[2021] UKFTT 148 (TC)

TC08117

Keywords: Validity of notice of enquiry sent to Appellant c/o occupant of the registered office, and whether the subsequent closure notice was valid, where occupant also 64-8 agent. Notice of enquiry valid. Appealed dismissed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal number: TC/2020/01424

BETWEEN

SOAPBOX COMMUNICATIONS LIMITED **Appellant**

-and-

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

TRIBUNAL: Judge Heather Gething

The hearing took place on 23 April 2021. With the consent of the parties, the form of the hearing was V (video) and all parties attended remotely using the Tribunal video platform. A face-to-face hearing was not held because of the restrictions imposed by the Covid 19 pandemic. The documents to which I was referred were contained in two bundles, the hearing bundle, labelled Bundle, of 126 pages and an authorities' bundle, labelled Litigation and Authorities Bundle, of 90 pages. I also received witness statements of Miss Olivia Tomlinson and Mr John Schwartz and skeleton arguments from each of the parties.

Miss Olivia Tomlinson, of Shencoh Associates Limited, for the Appellant

Mr Bradley, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents

DECISION

INTRODUCTION

1. The Appellant challenges the validity of a notice of enquiry into two amended returns and therefore the validity of the closure notice but not the content of the closure notice. The Appellant contends that the notice of enquiry was not served on the Appellant in accordance with section 115(1) Taxes Management Act 1970 ("**TMA").** The notice was addressed to the Appellant company **c/o Cardens** (the Appellant's 64-8 agent) at the registered office of the Appellant which was also the office and registered office of Cardens. The Appellant relies on *William Andrew Tinkler v The Commissioners for Her Majesty's Revenue & Customs* [2019] EWCA Civ 1392 ("***Tinkler***") where the Court of Appeal confirmed that a notice of enquiry was not duly served where the notice had not been sent to the current address of the Appellant and where the notice was sent to Mr Tinkler's 64-8 agent.

2. The Notice of enquiry was validly served and the appeal is dismissed.

THE FACTS

3. I heard evidence of Mr Schwartz a director and the company secretary of the Appellant and I find the following facts which were not in dispute:

4. The Appellant provides services from premises in London and Bath.

5. Prior to 28 July 2010, the Appellant's registered office was notified to Companies House as "*c/o Cardens Accountants LLP, 73 Church Road, Hove, East Sussex BN3 2BB*".

6. On 8 January 2015, Companies House was notified of a change of the Appellant's registered office to "The Old Casino, 28 Fourth Avenue, Hove, East Sussex BN3 2PJ". I will refer to this address below as "The Old Casino".

7. HMRC received an automatic notification from Companies House of a change in registered office.

8. HMRC's COTAX computer recorded the change of address. and included "*C/O Cardens"* in the record.

9. On 20 March 2015, Cardens notified Companies House of a change of their own registered office from Church Road to the Old Casino.

10. In consequence of the above, Cardens' address was the registered office of the Appellant throughout the enquiry. Cardens was also Appellant's 64-8 agent throughout the enquiry.

11. The Appellant has never had an entitlement to occupy the Old Casino or right to enter the Old Casino to take post addressed to the Appellant and delivered to the Old Casino. The Appellant had an agreement with Cardens to receive post on the Appellant's behalf and forward it to the Appellant or at the Appellant's direction.

12. On 25 October 2018, a notice of enquiry into the Appellant's amended returns for the periods ended 31 May 2016 and 2017, was issued by HMRC and addressed as follows:

" SOAPBOX COMMUNICATIONS LIMITED

c/o Cardens Accountants LLP

The Old Casino

28 Forth Avenue

Hove

East Sussex

BN3 2PJ"

13. A letter was also sent to Cardens, as the Appellants registered 64-8 agent, attaching a copy of the notice of enquiry that had been addressed to their client in the manner mentioned at [12] above.

14. The notice of enquiry addressed to The Appellant as described at [12] was received by Cardens. The copy in the bundle indicated it was date stamped by Cardens as having been received on 29 October 2018.

