



TC03430

Appeal number: TC/2013/03024

Application to appeal out of time – if out of time application granted then application to re-categorise the appeal – were the assessments sent to an incorrect address - appellant delayed in dealing with matters even after he must have been aware of them - application refused

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

EDWARD AKINLADE

Appellant

- and -

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

**TRIBUNAL: JUDGE JUDITH POWELL
MS ELIZABETH BRIDGE**

Sitting in public at Bedford Square, London on 21 November 2013

Mr Uzor, solicitor, for the Appellant

Mr Philip Shepherd, officer with HM Revenue and Customs, for the Respondents

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DECISION

5 We have been asked to write full written findings and reasons for our decision to refuse the Appellant's application to appeal out of time having originally released a decision in summary form.

1. This is an application by the Appellant for permission to appeal out of time and, if granted, the Respondents apply for the appeal to be re-categorised. It is currently categorised as complex.

10 2. The Appellant applies for permission to appeal out of time against the assessments to income tax made on the Appellant by the Respondents in 2010 for the four tax years up to and including the year ending 2006-2007 and related penalties.

15 3. There was little evidence presented to us by either party and this is reflected in the facts we were able to find. The Appellant did not attend the hearing. We had very few details of the history leading to the issue of the disputed assessments. In his Notice of Appeal the Appellant says that "during 2006" he left the UK and contacted HMRC to leave a forwarding address in Lagos but HMRC sent their correspondence to addresses where he "lived previously in UK, such as 11 Elliot Vale London SE3 0UW", that as a result he was unaware HMRC had raised assessments and
20 determinations and was unable to deal with their correspondences within the stipulated time as he was away from the UK. He said in his notice that he had computed his liability as "£27482.00" which had been paid in full.

25 4. The correspondence we were shown reveals that the Appellant and the Respondents were in discussion about the Appellant's tax affairs for the period in question from at least early in 2007. In February 2007 the Appellant wrote to the Respondents asking them to send correspondence to 102 Southwood Road London SE9 3QS. In April 2007 the Appellant wrote to the Respondents and entitled his letter "Return 2003 and 2004". These are two of the years in respect of which the disputed assessments were issued.

30 5. The April letter heading was "Silverock Properties Limited, 102 Southwood Road London SE9 3QS". In that letter the Appellant explained he would be travelling to Lagos to deal with the funeral arrangements for his parents who had died in a motor accident in Nigeria, and that he would be leaving on 25 April 2007 and that he expected to be away for about 4 weeks. The letter went on to say that he agreed to
35 "your offer to adjourn the hearing to allow me to travel and for you to list all matters at one hearing. I will be back about the 1st June 2007". The letter is headed "by fax and by phone" which suggests there was a telephone conversation between the Appellant and the Respondents and the final sentence of the letter reinforces that impression. The next letter we were shown was dated 27 November 2007, is entitled
40 "Own Tax Affairs" and thanks the Respondents for their "enquiries letter" and contains an appeal against "your penalty determination of £99,596.00". We mention this by way of background; the disputed assessments were not issued until 2010 and

so the hearings and penalty determination mentioned in this correspondence cannot relate to them.

6. We were shown a copy of a “Statement of Personal Assets and Liabilities, and Business Interests” completed in handwriting and signed by the Appellant and dated 20 August 2008. The assets mentioned in the letter include (amongst others) properties at 102 Southwood Road described as “3 flats” and as “vacant” and 11 Eliot Vale described as a “house” and as “rented”. This Statement seems to be completed on an HMRC standard form which was issued to the Appellant by name but did not include an address on it which leads to the conclusion he was handed it at a meeting. This conclusion is supported by the fact that the document was dated 20 August 2008 and we were told there was a meeting between the Respondents and the Appellant on 18 August 2008 and we were shown an email from Jane Robertson, an officer with HMRC, dated 27 August 2008 which refers to the meeting and to a colleague having received the Statement from the Appellant. The email referred to notes of the meeting but these were not produced to us. The email referred to a number of topics covered at the meeting of which the Appellant’s own tax affairs were one. The email referred to unresolved queries concerning the affairs of the Appellant including the source of bank deposits and details of claims for expenditure. The email referred to the Appellant being “next in the UK” around 9 September 2008.

