[2018] UKFTT 187 (TC)

TC06428

Appeal number: TC/2017/05289

PROCEDURE – application for permission to make late appeal – application refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

DANIEL PETERS **Appellant**
(also known as INKEY JONES)

- and -

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

TRIBUNAL: JUDGE ASHLEY GREENBANK

Sitting in public at Taylor House, 88 Rosebery Avenue, London on 25 January 2018

Michael Ripley, counsel, instructed by Barnes Roffe LLP, for the Appellant

Christopher Vallis, on behalf of the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

Introduction

1. This decision notice relates to an application by the appellant for permission to bring a late appeal against various decisions of the respondents, the Commissioners for Her Majesty's Revenue & Customs ("HMRC").

2. The decisions against which the appellant seeks to appeal are set out in:

(1) notices of assessment for all of the tax years from 1996-97 to 2011-12 and for the tax year 2013-14, which were issued on 28 July 2016;

(2) a penalty determination under section 7 of the Taxes Management Act 1970 ("TMA 1970") in respect of the tax years from 1996-97 to 2007-08 which was issued on 28 July 2016;

(3) a closure notice for the tax year 2012-13 which was issued on 2 August 2016; and

(4) two penalty assessments under Schedule 24 to the Finance Act 2007 for the tax years 2010-11 to 2014-15, both of which were issued on 16 August 2016.

3. The total amount of tax, interest and penalties at stake is significant. The amount shown in the assessments, determinations and the closure notice is approximately £1.9 million. In evidence, and in submissions, I was referred to a bankruptcy petition against Mr Jones in which HMRC are claiming in excess of £3.6 million.

4. The appellant's agent sent a letter to HMRC to appeal against the various assessments and determinations on 5 April 2017. The notice of appeal to the Tribunal was dated 19 June 2017.

5. The various assessments and determinations to which I have referred above were issued in the name of Mr Daniel Peters or Mr D J Peters. The appellant says that his proper legal name is Inkey Jones. The proceedings are in the name of Daniel Peters, but I have referred to the appellant as Mr Jones throughout this decision notice.

The hearing and the evidence

6. At the hearing, I was provided with a bundle of documents by the appellant and a bundle of documents by HMRC. The bundle of documents prepared by the appellant contained a witness statement given by Mr Jones. Mr Jones gave oral evidence and was cross-examined on his witness statement.

The facts relating to the proceedings

7. There was no dispute about the facts concerning the history of the proceedings. I have summarized them below.

8. An enquiry was opened into Mr Jones's self-assessment return for the tax year 2012-13.

9. On 27 November 2014, Mr Tariq Zaman of JK Shah Accountants ("JK Shah") submitted a form 64-8 signed by Mr Jones to authorize JK Shah to act as his agent in respect of his tax affairs. The form was in the name of "Inkey Jones".

10. During a telephone conversation on 18 March 2015, the relevant HMRC officer, Miss I F Tinney, informed Mr Zaman that she was unwilling to discuss the case with the staff of JK Shah because the authority to act was in the name of Inkey Jones and the returns had been submitted in the name of Daniel Peters. Miss Tinney requested that JK Shah obtain a form 64-8 in the name of "Daniel Peters".

11. JK Shah submitted a further form 64-8 signed by Mr Jones dated 24 March 2015. In this form, Mr Jones referred to himself as "Daniel J Peters". Mr Jones also signed this form as "D J Peters".

12. Each of the letters, notices of assessment, closure notices and penalty determinations sent by HMRC to Mr Jones to which I refer below was sent to Mr Jones at the same address that appears on the notice of appeal in the name of Mr Daniel Peters or D J Peters. In each case, a copy of the relevant correspondence was sent to JK Shah.

13. In a letter to Mr Jones dated 31 May 2016, Miss Tinney noted that she had not received any response to her recent requests for information. She warned Mr Jones that she would issue a closure notice together with notices of assessment for all of the tax years from 1996-97 to 2013-14 if no contact was made within 30 days. She also advised Mr Jones that she was considering whether any penalties were due.

14. During a telephone call on 28 June 2016, between Miss Tinney and Mr Zaman, Miss Tinney referred to her letter of 31 May 2016. Miss Tinney informed Mr Zaman that she would be issuing the assessments and the closure notice. Mr Jones would have 30 days in which to appeal. Miss Tinney advised that, if no appeal was made within the 30 day period, Mr Jones would have to demonstrate a reasonable excuse if he subsequently sought to make a late appeal.

