



TC08009

PROCEDURE - Income tax – whether to give permission for late appeal to be made - whether reasonable excuse - no – appeal dismissed.

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2019/05920

BETWEEN

MR SHAHBAD ZARGAR

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE KELVAN SWINNERTON
MR CHRISTOPHER JENKINS (MEMBER)**

The hearing took place on 10 December 2020. With the consent of the parties, the form of the hearing was by video. The Appellant did not attend the hearing but his representative was present and was in agreement that the hearing should proceed despite the absence of the Appellant. A representative for the Respondents was in attendance. The hearing was conducted by way of the Tribunal video platform. A face-to-face hearing was not held because of the ongoing Covid-19 pandemic and the related restrictions. We considered a bundle of 324 pages and a bundle of authorities.

Prior notice of the hearing had been published on the gov.uk. website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Mr Naeem (Rosemount Accountancy Ltd) for the Appellant.

Mr Khan, litigator of HM Revenue and Customs’ Solicitor’s Office for the Respondents.

DECISION

INTRODUCTION

1. This is an application by Mr Zargar for permission to make a late appeal. The appeal relates to a decision of HMRC of 19 January 2015 to issue assessment notices for the years 2008-9, 2009-10, 2010-11, and 2012-13 and to issue a closure notice for the year 2011-12. Penalties were also charged in relation to those assessments.
2. An appeal was submitted to the First-tier Tribunal (Tax Chamber) on 4 September 2019. On 7 October 2019, HMRC objected to Mr Zargar being allowed to make a late appeal.

THE FACTS

3. Mr Zargar operates a business that primarily repairs, polishes and sells jewellery. It operates from shop premises in Aylesbury, Buckinghamshire.
4. Mr Zargar has been operating the business since about 1990 and it continues to trade.
5. Mr Zargar works full-time in the shop and his wife, who is from Ireland, also works in the shop when her assistance is needed.
6. On 9 May 2011, the business of Mr Zargar was subjected to an armed robbery.
7. On 14 March 2012, a cheque for insurance monies relating to the robbery in the sum of £82,070 was sent to Mr Zargar by the insurance brokers (Besso Limited).
8. On 29 August 2013, HMRC wrote to Mr Zargar explaining that they were undertaking a check of his self-assessment tax return for the year 2011-12. HMRC also wrote on the same date to the (then) agent of the Appellant (Aminian & Co, Chartered Accountants) explaining this.
9. On 2 September 2013, Aminian & Co telephoned HMRC stating that they held a lot of the records for Mr Zargar but that they would need to obtain bank statements and other records from the wife of the Appellant. It was explained also by Aminian & Co that there were no sales invoices or till rolls.
10. On 11 November 2013, HMRC telephoned Mr Zargar to arrange a meeting and Mr Zargar explained that his wife was in and out of hospital although he did not know what was wrong with her.
11. On 21 November 2013, HMRC sent a 'Notice to provide information and produce documents' to Mr Zargar because HMRC had not received all the items requested.
12. On 21 January 2014, a meeting took place between Mr Zargar and officials of HMRC. A note of that meeting was prepared by HMRC. The meeting was attended by Mr Zargar, Mr Aminian, Mrs P Ferreiro Cives (HMRC) and Mr P Thomson (HMRC). It was explained at that meeting that Mr Zargar did not keep a record of stock.
13. On 22 April 2014, HMRC issued another 'Notice to provide information and produce documents' to Mr Zargar.

14. On 19 January 2015, HMRC issued notices of further assessment. The amounts charged were as follows: 2008-9 - £4,294.92; 2009-10 - £4524.52; 2010-11 - £4760; 2012-13 - £5247.55. The further assessments were due to the understatement of sales and profits by Mr Zargar. The amount to be paid for 2011-12 was £5100.52 after the check of the self-assessment tax return for that year had been completed and a closure notice issued.
15. The letter of HMRC dated 20 January 2015 refers to penalties in the sum of £15,492.31.
16. On 13 February 2015, Aminian & Co wrote to HMRC stating that, amongst other things, Mr Zargar wished to appeal against the further assessment for 2012/2013.
17. On 27 February 2015, Aminian & Co wrote to HMRC stating that Mr Zargar would like to appeal against the further assessments for the other years as well.
18. On 9 April 2015, HMRC telephoned Aminian & Co explaining that, since 27 February 2015, they had not received any additional information from Mr Zargar to assist HMRC in the appeal made by Mr Zargar to the further assessments. Consequently, HMRC would need to issue a decision letter which would crystallise the assessments and the closure notice.
19. On 9 April 2015, HMRC issued a Notice of Penalty Assessment detailing penalties amounting to £15,492.31.
20. A review was requested of the decisions of HMRC.
21. On 3 June 2015, the review varied the decisions of HMRC and reduced the additional duties for the five years to £21,071.77 and the penalty charge to £10,693.92.
22. On 27 July 2015, HMRC wrote to Mr Zargar explaining that HMRC's letter of 3 June 2015 stated that, if he did not appeal to the Tribunal within 30 days, HMRC would assume that the matter was settled by agreement under S54(1) Taxes Management Act 1970. The assessments and penalties had, therefore, been released for collection as set out in the letter of HRMC dated 3 June 2015.