7. By email of Monday 8 September 2008 Jane Robertson asked the Appellant whether the Appellant wished to arrange a further meeting during that week. He replied saying that due to emergency family matters in Sierra Leon he would not “make the UK this month” and would “be in touch when he fixed a date for next month”. Miss Robertson followed up the August and September 2008 emails with further emails on 24 October 2008 and 16 December 2008 inviting the Appellant to arrange a meeting but there is no record that she received a reply. Each email was entitled “Silverrock Properties Ltd etc.” and in the December email Miss Robertson said that if she did not hear from the Appellant by mid-January she would have no alternative but to list the open appeals before the general Commissioners. Again, the appeals mentioned in that email cannot have been the appeals which are the subject of the notice to appeal being considered here since those assessments were not issued until 2010 but they show that there was email contact between the Appellant and the Respondents in August 2008 and that the Appellant’s own tax affairs had been discussed at the August meeting.

8. We did not see copies of the assessments but the Respondents told us they had been sent to 11 Elliot Vale, London and this is supported by what is said in the Appellant’s notice of appeal. It appears that the assessments were issued in June 2010. We conclude that the assessments were probably sent to Eliot Vale. There is no evidence that the Appellant had asked for correspondence to be sent to him in Nigeria. Equally there is no evidence that he asked for correspondence to be sent to him at 11 Eliot Vale. There was no indication why that address had been chosen.

9. The next correspondence we were shown was in the form of a letter dated 9 May 2011 from an address in Lagos, Nigeria. This letter was addressed to Debt Manager, Enforcement and Insolvency and was headed “by recorded delivery and by

5 fax". This letter referred to a "recent visit to your London office" and matters which
"has only just been brought to my notice". The letter does not say when the visit took
place but the letter refers to the Appellant's unique taxpayer reference and to the
amount of arrears. The amount of arrears mentioned corresponds to the amounts
10 assessed by the disputed 2010 assessments and indicates that by then the Appellant
was aware of the assessments. The letter also says (after saying that he relocated
from the United Kingdom "since 2007" and had not earned any income in the United
Kingdom since then) "nor could I have earned income before that date which would
incur tax liability of the magnitude indicated in your said letter". The letter says that
15 "even if your figures are correct, which is denied I do not currently have any income
from which to pay that level of tax. However, as there may be some outstanding
liability before my relocation from the United Kingdom and I have spoken to my
relatives and friends to take a loan from them and I am prepared to make an offer of
£50,000.00 in full and final settlement of any and all liability to the Inland Revenue."
This letter did not elaborate on how the Appellant had calculated the amount of the
offer. We notice that if this letter amounted to an appeal against the 2010 assessments
it would have been late.

10. We were not shown any correspondence dealing with the Appellant's letter of
May 2011. We were informed of the service of bankruptcy proceedings heard and
20 adjourned in March 2013. This was followed by the appeal to this Tribunal in April
2013 and we have already mentioned the grounds of the appeal.

11. We understand that the subsequent bankruptcy proceedings were served on the
Appellant in Nigeria. The bankruptcy hearing on March 1 2013 recorded the petition
debt as £1,183,796.35 (which is in line with the letter from the Appellant to the
25 Respondents in May 2011 which mentioned "Arrears of over £1million") and a letter
from the Respondents to the Appellant's representatives dated 4 March 2013 recorded
that he also owed further arrears and interest amounting to £43,506.08. That letter
went on to explain that the bankruptcy hearing was adjourned to enable the Appellant
to submit late returns and settle the debt. The Appellant did not complete returns and
30 there was no evidence of him or of his representatives replying to the March 2013
letter.