15. In a letter to Mr Jones dated 15 July 2016, Miss Tinney explained that she had arranged to issue a closure notice for the tax year 2012-13 and notices of assessment for the tax years 1996-97 to 2011-12 and the tax years 2013-14 to 2014-15. She advised that she was arranging for penalties to be raised for each of these years and provided an explanation of the penalties that were due.

16. On 28 July 2016, Miss Tinney issued notices of assessment to Mr Jones for each tax year from 1996-97 to 2011-12 and for the tax year 2013-14. The notices contained details of the deadline to appeal the assessments and the procedure for making an appeal.

17. Also on 28 July 2016, a penalty determination was raised for the tax years 1996-97 to 2007-08 under section 7 TMA 1970. The penalty determination contained

details of the deadline to appeal the determination and the procedure for making an appeal.

18. In a letter 2 August 2016, Miss Tinney issued a closure notice to Mr Jones for the tax year 2012-13. In her letter, Miss Tinney set out the deadline for making an appeal against the closure notice and the procedure for doing so.

19. In two letters dated 16 August 2016, Miss Tinney gave notice to Mr Jones of two penalty assessments under Schedule 24 to the Finance Act 2007 covering the tax years 2010-11 to 2014-15. Both letters contained details of the deadline for making an appeal against the assessments and the procedure for doing so.

20. On 19 January 2017, during a telephone conversation between Miss Tinney and Mr Zaman of JK Shah, Mr Zaman indicated that, although HMRC had been using the correct postal address, Mr Jones had not received any of the correspondence from HMRC as the post had been addressed to "Daniel Peters" and he was known at that address as "Inkey Jones". Miss Tinney challenged this explanation on the grounds that Mr Jones had responded to previous correspondence addressed to "Mr Peters" and that no undelivered mail had been returned to HMRC. Miss Tinney also informed Mr Zaman that a late appeal could be lodged with HMRC and that a reasonable excuse would need to be demonstrated.

21. On 5 April 2017, JK Shah wrote to Miss Tinney. The letter stated, "Please accept this letter as a formal appeal against the assessments and penalties raised." The letter did not specify any particular grounds of any appeal.

22. In a letter dated 12 April 2017, Miss Tinney refused to accept the appeal on the basis that the appeal was made outside the 30 day period for making an appeal and Mr Jones had no reasonable excuse for bringing his appeal out of time.

23. On or around 19 June 2017, Mr Jones submitted a notice of appeal to the Tribunal dated 19 June 2017. The grounds of appeal set out in the notice are that: the assessments were raised on the basis of estimated income and had not been agreed; and that the assessments were excessive, in particular, they included business income dating back to 1996-97, when Mr Jones commenced business in 2011.

24. Following the submission of the grounds of appeal Mr Jones has appointed new agents. He is now represented by Barnes Roffe LLP.

Mr Jones's evidence

25. As I have mentioned above, Mr Jones provided a witness statement and was cross-examined on it.

26. I have summarized Mr Jones's evidence in the following paragraphs. Other than in relation to his medical history, on which I will comment further below, Mr Jones's evidence was not challenged by HMRC.

27. Mr Jones's evidence covered five main areas: (i) his relationship with his former agent, JK Shah; (ii) the use of the name Daniel Peters; (iii) his medical history; (iv) the merits of the underlying appeal; and (v) the consequences for him of not being permited to proceed with an appeal.

Mr Jones's relationship with JK Shah

28. When HMRC began the enquiry into his self-assessment tax return for the tax year 2012-13, Mr Jones knew that he would not be able to cope with the enquiry himself. Mr Jones was referred by a friend to JK Shah.

29. Mr Jones relied on JK Shah to conduct the enquiry. He informed HMRC that JK Shah were dealing with matters relating to the enquiry. Mr Jones produced a copy of text message in which Mr Jones instructed HMRC to deal with JK Shah in relation to the enquiry.