THE LAW

23. The Upper Tribunal in *William Martland v The Commissioners for HM Revenue and Customs* [2018] UKUT 0178 (TCC) gave guidance as to how this Tribunal should approach an application to allow the notification of a late appeal. Consequently, we shall apply the principles in that decision when deciding whether it is appropriate for us to give permission to appeal. The Upper Tribunal stated as follows in the case of *Martland*:

When the FTT is considering applications for permission to appeal out of time, therefore, it must be remembered that the starting point is that permission should not be granted unless the FTT is satisfied on balance that it should be. In considering that question, we consider the FTT can usefully follow the three-stage process set out in *Denton*:

- (1) Establish the length of the delay. If it was very short (which would, in the absence of unusual circumstances, equate to the breach being “neither serious nor significant”), then the FTT “is unlikely to need to spend much time on the second and third stages” – though this should not be taken to

mean that applications can be granted for very short delays without even moving on to a consideration of those stages.

(2) The reason (or reasons) why the default occurred should be established.

(3) The FTT can then move onto its evaluation of “all the circumstances of the case”. This will involve a balancing exercise which will essentially assess the merits of the reason(s) given for the delay and the prejudice which would be caused to both parties by granting or refusing permission. (paragraph 44)

That balancing exercise should take into account the particular importance of the need for litigation to be conducted efficiently and at proportionate cost, and for statutory time limits to be respected.... (paragraph 45)

In doing so, the FTT can have regard to any obvious strength or weakness of the applicant's case; this goes to the question of prejudice – there is obviously much greater prejudice for an applicant to lose the opportunity of putting forward a really strong case than a very weak one. It is important however that this should not descend into a detailed analysis of the underlying merits of the appeal. (paragraph 46)

Shortage of funds (and consequent inability to instruct a professional adviser) should not, of itself, generally carry any weight in the FTT's consideration of the reasonableness of the applicant's explanation of the delay: see the comments of Moore-Bick LJ in *Hysaj* referred to at [15(2)] above. Nor should the fact that the applicant is self-represented – Moore-Bick LJ went on to say (at [44]) that “being a litigant in person with no previous experience of legal proceedings is not a good reason for failing to comply with the rules”; HMRC's appealable decisions generally include a statement of the relevant appeal rights in reasonably plain English and it is not a complicated process to notify an appeal to the FTT, even for a litigant in person. (paragraph 47).

24. The Upper Tribunal in *HMRC V Katib* [2019] UKUT 189 (TCC) stated:

...as a matter of principle, the need for statutory time limits to be respected was a matter of particular importance to the exercise of its discretion... Differences in fact do not negate the principle, and it is not possible to detect that the tribunal thereafter gave proper weight to it in parts of the decision which followed. (paragraph 17)

DISCUSSION

25. Mr Zargar did not attend the hearing nor did he provide a witness statement.

26. Where HMRC does not agree to notice of an appeal being made to them after expiry of the time limit of 30 days, the tribunal has a discretion to give permission to admit the appeal late under s.49(2)(b) of the Taxes Management Act 1970 (“TMA”) although that provision does not contain a test for deciding the issue. However, as referred to above, the Upper Tribunal case of *William Martland v HMRC* [2018] UKUT 0178 (TCC) considered the approach to be taken in the exercise of this statutory discretion.

27. As set out, that involves a three-stage approach of establishing whether or not the length of the delay is serious and/or significant, establishing the reason(s) for the delay and evaluating all the circumstances of the case using a balancing exercise to assess the merit(s) of the reasons given for the delay and the prejudice which would be caused to both parties by granting or refusing permission.

28. In the present case, it is not in dispute between the parties that the delay was anything other than serious and significant with the intention to appeal being notified to HMRC on 4 September 2019 which was about four years and three months after the expiry of the deadline in early July 2015.

29. Turning now to the reasons for the delay, the grounds of appeal state that the primary reason for the delay in appealing by the Appellant is because the previous accountant of the Appellant, Aminian & Co, did not provide the requested information to HMRC on time.

30. At the hearing, Mr Naeem on behalf of the Appellant stated that the Appellant comes from a backward area of Pakistan and that the Appellant does not have a high level of proficiency in the English language. Mr Naeem went on to explain that the Appellant does not, therefore, understand financial and tax matters and has a low level of income.

