

## INLAND REVENUE BOARD OF REVIEW DECISIONS

### Case No. D86/04

**Profits tax** – whether frequent absence from Hong Kong can be a ground for an extension of the time limit for appeal – section 66(1A) of the Inland Revenue Ordinance ('IRO').

Panel: Kenneth Kwok Hing Wai SC (chairman), George Lo Kwan Wang and Tse Tak Yin.

Date of hearing: 3 January 2005.

Date of decision: 24 February 2005.

The appellant objected against an assessment. The Inland Revenue sent the determination to the appellant under cover of the Deputy Commissioner's letter to the appellant dated 16 August 2004. The appellant gave notice of his objection against an assessment by letter dated 17 September 2004. The appellant did not enclose a copy of the determination and did not state his grounds of appeal. By letter dated 20 September 2004, the Clerk to the Board of Review drew the appellant's attention to the one month time limit for an appeal under section 66 and informed the appellant that his notice would not be entertained unless it was accompanied by a copy of the determination and a statement of the grounds of appeal.

By a letter dated 10 October 2004, the appellant stated his grounds of appeal and enclosed a copy of the determination. The appellant asked to extend the time limit for appeal on the ground of his frequent absence from Hong Kong and the appellant further asserted that he had not received the determination by 12 September 2004.

#### **Held:**

The Board did not accept the appellant's assertion and the Board found that the appellant had already received the determination and the appellant had ample time from 12 September (Sunday) to 17 September 2004 (Friday) to give notice of appeal. The Board found that the appellant had not been prevented by absence from Hong Kong to give notice of appeal within the section 66(1) time limit.

#### **Appeal dismissed.**

Chan Man On for the Commissioner of Inland Revenue.  
Taxpayer in person.

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### **Decision:**

1. By letter dated 12 March 2003, the appellant objected against an assessment and requested the assessor to send all further communications to an address given in the letter.
2. By his determination dated 16 August 2004, the Deputy Commissioner of Inland Revenue reduced the profits tax assessment for the year of assessment 1997/98 dated 23 March 2001, showing net assessable profits of \$3,061,534 (after set-off of loss brought forward of \$78,818) to net assessable profits of \$2,702,307 (after set-off of loss brought forward of \$78,818).
3. The determination was sent under cover of the Deputy Commissioner's letter to the appellant dated 16 August 2004. The Deputy Commissioner informed the appellant of his right to appeal, quoting section 66(1), (1A) & (2) of the Inland Revenue Ordinance, Chapter 112, in full.
4. The determination and the covering letter were sent by registered post on 16 August 2004 and were delivered on 17 August 2004 to the address given by the appellant in his letter dated 12 March 2003.
5. By letter dated 17 September 2004 received by the Clerk to the Board of Review on 20 September 2004, the appellant gave notice of his objection. He did not enclose a copy of the determination and did not state his grounds of appeal.
6. By letter dated 20 September 2004, the Clerk drew the appellant's attention to the one month time limit for an appeal under section 66 and informed the appellant that his notice would not be entertained unless it was accompanied by a copy of the determination and a statement of the grounds of appeal.
7. By a two-page hand-written letter dated 10 October 2004 received by the Clerk on 14 October 2004, the appellant stated his grounds of appeal and enclosed a copy of the determination.
8. The appellant's notice of appeal is clearly outside the one month time limit under section 66(1).
9. At the hearing on 3 January 2005, he asked us to extend the time limit for appeal.
10. Section 66(1A) provides that:

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*‘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).’*

11. The only ground relied upon by the appellant was what he called his frequent absence from Hong Kong. There is no allegation of prevention by illness or other reasonable cause.

12. Mr CHAN Man-on pointed out that according to the records provided by the Immigration Department, the appellant was in Hong Kong from 10:43 a.m. on 12 September 2004 (Sunday) to 6:59 p.m. on 17 September 2004 (Friday). The appellant admitted that he had no work in Hong Kong in September 2004. We do not accept the appellant’s assertion that he had not received the determination by 12 September 2004. In our decision, the appellant had already received the determination and he had ample time from 12 September (Sunday) to 17 September 2004 (Friday) to give notice of appeal. In our decision, he had not been prevented by absence from Hong Kong to give notice of appeal within the section 66(1) time limit.

13. The appellant has not made out any case for extension of time and we reject his application.