30. Mr Jones referred in his evidence to the unsatisfactory nature of this relationship with JK Shah. He referred in particular to:

(1) the repeated failure of Mr Zaman to respond to his requests for updates on the progress of the enquiry (and produced email correspondence in support of this statement, in particular relating to the period between the issue of the various assessments, determinations and the closure notice and the notice of appeal);

(2) what from the correspondence that he had now seen would appear to be JK Shah's tendency to suggest that delays in responding to HMRC were due to Mr Jones's failures to respond to JK Shah (when, according to Mr Jones, it was JK Shah who were failing to contact him);

(3) the failure of Mr Zaman to inform him of the deadlines for making an appeal; the understanding that he (Mr Jones) had from his correspondence with Mr Zaman that the possibility of a negotiated settlement remained open;

(4) the failure of Mr Zaman to pass on information derived from correspondence or conversations with HMRC (for example, Mr Jones was not aware of the conversation of 19 January 2017 referred to at [20] or the letter of 5 April 2017 referred to at [21]); and

(5) mis-information that was passed on to HMRC by Mr Zaman relating to the subject matter of the enquiry which had led to the inflated assessments issued by HMRC.

31. Mr Jones says that he assumed that JK Shah was dealing with any appeal. The first time at which he realized that there was any urgency in relation to appeal was on 21 June 2017 when he received an email from Mr Zaman asking him to attend at JK Shah's offices on the following day to sign an appeal form "else (sic) HMRC are going to publish your name on their list of deliberate tax defaulters".

32. As I have mentioned above, this evidence was not challenged by HMRC and I accept it as fact. I note in passing that the date of the email referring to the appeal form to which I have referred at [31] above is not consistent with the date on the notice of appeal to which I referred at [23] above.

The use of the name Daniel Peters

33. Mr Jones was born Daniel Jon Peters. Since about 1999, he has been known as Inkey Jones. On 15 March 2012, Mr Jones changed his name to Inkey Jones by deed poll. His current passport was issued in the name of Inkey Jones on 22 July 2012.

34. Mr Jones says that he has explained to HMRC on many occasions that he was not likely to receive post addressed to "Daniel Peters" at his current address. This was because post was collected in a communal post box and delivered by the cleaner. The cleaners did not know him as "Daniel Peters" and would throw away any junk mail.

35. Once again, this evidence was not challenged by HMRC and I accordingly accept it as fact.

Medical condition

36. Mr Jones acknowledged that he did not attend diligently to his tax affairs. One reason for this was that he was suffering from depression. His evidence was supported by two page letter from Dr Gurpreet Gill of "samedaydoctor Canary Wharf" dated 22 January 2018 which states Dr Gill's view, following a consultation with Mr Jones on that day, that Mr Jones was suffering from "a moderate to severe depression" which dated back to 2014.

37. HMRC challenged this evidence. In cross-examination, Mr Jones acknowledged that he had only met Dr Gill on the one occasion for the purpose of obtaining the letter and that Dr Gill did not have access to Mr Jones's medical records. Mr Jones produced no other evidence of his illness.

38. I have discussed the extent to which I have relied on the medical evidence below.

The merits of the appeal

39. The assessments raised by HMRC involved estimates of profits based on incorrect assumptions and gains arising from disposals of property that Mr Jones had never owned. Some of these estimates arose from discussions between HMRC and JK Shah in which incorrect information had been provided.

40. HMRC did not challenge this evidence. I accepted it as fact.

The consequences of permission not being granted

41. The amount at stake in the appeal was significant. If the appeal was not allowed to proceed, Mr Jones would be made bankrupt and would not in any event be able to pay the tax claimed in the assessments.

42. Once again, HMRC did not challenge this evidence. I accepted it as fact.

The relevant legislation

43. The relevant time limits for appeals against the various assessments, penalty determinations and the closure notice are set out in the following paragraphs.

(1) For appeals against assessments for the tax years 1996-97 to 2011-12 and the tax year 2013-14, s31A(1)(b) TMA 1970 provides that notice of an appeal must be given within 30 days of the "specified date", which, by virtue of s31A(4) is the date on which notice of assessment was issued.

(2) For appeals against penalty determinations for the tax years 1996-97 to 2007-08, s100B TMA 1970 provides that: "An appeal may be brought against the determination of a penalty…and the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax". A notice of appeal against these determinations must therefore be given within 30 days of the date on which the determination is issued (see (1) above).