15. Cardens called Mr Schwartz to inform him that a notice of enquiry had been received. As the issue related to R&D relief, Mr Schwartz directed that the notice of enquiry be sent to Shencoh Associates Limited ("***Shencoh***") who are specialists in R&D.

16. Shencoh communicated with HMRC throughout the course of the enquiry leading to the issue of the closure notice on 11 December 2019, and they represent the Appellant in this appeal.

17. There is no dispute about whether the notice would have been served on time if it had been validly served.

THE APPELLANT'S POSITION

18. Para 24 of Schedule 18 to the Finance Act 1998 deals with the ability of HMRC to enquire into a return. Para 24(1) requires HMRC to **give** notice [my emphasis] of its intention to do so within the time allowed, and Para 24(5) states that a return that has been subject to one enquiry may not be subject of another. It follows, that for a closure notice to be valid there must be a valid enquiry into a return. If there was no valid enquiry, the amended assessments in the closure notices would be invalid and the Appellants self-assessment would be reinstated. No further enquiry into the returns could be made by HMRC.

19. Section 115(1) TMA requires that a notice that is to be served under the Taxes Acts on a person *"may be either delivered to him or left at his usual or last known place of residence".*

20. A notice that is sent to an address at which the Appellant no longer resides is invalid see *Tinkler at* [68]

21. A notice must be sent to the taxpayer and not to a 64-8 agent. HMRC accept a notice of enquiry must be served on the taxpayer in question and not on a 64-8 agent. The Appellant relies on *Tinkle*r at [41] and [42].

22. The correct address for service on a company is, as specified in section 1139(1) Companies Act 2000, the company's registered office.

23. Section 7 of the Interpretation Act 1978 ("***the Interpretation Act****")* indicates that where an Act requires a document to be "served" then unless there is any contrary intention, service is deemed to be effective if the letter is" ***properly addressed"*** and sent by pre-paid post.

24. The Appellant's registered address is the Old Casino. The Appellant says it is not, *"c/o Cardens, The Old Casino"*. HMRC has served the notice on the section 64-8 agent and not on the Appellant.

25. The Appellant should not be estopped from challenging the validity of the notice of enquiry simply because Shencoh have assisted HMRC with their enquiry, See *Tinkler* at [68].

26. The inclusion of "*C/O Cardens*" was the result of an error in HMRC's computer system and is an admission on the part of HMRC that the notice of enquiry was not sent to the intended correct address. In matters of procedure there is no room for error.

27. Both section 1139 Companies Act and section 7 of the Interpretation Act require accuracy. The Respondents intended to send the notice to the Appellant's agent and did so and that is invalid service.

28. The Appellants ask for the closure notice to be set aside.

THE RESPONDENTS POSITION

29. There is no right of appeal against a notice of enquiry. There is a right of appeal against a closure notice. It is accepted that for a closure notice to be valid that there must be a valid enquiry into the return.

30. The enquiry notices into the returns were valid as they were properly served. They were addressed to the Appellant and sent to the Old Casino, the registered office of the Appellant.

31. The inclusion of "C/O Cardens is the result of the COTAX software and a hang-over from the prior notification in July 2010 when the registered office was notified as that of Cardens at Chruch Road in Hove, and specifically included the wording "C/O Cardens".

32. Section 1139 Companies Act 2006 permits a document to be served by sending it by pre-paid post to the registered office of a company. That has been done. The notice was addressed to the Appellant and delivered by post to the registered office.

33. Further section 115 TMA enables a notice to be validly served or delivered to a company, "*at any other prescribed place.*" That term is not defined. Sending a notice to the registered office was considered compliant with section 115 in the FTT decision of *Partito Media Services Ltd v HMRC* [2012] UKFTT 246. In that case as in this, the registered office of both the Appellant and the Appellant's agent was at the same address.

34. Section 7 of the Interpretation Act states that a document is properly served if it is sent by properly addressing, pre-paying and posting a letter containing the document, unless the contrary is proved. The notices were sent to The Old Casino. The Appellant had provided a copy of the notice in the bundle showing it had been received by Cardens. The notices were therefore served on the Appellant.

