



TC03215

Appeal number: TC/2013/06701

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR FOUAD ELAZOUA

Appellant

-and-

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE HOWARD M NOWLAN
MICHAEL BELL ACA CTA**

Sitting in public at 45 Bedford Square in London on 20 December 2013

Mukesh Mandalia of Neilsens, chartered accountants, on behalf of the Appellant

Karen Weare of HMRC on behalf of the Respondents

DECISION ON AN APPLICATION TO APPEAL OUT OF TIME

1. This was an application to appeal out of time, for three assessments made for the tax years 2003/2004 to 2005/2006, all issued on 17 June 2009, and an application to make a late appeal against the 2006/2007 closure notice issued on 20 August 2009.
2. Without our fully understanding the detail the assessments had been estimated assessments in respect of undeclared rental income.
3. The Respondents' very thorough and fair skeleton argument revealed that while yet later applications had been made for the Appellant to appeal out of time, there was on the file a letter dated 13 August 2010 from the Appellant's then accountants informing HMRC that "*our above client wishes to appeal against the assessments issued.*" The letter went on to summarise the family reasons that had led to the application being late. HMRC had not responded directly to what appeared at least arguably to be an application to appeal out of time, in the respect that they had not confirmed that the late application to appeal would be accepted or refused. Various later letters in the file involved HMRC continuing to ask questions, and in particular to request from the relevant accountants tax returns for later periods, and for some reason the accountants failed to respond to all such letters and requests.
4. The significance of the letter of 13 August was, however, as HMRC's representative very fairly conceded, that if we accepted that the letter amounted to a Notice of Appeal and an application to progress that appeal notwithstanding that it was out of time, and if the failure of HMRC to accept or reject the application was to be taken to be tacit acceptance that the late Notice was accepted, then there was in fact an open appeal and we did not even have to decide whether to exercise our discretion to allow the Appeal to proceed out of time.
5. We both concluded that there was currently an open appeal, based on the letter of 13 August 2010 and the tacit acceptance of that Notice implicit in HMRC's failure to respond to the application in any way.
6. Were we wrong in that conclusion we also addressed the question of whether to override the more recent decision of HMRC to refuse later Applications to appeal out of time, and to exercise our discretion to allow the appeal to proceed.
7. While we appreciate the importance of time limits being respected, our decision on the alternative point is that the Appeal should in any event proceed. Our reasons for this decision were that it appeared to be virtually common ground that the assessments in question were not only estimated assessments, but quite naturally ones that were likely to be excessive. There had been various intimations that if the assessments were now simply confirmed, the Appellant might be made bankrupt. There was also evidence on the file that the Appellant had earlier used two different firms of accountants, and without our knowing where the fault lay, the Appellant claimed that he had been let down by those accountants, and certainly one at least had failed to respond to numerous letters from HMRC. Finally we noted that both the Appellant and his current accountant had appeared before us, the latter making it clear that full figures had already been prepared for all the earlier years in question. On the basis therefore that it would be manifestly unfair to render it likely that the

Appellant would be made bankrupt by assessments that may well have been excessive, and that the Appellant and his accountant were now ready to provide all requested figures, the Appellant confirming that he would then pay the tax shown to be properly owing, we decided to allow the appeal to proceed out of time, were our earlier decision that there was already an open appeal wrong.

Right of Appeal

8. This document contains full findings of fact and the reasons for our decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) Tax Chamber Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**HOWARD M NOWLAN
TRIBUNAL JUDGE**

RELEASE DATE: 8 January 2014