(3) For appeals against penalty assessments for the tax years 2010-11 to 2014-15, paragraph 16 Schedule 24 Finance Act 2007 provides that: "An appeal under this Part of this Schedule shall be treated in the same way as an appeal against an assessment to the tax concerned". A notice of appeal against these assessments must therefore be given within 30 days of the date on which the determination is issued (see (1) above).

(4) As regards the appeal against the closure notice, s31A(1)(b) TMA 1970 notice of an appeal must be given within 30 days of the "specified date", which, by virtue of s31A(3) is the date on which the closure notice was issued.

44. Section 49 TMA 1970 sets out the circumstances in which a late notice of appeal may be given. It provides:

> **49 Late notice of appeal**
>
> (1)This section applies in a case where—
>
> (a) notice of appeal may be given to HMRC, but
>
> (b) no notice is given before the relevant time limit.
>
> (2) Notice may be given after the relevant time limit if—
>
> (a) HMRC agree, or
>
> (b) where HMRC do not agree, the tribunal gives permission.

> (3) If the following conditions are met, HMRC shall agree to notice being given after the relevant time limit.
>
> (4) Condition A is that the appellant has made a request in writing to HMRC to agree to the notice being given.
>
> (5) Condition B is that HMRC are satisfied that there was reasonable excuse for not giving the notice before the relevant time limit.
>
> (6) Condition C is that HMRC are satisfied that request under subsection (4) was made without unreasonable delay after the reasonable excuse ceased.
>
> (7) If a request of the kind referred to in subsection (4) is made, HMRC must notify the appellant whether or not HMRC agree to the appellant giving notice of appeal after the relevant time limit.
>
> (8) In this section "relevant time limit", in relation to notice of appeal, means the time before which the notice is to be given (but for this section).

45. In this case, HMRC do not agree that notice of appeal may be given to HMRC after the relevant time limit and so a notice of appeal can only be given after the relevant time limit, if the Tribunal gives permission (s49(2)(b) TMA 1970).

The parties' submissions

46. For Mr Jones, Mr Ripley made the following points.

> (1) Mr Ripley accepted that the delay was serious and significant: the time limits for appeal against the relevant decisions expired on various dates in August and September 2016; JK Shah did not inform HMRC that Mr Jones intended to contest those decisions until 19 January 2017 and did not attempt to make a formal appeal until 5 April 2017.
>
> (2) The legislation gives a discretion to the Tribunal to permit a late appeal. The more robust approach to dealing with late applications derived from cases such as the decision of the Supreme Court in *BPP Holdings Ltd v HMRC* [2017] UKSC 55 ("*BPP*") should not make it impossible to obtain an extension.
>
> (3) Mr Jones is not a sophisticated tax payer. The medical evidence showed that Mr Jones was suffering from depression. When the enquiry was opened he had appointed accountants. He relied on his accountants to deal with the enquiry. That was a reasonable course of action for him to take. He was let down by his accountants who consistently failed to inform him of progress of the enquiry or of the deadlines for appeal. It was not the case that Mr Jones took no further action. There was ample evidence of Mr Jones continuing to chase JK Shah for updates on the progress of the appeal.
>
> (4) Mr Jones did not receive much of the communication from HMRC for the reasons that he had given: the letters were addressed to "Daniel Peters" and he was known at his home address and Inkey Jones and not Daniel

Peters. Although HMRC say that it should not have been a surprise that correspondence was addressed to Daniel Peters, it was. Mr Jones asked several times for correspondence to be in the name Inkey Jones.

(5) Although the Tribunal was not required to embark on an investigation of the merits of an appeal in these proceedings, it was clear without much investigation that some of the assessments were based on flimsy evidence. In such circumstances it was appropriate for the Tribunal to take into the merits of the appeal (*R (oao Dinjan Hysaj) v SSHD* [2014] EWCA Civ 1633 ("*Hysaj*") per Moore-Bick LJ at [46]).

(6) The appeal represented Mr Jones's final chance to avoid personal bankruptcy.

47. For HMRC, Mr Vallis makes the following submissions.

(1) HMRC had acted properly in addressing correspondence to "Daniel Peters". The returns had been filed in the name "Daniel Peters". HMRC had requested a form 64-8 in the name of "Daniel Peters". Mr Jones had suggested in a text message of 9 February 2015 that Miss Tinney should contact him at email address which bore the name Daniel Peters. It should come as no surprise to Mr Jones or his agents that HMRC continued to write to Mr Jones in the name of Daniel Peters.

