioned above, the Appellant did not attend the appeal hearing on 16 March 2007. Upon direction by the Board, the Clerk telephoned the Appellant and was able to get into contact with him. However, the Clerk was informed by the Appellant over the phone that he would not attend the hearing.

**Section 68(2), (2B) and (2D) of the Inland Revenue Ordinance ('IRO')**

8. By virtue of sub-section (2) of section 68 of the IRO, the Appellant was required to attend at the meeting of the Board at which the appeal was heard either in person or by an authorized representative.

9. Section 68(2B) of the IRO provides as follows:

*'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.'*

10. Section 68(2D) of IRO further provides as follows:

*'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 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.'*

**The Board's decision**

11. The Appellant failed to attend the appeal hearing despite the express requirement of section 68(2) of IRO and despite notice and reminder by the Board as mentioned above.

12. There was no evidence before the Board that the Appellant's failure to attend the appeal hearing was due to sickness or other reasonable cause. The Board was not satisfied that there was any reasonable cause at all for the Appellant's failure to attend the appeal hearing. Accordingly, there was no ground for postponing or adjourning the appeal hearing under section 68(2B)(a) of IRO.

13. There was no application made by the Appellant for the hearing of the appeal in the absence of himself or his authorized representative under section 68(2D) of IRO.

14. Accordingly, the only other option under section 68(2B) of IRO was for the Board to dismiss the appeal under subsection (c), which the Board did on 16 March 2007.