31. Mr Naeem explained that he was not instructed by the Appellant until November 2019, that Mr Naeem was not able to find a solicitor to represent the Appellant previously but that he has now found a tax barrister who can act for the Appellant.

32. Mr Naeem told us that he was not submitting that the decision of HMRC was wrong but that the previous accountant of the Appellant had informed the Appellant that everything was in hand and that that there was not a problem.

33. Mr Khan for HMRC stated that, with respect to the English language being a factor in the delay of the appeal, HMRC had not encountered any problems of language when dealing with the Appellant with reference made to HMRC records of telephone discussions with the Appellant (such as on 16 January 2018) where no problems of language were highlighted.

34. With respect to the primary reason for the delay, that of the conduct of the former agent of the Appellant (Aminian & Co), Mr Khan submitted that a failure of the agent should be regarded as a failure of the Appellant.

35. Furthermore, Mr Khan referred us to the note of a telephone conversation dated 16 May 2014 between Mr Aminian (of Aminian & Co) in which reference is made to continuing health problems of Mrs Zargar and which also states: "*He wants to do as little work as possible for these clients because they cannot afford to pay him*". Mr Khan submitted that, despite issues as to whether Aminian & Co would be paid by the Appellant, they continued to act for the Appellant and to respond to the requests of HMRC which does not support at all the contention of the Appellant that he was let down by Aminian & Co and that any failures of Aminian & Co constitute a reason for the delay of the Appellant in appealing. Mr Khan also stated that no complaint has been made by the Appellant in respect of the conduct of Aminian & Co.

36. With respect to any language difficulties of the Appellant being a valid reason for the delay in appealing, it is clear that the Appellant has operated a retail shop for about 30 years and that he has worked full-time in that shop. That would have involved his having to communicate with customers in English on a daily basis.

37. It is also the case that the Appellant has conversed with HMRC by telephone without difficulties and that he attended the meeting with HMRC on 21 January 2014 where no difficulties in language experienced by the Appellant were highlighted. We do not, therefore, accept that difficulties of the Appellant with the English language played any part at all in the delay by the Appellant in making an appeal.

38. The primary reason given by the Appellant for the delay in appealing is due to the failure of Aminian & Co and the claimed assurance given by Aminian & Co to the Appellant that the tax affairs of the Appellant were in hand and that there was not a problem.

39. It is clear from the letter of HMRC to the Appellant dated 3 June 2015 that the tax affairs of the Appellant were not in hand and that there was a significant problem with them. That was made abundantly clear to the Appellant in that letter as was the timeframe in which an appeal was to be made. We do not accept, therefore, that the Appellant was acting under the belief that there was no problem with his tax affairs as the opposite was made clear to him.

40. Neither do we accept the contention of Mr Naeem that the Appellant was let down by Aminian & Co given that the documentation illustrates that Aminian & Co engaged with HMRC and sought to respond to the queries of HMRC despite the concerns of Aminian & Co conveyed to HMRC that they would not be paid for the work that they were undertaking on behalf of the Appellant.

41. That said, even if the Appellant had been let down by Aminian & Co, the Appellant after having received the letter of 3 June 2015 had the opportunity to engage another agent to assist him with the matters made clear to him in that letter but he made no attempt at all to do so.

42. We consider that the reasons put forward by the Appellant for the delay in making an appeal have no merit at all.

43. In relation to evaluating the circumstances of the case as a whole, HMRC's letter of 3 June 2015 refers to substantial sums that appear to have been taken from the business of the Appellant and deposited in a private bank account on a regular basis. HMRC consider that these omissions appear to have been brought about deliberately by the Appellant such that the level of business turnover was understated and the level of tax to be paid was reduced. Despite repeated requests for documentation to explain this activity including a request for details of a loan made to the Appellant by a friend of the family of the wife of the Appellant named Mr Gerald Brennan, the required documentation and information was not provided to HMRC.

44. In his grounds of appeal, it is stated that the increase in turnover of the Appellant detailed in the assessments of HMRC is unjustifiable and excessive. That said, no further explanation or detail has been provided as to why the assessments made by HMRC are excessive or unjustifiable despite the years that have elapsed since the assessments were made.

45. Considering the circumstances as a whole, we find that there is little prejudice to Mr Zargar and that the merits of the appeal succeeding at first blush are dim.

46. Applying the three-stage test in *Martland* we find that the reasons given by Mr Zargar plainly are not reasonable excuses for the lateness of Mr Zargar in filing an appeal.

DECISION

47. We have concluded, in all the circumstances of the case, that Mr Zargar has not given a sufficiently good reason for a serious and significant delay in making an appeal.
48. We refuse Mr Zargar permission to make a late appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

49. 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.

KELVAN SWINNERTON

TRIBUNAL JUDGE

RELEASE DATE: 28 JANUARY 2021