(2) Both the agents and Mr Jones were well aware of the deadlines for appealing against the assessments. They were set out clearly in HMRC's correspondence.

(3) Following the decisions of the Upper Tribunal in *HMRC v McCarthy & Stone (Developments) Limited* [2014] UKUT 196 (TCC) ("*McCarthy & Stone*") and the Supreme Court in *BPP Holdings Ltd v HMRC* [2017] UKSC 55 ("*BPP*"), the Tribunal should adopt a robust approach to applications for extensions of time.

(4) The purpose of the time limit was to provide finality: *John O'Gaunt Golf Club v HMRC* [ ] at [21].

(5) The length of the delay was substantial and serious: *Romasave (Property Services) Limited v HMRC* [2015] UKUT 0254 (TCC) ("*Romasave*") at [96].

(6) The reasons given by Mr Jones for the delay were plainly inadequate.

(a) Mr Jones says that he is an "unsophisticated taxpayer", but it is the responsibility of all taxpayers to ensure that deadlines are adhered to.

(b) There was little evidence of Mr Jones suffering from a medical condition sufficient to prevent him from making the appeal. The only evidence was in the form a short letter from a "same-day" doctor, who had not seen Mr Jones previously and who did not have access to Mr Jones's medical records.

(c) Mr Jones relied on his agent, JK Shah. But reliance on an agent cannot displace his obligations to comply with time limits: *Andrew Green v HMRC* [2016] UKFTT 0421 (TC) ("*Andrew Green*") at [61]-[63].

(d) Mr Jones says that he thought that he was doing the right thing in not responding to HMRC and leaving the correspondence to his agent. This excuse contradicts the argument that he did not receive the correspondence from HMRC and was not aware of the deadlines. He should have realized that progress was not being made.

(e) Mr Jones says that he "buried his head in the sand" – but that is precisely the behaviour that the new approach seeks to eradicate.

(7) HMRC would suffer material detriment if the appeal is allowed to proceed. It would have to devote significant resource to the appeal.

(8) It was not permissible to take into account the merits of the appeal under the new approach: *Denton and others v TH White Ltd and others* [2014] EWCA Civ 9106 ("*Denton*") at [56] and [81] and *HRH Prince Abdulaziz Bin Mishal Bin Abdulaziz Al Saud v Apex Global Management Ltd and another* [2014] UKSC 64 ("*Apex Global*") at [29]. It would only be appropriate to do so in a case in a case where the claim was so strong that the claimant would be entitled to summary judgment (*Apex Global* at [29]).

Discussion

48. The legislation does not set out any specific criteria which the Tribunal must take into account in determining whether or not to grant an application for permission to make an appeal outside the relevant time limit. The Tribunal should therefore exercise its discretion in a manner which gives effect to the overriding objective in rule 2 of the Tribunal Procedure (First-tier Tribunal)(Tax Chamber) Rules 2009 (the "Tribunal Rules"), that is "to deal with cases fairly and justly".

The correct approach

49. In recent years, there have been a number of cases that have provided useful guidance on the approach which the Tribunal should take in determining questions of this kind. I was referred by the parties to several of these cases. I do not intend to embark upon a comprehensive survey of those cases in this decision. However, I will first summarize the key principles that I take from them.

(1) In exercising its discretion "fairly and justly", the Tribunal must ensure that it takes into account all of the relevant facts and circumstances of the case.

(2) In doing so, appropriate weight must be given to the requirement for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders.

In this respect, important guidance has been provided most recently by the Supreme Court in *BPP*, from which it is clear that, whilst the Tribunal must take all relevant factors into account, close regard should be paid to the approach now taken by the courts, under which importance is attached to observing rules. Although the Civil Procedure Rules ("CPRs") do not strictly apply to the Tribunals, a similar approach should generally be followed. On this issue, Lord Neuberger in *BPP* (at [25]) referred in particular to the guidance given by Judge Sinfield in *McCarthy & Stone* (at [42]-[48]) when considering whether to permit an extension of time under the rules applicable in the Upper Tribunal. In that context, Judge Sinfield referred to the decision of the Court of Appeal in *Mitchell v News Group Newspapers Ltd* [2013] EWCA Civ 1537 which made it clear (at [49]) that, whilst all the circumstances should be taken into account, particular weight should be given to the references in the CPRs (CPR 3.9) to the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, practice directions and orders.