35. The inclusion of the expression "*C/O Cardens*" within the addressee does not make the notices void by reason of mistake, defect or omission. Section 114 TMA provides that mistakes, defects and omissions, or want of form does not make a notice issued under the Taxes Acts invalid provided it is correct in substance.

36. The purpose of the notice was clear. The annotation by Cardens, "*for the R+D Co to handle*," confirms that was the case.

37. There was no evidence that the notices would have been treated differently by Cardens had the words "*C/O Cardens*" not been included. Indeed appeals, against the closure notices issued at the close of the enquiry, were lodged. The inclusion of "C/O Cardens" did not affect the way the notices were handled.

38. The facts in *Tinkler* were different from the present case, the notice of enquiry in that case was sent to an old address and never received by the taxpayer. The notice had not been validly served at the usual or last known place of residence. The issues in *Tinkler* in the Court of Appeal were:

(1) Whether a valid notice of enquiry was given by copying the notice to the Agent, and

(2) Whether the Appellant was estopped by convention from denying that a valid enquiry had been opened.

39. The Respondents are not asserting that a notice of enquiry that had been sent to a 64-8 agent or authorised representative, constitutes service of a valid notice of enquiry. Cardens were the authorised representative of the Appellant, but the notices were sent to the registered office of the Appellant. As Mr Tinkler was not a company, section 115 TMA did not apply.

40. The Respondents do not plead that the Appellant having engaged in the enquiry is estopped by convention from accepting that the notice had been validly served. That issue does not arise in this case as the Respondents say the notice was validly served. The Respondents noted that the issue of estoppel in Tinkler is now the subject of an appeal to the Supreme Court. The issue of estoppel may therefore arise in the future, if the decision of this Tribunal is appealed and the decision of the Court of appeal is reversed by the Supreme Court.

41. The Respondents request that the appeal be dismissed.

DISCUSSION

42. The general rule in construing taxing statutes is for the legislation to be construed purposively and applied to the facts viewed realistically see *BMBF v Mawson* 2004 HoL (2005 STC 1). The purpose should, so far as is possible, be identified from the words used in their context.

43. The purpose of a notice of enquiry is to signal that HMRC wish to check the taxpayer's self-assessment and that his self-assessment may be challenged or altered. This is a significant piece of correspondence as it may lead to an adjustment to the self-assessment and further liability to pay tax and potential penalties. It is fundamental to the operation of the enquiry system that the taxpayer should receive the notices. It is unsurprising that the practice adopted by HMRC is that such correspondence must be served on the taxpayer in question and not just sent to an agent.

44. The Appellant in this case received the notice of enquiry see [15] above.

45. The requirement in Para 24(1) of Schedule 18 to the FA 1998, if HMRC wishes to enquire into a return, is that they "*must **give notice** to the company of their intention to do so ("notice of enquiry") within the time allowed.". [Emphasis added]*

46. There is no dedicated legislation on how the notice is to be given in Schedule 18, but Sections 114 and 115 TMA and section 1139 Companies Act 2006 provide guidance as to how the purpose is to be given effect to. These sections deal with matters of detail which are important in a case where there is doubt whether the purpose has been effected, such as the Tinkler case. Such doubts do not arise in this case.

47. Section 1139(1) Companies Act 2006 provides that any document may be served on a company registered under this Act by leaving it at, or sending it by post to, the company's registered office. The registered office is the address shown for that purpose in the register available for public inspection. The notice in this case was sent by post to the registered office at the Old Casino. The inclusion of *"C/O Cardens*" between the Appellant's name and the registered office address did not prevent the Post Office delivering the document to the registered office. The document having been delivered by the Post Office would be treated as having been served on the Appellant for the purposes of section 1139 Companies Act.

48. Section 115(1) TMA provides:

> "*A notice or form which is to be served under the Taxes Act on a person may be either delivered to him or left at his usual or last known place of residence."*

47. What amounts to service is dealt with by section 115(2) which relevantly provides:

> "*(2) Any notice....to be given or sent, served or delivered under the Taxes Acts may be served by post, and, if to be given, sent, served or delivered to or on any person by HMRC may be so served addressed to that person-*
>
> *(a) at his usual or last known place of residence, or his place of business or employment*
>
> *(b) in the case of a company, at any other prescribed place and, in the case of a liquidator of a company, at his address for the purposes of the liquidation or any other prescribed place.*

49. Section 115(3) indicates that what is meant by "prescribed place" is to be determined by Regulations made by the Board, but no such regulations have been issued. In the absence of such guidance, the giving of notice by HMRC under Para 24(1) must be governed by section 115(2).