12. By an appeal notice dated 23 April 2013 the Appellant submitted an appeal to
the Tribunal in respect of the June 2010 assessments. We have already recorded that
his appeal notice stated that he was unaware of the assessments because he had left
35 the UK for Nigeria during 2006. He referred in his notice to the address in London
11 Elliot Vale to which the assessments had been sent and also to an address in
Nigeria to which he had apparently requested all correspondence should be directed.

13. We cannot accept that the Appellant had left the UK in 2006 leaving a
forwarding address in Nigeria as mentioned in his Notice of Appeal in view of his
40 letter to Mr Gibson an officer with the Respondents, on 5 February 2007 to confirm
his address as 102 Southwood Road, London. We also see that he wrote to him again
in April 2007 from the same address. In the second letter he explained that he was
travelling to Lagos to attend to the funerals of his parents who had been killed in a
motor accident and that he would be away for four weeks and would return by 1 June

2007. This does not indicate a removal from the United Kingdom in April 2007. He wrote again on 27 November from the same address to appeal against a penalty determination of some £99,596 and referred to a letter from Mr Gibson of 2 November 2007. We conclude he was aware of enquiries into his tax affairs in 2007 and the November 2007 letter in particular refers to “own tax affairs”. He also attended a meeting in 2008 about his own tax affairs.

14. There was no explanation why assessments were issued to the Eliot Vale address. That property was certainly an asset of the Appellant in August 2008 since the statement of assets and liabilities in August 2008 listed both 102 Southwood Road and 11 Elliot Vale as assets. On that statement the Eliot Vale property is shown as rented whereas the Southwood Road property is shown as vacant and Southwood Road was the address to which, in 2007, the Appellant had asked his correspondence to be addressed. However the Appellant’s complaint is not that the correspondence was sent to Eliot Vale rather than to Southwood Road but that it was not sent to the address in Nigeria and that he did not receive correspondence allowing him to deal with his affairs. It is clear that well after 2006 he was receiving and sending correspondence from Southwood Road and that he was receiving and sending emails as well. There is no evidence that he replied at all to Miss Robertson’s requests for a meeting after September 2008 and although his representative said that he was not always in reliable email contact he was aware of the need for a further meeting which he never arranged. The email that he plainly received (because he responded to it) referred to unresolved queries concerning the affairs of the Appellant including the source of bank deposits and details of claims for expenditure.

15. There were gaps in the documents produced by the Respondents to us. The Respondents say there is no evidence that the Appellant asked for assessments to be sent to him in Nigeria. Although we gave relatively little weight to what they say since there are plainly gaps in the records the Appellant did not produce any evidence that he had asked for correspondence to be sent to him in Nigeria and none of his emails contain such a request. We concluded that the only request likely to have been made was for correspondence to be sent to 102 Southwood Road.

16. The Respondents say that the Appellant must have been aware of the ongoing investigation. We accept that to have been the case. They say he initially responded to emails from the Respondents and then failed to take further action to deal with the outstanding queries and there is evidence in the email chain that this is so. The delay that the Respondents complain of and say justifies them opposing the late appeal is the delay between May 2011 and April 2013. They say the Appellant must have been aware of the outstanding assessments in May 2011. There was then a further delay of some 50 days after the letter of March 2013 was sent to his representative before an appeal was lodged.

17. Despite the regrettable gaps in the correspondence produced to us by the Respondents we concluded that the Appellant must have been aware of the assessments in May 2011 and there was no evidence that he made any effort to deal with these nor did he respond after the bankruptcy hearing was adjourned to allow him to do so. By this time he had representatives dealing with matters on his behalf.

This follows a pattern we can see of him failing to deal with matters involving the relevant period after the 2008 meeting. In light of this we refused his application to appeal out of time and because of that we did not consider the classification of the appeal.

5 18. This document contains full findings of fact and reasons for the 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
10 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.

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**JUDITH POWELL
TRIBUNAL JUDGE**

RELEASE DATE: 19 March 2014

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