(3) In considering these issues, it is useful to adopt the structure of enquiry suggested by Morgan J in *Data Select Ltd v HMRC* [2012] STC 2195 ("*Data Select*") or the similar approach adopted by the Court of Appeal in *Denton* or the Upper Tribunal in *Romasave*.

In *Data Select*, Morgan J suggested (at [34]) that the Tribunal should ask itself the following questions: what is the purpose of the time limit, how long was the delay, was there a good explanation for it, and what are the consequences for the parties of an extension or a refusal. In *Denton*, the Court of Appeal suggested a three-stage process, the first being to identify and assess the seriousness and significance of the failure, the second to consider why it occurred and the third to evaluate all the circumstances of the case, including those emphasised by the CPRs (*Denton* at [54] –[55]). This was the approach followed by the Upper Tribunal in *Romasave*. As the Upper Tribunal in *Romasave* pointed out (at [94]) there is no material difference in principle between the approach in *Denton* and that in *Data Select*.

The seriousness of the delay

50. If I apply the structure of enquiry adopted in *Denton*, the first stage is to identify and assess the serious of the delay.

51. In this case, the parties acknowledge that the purpose of the time limit is to facilitate finality in litigation. There is also little dispute between them that the delay is both significant and serious. The delay in making an appeal to HMRC – even if we accept that the letter from JK Shah of 5 April 2017 is an appeal – is between six and eight months after the expiry of the time limits for appeal against the relevant

decisions. There was a further delay in notifying the appeal to the Tribunal which did not take place until, at the earliest, 19 June 2017.

The reasons for the delay

52. The second stage is to determine whether there was a good reason for the delay.

53. Mr Ripley, for Mr Jones, has essentially put forward three reasons for the delay:

(1) Mr Jones's medical condition;

(2) Mr Jones's reliance upon his agent, JK Shah, who failed to appeal against the various decisions in time;

(3) the fact that HMRC continued to use the name Daniel Peters in correspondence, with the result that Mr Jones did not receive many of the documents and so was not aware of the relevant time limits.

I will deal with these in turn.

54. As regards Mr Jones's medical condition, I agree with HMRC that the evidence presented to the Tribunal is not particularly strong. It is limited to the letter from Dr Gill, a walk-in doctor, who had not previously seen Mr Jones. In preparing that letter, Dr Gill did not have access to Mr Jones's medical records. Dr Gill was not available to be cross-examined at the hearing.

55. Notwithstanding those limitations, I accept that Mr Jones was suffering from depression during the period in question. This is a factor that I will take into account. That having been said, as HMRC point out, it is also necessary to consider the limitations of the evidence. Dr Gill's letter suggests that it would be common for a patient with depression to find everyday tasks a challenge. Perhaps not unsurprisingly, it does not provide any specific guidance as to the extent to which Mr Jones's particular condition affected his ability to deal with his tax affairs promptly.

56. The second reason given by Mr Ripley was Mr Jones's reliance upon JK Shah to deal with his tax affairs. HMRC did not contest Mr Jones's evidence in this respect. As I have mentioned, it was clear from a text message provided in the documentary evidence supporting Mr Jones's statement that HMRC were aware that Mr Jones was relying upon JK Shah to deal with his affairs. That evidence also contained some emails from Mr Jones to JK Shah asking for updates on the progress of the appeal against the various assessments, determinations and the closure notice in the period between their issue and the service of the notice of appeal.

57. HMRC says that a taxpayer should not be entitled to abdicate his or her responsibility for his or her tax affairs to an agent. Mr Vallis referred to the decision of the First-tier Tribunal (Judge Clark) in the case of *Andrew Green* in this respect. Judge Clark's comments in that case suggest that it will never be an adequate reason that a taxpayer has relied upon his or her agent to submit tax returns or to submit an appeal within relevant time limits; the taxpayer remains responsible for ensuring that all relevant time limits are met. He said (at [61] to [63]):

> "[61] In our view, Rule 11 permits the appointment of a representative, but does not displace the obligations falling on the relevant appellant; these are the same whether or not that appellant, as a party to the proceedings, has appointed a representative.
>
> [62] Thus if for any reason the representative has not performed the obligations necessarily arising from the appointment to that position, this cannot affect the position of the appellant in those proceedings. Were the position to be otherwise, it could conceivably put an appellant with an incompetent or non-performing representative in a better position than an appellant whose choice of representative had proved to be satisfactory.
>
> [63] For these reasons, our view is that we must examine the history of Mr Green's appeals on the basis that it fell to him to ensure that the relevant requirements were complied with and that this was done within the appropriate time limits. Any question as to the lack of adequacy of the service provided by a representative is a matter between the appellant and the representative and cannot be the concern of HMCTS, the Tribunal, or the other party to the appeal."

