Case No. D98/00

Salaries tax – whether taxpayer entitled to claim deductions for expenses allegedly incurred in the course of the employment – whether 'prevented' from giving the requisite notice of appeal – section 66(1) of the Inland Revenue Ordinance ('IRO').

Panel: Ronny Wong Fook Hum SC (chairman), Kenneth Ku Shu Kay and Henry Lau King Chiu.

Date of hearing: 2 August 2000.
Date of decision: 28 November 2000.

The taxpayer produced a bundle of vouchers in support of her claim for deduction as regard various expenses in respect of social entertainment and gifts allegedly incurred by the taxpayer in the course of her employment. However, there was no contemporaneous record indicating the name of her client or the purpose of such entertainment. The Commissioner took the view that the vouchers evidenced merely personal expenses of the taxpayer and those expenses were not deductible. The Commissioner therefore rejected the taxpayer's claim. The taxpayer wished to appeal before the Board against the Commissioner's decision out of time.

In a gist, there were two issues in this appeal hearing, first, whether the Board should exercise its discretion under section 66(1A) of the IRO and extend time in favour of the taxpayer given her failure to comply with section 66(1) of the IRO; Second, if so, whether the relevant expenses allegedly incurred by the taxpayer in the course of her employment were deductible.

Held:

1. The jurisdiction of the Board to extend time is governed by section 66(1A) of the IRO.

2. Neither laches nor ignorance of one's rights or of the steps to be taken is a ground upon which an extension may be granted: D9/79, IRBRD, vol 1, 354; D11/89, IRBRD, vol 4, 230.

3. As pointed out by the taxpayer's letter of 14 March 2000, she was giving priority to her work. She was not prevented by any reasonable cause from giving the requisite notice. There was no reason for the Board to extend time in her favour.

4. As the Board was not seized of the appeal proper, it would not be right for the Board to express any view as to the validity of the taxpayer' s claim for deductions.

5. Stringent tests for deductions of expenses incurred in the course of employment had been laid down in D76/90, IRBRD, vol 5, 515.

6. It would be wishful thinking to believe that these stringent tests can be complied with by the mere submission of a bundle of receipts involving diverse amounts with no contemporaneous evidence as to the purpose of each item of expenditure.

Appeal dismissed.

Cases referred to:

D9/79, IRBRD, vol 1, 354
D11/89, IRBRD, vol 4, 230
D76/90, IRBRD, vol 5, 515

Lee Yun Hung for the Commissioner of Inland Revenue.
Taxpayer in person.

Decision:

1. By a determination dated 31 January 2000, the Commissioner rejected the Taxpayer' s claims for various expenses in respect of social entertainments and gifts allegedly incurred in the course of her employment as a consultant by Company A trading as Company B. The Taxpayer produced a bundle of vouchers in support of her claims. There was, however, no contemporaneous record indicating the name of her client or the purpose of such entertainment. The Commissioner took the view that the vouchers evidenced merely personal expenses of the Taxpayer and those expenses are not deductible.

2. The Taxpayer now wishes to appeal before this Board. She wrote to the Clerk of this Board on 14 March 2000. She explained that the month of February was a very difficult month. She had to devote all her time in order to meet the requirements imposed by her employer. It was through her oversight that she did not submit any document to this Board. She asked this Board to give her a further opportunity. The Board received this letter on 17 March 2000.

3. By further letter dated 4 April 2000, the Taxpayer reiterated her difficulties and urged this Board to admit her appeal. She submitted her grounds of appeal for the first time on 18 April 2000.

4. At the hearing before us, the Taxpayer explained that her level of education is not high. It was with difficulties that she drafted her previous correspondence with this Board. She had no knowledge of the applicable rules governing appeal to this Board. She urged this Board to consider her appeal as some of her colleagues managed to persuade the Revenue to accept their deductions. The Taxpayer was accompanied at this hearing by Madam C. Madam C expressed support of the Taxpayer' s stance.

5. Our jurisdiction to extend time is governed by section 66(1A) of the Inland Revenue Ordinance (Chapter 112). In D9/79, IRBRD, vol 1, 354 the Board pointed out that:

> *' ... a Board of Review has jurisdiction to extend time if it is satisfied that an appellant was "prevented" by illness or absence from the Colony or other reasonable excuse from giving the requisite notice of appeal ... The word "prevented", as we see it, is opposed to a situation where an appellant is able to give notice but has failed to do so. In our view, therefore, neither laches nor ignorance of one' s rights or of the steps to be taken is a ground upon which an extension may be granted ...' .*

6. In D11/89, IRBRD, vol 4, 230 a differently constituted Board further pointed out that:

> *' ... The provisions of section 66(1A) are very clear and restrictive. As was pointed out by the Commissioner' s representative, an extension of time can only be granted where the Taxpayer has been "prevented" from giving notice of appeal within the prescribed period of one month. In this case, it cannot be said that the Taxpayer was prevented from appealing. He could well have appealed within the time prescribed. He was in no way prevented from so doing by the fact that he did not have evidence to prove his case.'*

7. We are of the view that there authorities are directly applicable. As pointed out by the Taxpayer' s letter of 14 March 2000, she was giving priority to her work. She was not prevented by any reasonable cause from giving the requisite notice. There is no reason for us to extend time in her favour.

8. As we are not seized of the appeal proper, it would not be right for us to express any view as to the validity of the Taxpayer' s claim for deductions. We would only invite the Taxpayer to note what this Board stated in D76/90, IRBRD, vol 5, 515:

> ‘ *There are many leading cases which make it clear that the deductions permitted for salaries tax purposes are very limited. Expenses must not be of a domestic or private nature. Furthermore they must be wholly incurred in the production of the assessable income, they must be exclusively incurred in the production of the assessable income and in addition they must be necessarily incurred in the production of the assessable income. The word “wholly”, “exclusively”, and “necessarily” each stand alone and must be given their full meaning. They are not one expression. Before an expense can be deducted, it must comply with all three tests. The word “wholly” means that if an expense is incurred partly for the benefit of the Taxpayer or any other person, the expense is not deductible. It does not matter if the principal object of the expense or the majority of the expense is attributable to the employment. It must be “wholly” attributable to the employment. The word “necessarily” has also been given a very precise interpretation. The expense must be necessarily incurred in the production of the assessable income. This means that this test has two limbs. The expense must be something which the employee must incur and has no choice. If there is any choice, then it is not necessarily incurred. Secondly, it must be necessarily incurred in the production of the assessable income. This means that it is not sufficient for the employment contract or employer to impose a condition upon the employee if the expense is not incurred in the production of the assessable income.’*

It would be wishful thinking to believe that these stringent tests can be complied with by the mere submission of a bundle of receipts involving diverse amounts with no contemporaneous evidence as to the purpose of each item of expenditure.

9. For these reasons, we refuse the Taxpayer’ s application for extension of time. There is no proper appeal before us and the assessment must stand.