58. I would not put the position quite as categorically as Judge Clark did in that case. The circumstances in which reliance upon an agent can of itself constitute an adequate reason for failure to meet a relevant time limit may be limited. However, the obligation of the Tribunal is to deal with cases fairly and justly having taken into account all of the facts and circumstances of the case. In particular, while I would agree that in many cases reliance upon an agent will not be an adequate reason, when coupled with other factors such as evidence of mental illness or evidence that the taxpayer has taken all reasonable steps to ensure that the time limits were met, there may be circumstances in which it can form part of an adequate reason for a delay.

59. In the present case, I have accepted that Mr Jones was suffering from depression. It is also clear that he relied on his agent JK Shah to deal with his affairs and that he did make some attempts in period between the issue of the various decisions and the provision of the notice of appeal to chase them for updates on progress. Whether or not that is all that could reasonably be expected of Mr Jones is difficult to determine in the absence of more comprehensive evidence of the effects on Mr Jones of his particular condition.

60. The third reason given by Mr Jones is that he did not receive much of the correspondence from HMRC because of the fact that he was known at his address as Inkey Jones and the correspondence was in the name of Daniel Peters.

61. Mr Jones says that the postal arrangements at his apartment were such that he did not receive correspondence addressed to Daniel Peters and that he informed HMRC of this state of affairs on a number of occasions. HMRC did not challenge this statement. In the documentary evidence, there is evidence of JK Shah informing HMRC in the telephone conversation on 19 January 2017 of this fact, although this was, of course, some time after the various notices of assessment and penalty determinations had been issued and the relevant time limits for appeal against those assessments and determinations had expired.

62. I have accepted Mr Jones's statements as fact. However, I am not persuaded that the use by HMRC of the name Daniel Peters in written correspondence is a good reason for the delay. Mr Jones was well aware that HMRC were using the name Daniel Peters in correspondence. He submitted his returns in that name. He was aware that HMRC had requested a revised form 64-8 in the name Daniel Peters. Furthermore, some of the documentary evidence, which is attached to Mr Jones's witness statement includes emails in which Mr Jones instructs JK Shah not to be concerned about the use of the name Daniel Peters in correspondence with HMRC. Given that Mr Jones was equally well aware that an enquiry had been opened by HMRC, he could and should have made arrangements to ensure that the post which was being delivered to his address in the name of Daniel Peters would be forwarded to him. He failed to do so.

63. In any event, all of the correspondence was copied to his agent, JK Shah. There has been no suggestion that the correspondence was not received by them. For all of these reasons, I do not regard the use of the name Daniel Peters by HMRC in correspondence as a good reason for the delay and I do not take it into account.

64. On balance, it seems to me that the reasons for Mr Jones's failure to make an appeal before the relevant time were that Mr Jones was suffering from depression and that he placed too much of a reliance on his agent. I take these issues into account, but that the weight I should give them is affected by the lack of more comprehensive medical evidence on the effect of Mr Jones's condition.

The other circumstances of the case

65. The next stage is to consider all circumstances of the case to enable the Tribunal to deal fairly and justly with the application. This includes taking into account the requirement for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders. In addition to those factors and factors that I have described in the context of the reasons for the delay, the issues that the parties argued that I should take into account were (i) the merits of the case; and (ii) the consequences of my decision on the parties.

66. Mr Ripley, for Mr Jones, says that I should take into account the merits of the appeal in this case. Although in the usual case the merits are not relevant to an application for the extension of a time limit, the Tribunal could and should take into account the merits of the case where it can do so without material investigation where the grounds are very strong.

67. He referred to a passage from the judgment of Moore-Bick LJ in *Hysaj* (at [46]), where Moore-Bick LJ said:

> "[46] If applications for extensions of time are allowed to develop into disputes about the merits of the substantive appeal, they will occupy a great deal of time and lead to the parties' incurring substantial costs. In most cases the merits of the appeal will have little to do with whether it is appropriate to grant an extension of time. Only in those cases where the court can see without much investigation that the grounds of appeal

> are either very strong or very weak will the merits have a significant part to play when it comes to balancing the various factors that have to be considered at stage three of the process. In most cases the court should decline to embark on an investigation of the merits and firmly discourage argument directed to them. Here too a robust exercise of the jurisdiction in relation to costs is appropriate in order to discourage those who would otherwise seek to impress the court with the strength of their cases."

68. Mr Ripley says that the grounds of Mr Jones's appeal are strong. He points to the fact that the assessment and determinations are often based on HMRC's estimates or incorrect information. In this respect, he referred me to evidence in Mr Jones's statement, which HMRC did not contest, of the inclusion of a capital gain in one of the assessments in relation to a property that Mr Jones has never owned.

69. For his part, Mr Vallis says that the merits of the case are irrelevant in the context of an application for a person to make an appeal out of time. He referred me to the decision of the Supreme Court in *Apex Global* and to the passage from the judgment of Lord Neuberger (at [29]) to which I have referred above:

> "[29] In my view, the strength of a party's case on the ultimate merits of the proceedings is generally irrelevant when it comes to case management issues of the sort which were the subject matter of the decisions of Vos J, Norris J and Mann J in these proceedings. The one possible exception could be where a party has a case whose strength would entitle him to summary judgment. Both the general rule and the exception appeared to be common ground between the parties, although Mr Fenwick seemed to be inclined at one stage to suggest that the exception might be a little wider. In my view, the general rule is justifiable on both principled and practical grounds."

70. For my own part, I did not perceive any material difference in the statements of Moore-Bick LJ in *Hysaj* and Lord Neuberger in *Apex Global*. The judgments are given in slightly different contexts, but the principle is the same, namely that the strength of a party's case is not usually relevant in deciding whether an application for permission to make a late appeal should be granted unless that party's case is particularly strong and can be demonstrated without a substantial enquiry into the evidence.

71. Mr Jones presented some evidence of particular points arising from the assessments and the closure notice in order to demonstrate that the amounts claimed were excessive. HMRC did not contest this evidence. It is inevitable given the nature of the assessments that there will be some discrepancies. That was a matter that should have been addressed by disclosure during the enquiry process. I do not have before me comprehensive evidence to determine whether the amounts assessed are or are not properly charged and it would not, for the reasons given in cases such as *Denton*, *Hysaj* and *Apex Global*, be appropriate for me to embark upon such an enquiry now. On this basis, I will treat the merits of the case as neutral.

72. Mr Ripley also refers to the consequences for Mr Jones of a refusal to grant permission for a late appeal. He says that, although it may be possible for Mr Jones to

bring a claim against JK Shah in relation to their conduct of his tax affairs, there can be no guarantee of any success or indeed that any judgment obtained against JK Shah would ultimately be recoverable. Given the amount of the claim against Mr Jones in this appeal, it is likely that Mr Jones would be made bankrupt if he were not allowed to appeal. The consequences for Mr Jones would indeed be serious and I take this account to account in the balancing exercise.

73. Mr Vallis refers to the consequences for HMRC. He notes that HMRC would be required to divert resource to an appeal which it had considered to be final. I do not underestimate the time and cost HMRC would be required to devote to this appeal and so I take this onto account in the balancing exercise.

Conclusion

74. Having taken all of these factors into account, together with the need for litigation to be conducted efficiently and at proportionate cost and the need to enforce compliance with rules, practice directions and orders, I have decided to refuse this application.

75. It seems to me that, while there is a plausible reason for the delay in in the form of Mr Jones's depression and the failure of his agents to take appropriate action, and the potential consequences for Mr Jones are very significant, the evidence of the effect of Mr Jones's condition on his ability to deal with his affairs is not strong. In the final analysis, those factors are insufficient to outweigh the seriousness of the delay, and the need to ensure that litigation is pursued efficiently and that time limits are adhered to.

Decision

76. For the reasons that I have given above, I refuse the application.

Rights to appeal

77. 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 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.

ASHLEY GREENBANK
TRIBUNAL JUDGE

RELEASE DATE: 5 APRIL 2018