50. The parties accept that the registered office of a company is its place of residence for the purposes of section 115(2).

51. The Appellants consider the notice that was sent was defective because:

> (1) The notice was addressed to SOAPBOX COMMUNICATIONS LIMITED, C/O Cardens, The Old Casino. "*C/O Cardens"* is not part of the address of the registered office of the Appellant.
>
> (2) The inclusion of "C/O Cardens" means that the document had been sent to the Appellant's 64-8 agent.
>
> (3) There must be a zero-tolerance approach to errors in the formalities surrounding the service of notices.
>
> (4) Section 7 of the Interpretation Act will not deem the notice of enquiry to have been properly served because the notice was not properly addressed.

52. Section 114 TMA provides some assistance in relation to defects in this context. It does not indicate a zero-tolerance approach be adopted. It provides:

"*A**n assessment, determination, warrant or other* ***proceeding*** *which purports to be made in pursuance of any provision of the Taxes Acts* ***shall not be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of mistake****, defect or omission therein,* ***if the same is in substance and effect in conformity with*** *or according to the intent and meaning of* ***the Taxes Acts, and if the person*** *is properly charged or intended to be charged or* ***affected thereby is designated therein according to common intent and understanding.****" [My Emphasis]*

53. It is evident that the notice of enquiry was addressed to SOAPBOX COMMUNICATIONS LIMITED and it is equally evident that the parties commonly understood that the notices of enquiry were addressed to the Appellant and concerned the Appellant's self-assessment for the years ended May 2016 and 2017, and the Appellant cooperated with HMRC in the enquiry. If the inclusion of "C/O Cardens" was an error or mistake, section 114 would prevent the error or mistake from causing the notice of enquiry

from being quashed or deemed void, whether the "C/O Cardens" was regarded as part of the address or the addressee.

54. The Appellant considers that the inclusion of the C/O Cardens renders the notice invalid as it was served on the 64-8 agent. I do not agree that that is the effect. There are two reasons:

(1) HMRC sent the 64-8 agent a letter dated 25 October 2018 to which was attached the letter addressed to SOAPBOX COMMUNICATIONS LIMITED, C/O Cardens, The Old Casino. That letter is different in form and content.

(2) In is common practice, when addressing a letter to A to be delivered to the address of B, to use the notation "C/O" meaning "care of". It does not signify that B, the person to whom the letter will be delivered, is acting in any capacity other than that of post box. It is common for companies to select a registered office which is not the place of business of the company or the private address of a director or shareholder. The incorporators of companies offer this service to newly incorporated companies. It is also common for companies, with the agreement of their accounting advisor, to select their accounting advisors address to be the registered address, as was the case here. The agreement of the accounting advisor to do so is required because the accounting advisor must forward the mail when received to the directors of the business. In this case it so happened that Cardens was the 64-8 agent of the Appellant. HMRC's letter to the 64-8 agent is different in form and content. It is clear the letter addressed to the Appellant C/O Cardens was not a letter to the 64-8 agent.

(3) That section 114 allows for tolerance of some errors or mistakes in notices of enquiry, is not inconsistent with the situation in Tinkle where the taxpayer did not receive the notice. It is a fundamental requirement that a taxpayer receives the notice.
(4) In this case, the letter addressed to the Appellant C/O Cardens was received by Carden, Cardens called Mr Schwarz and informed him of the enquiry into the returns, Mr Schwartz directed that the notice of enquiry should be sent to Shencoh. That this occurred was also recorded by hand on the copy of the letter provided by the Appellant in the bundle. The objective of the legislation had been achieved in this case.

55. Section 7 of the Interpretation Act provides that:

"Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, prepaying, and posting a letter containing the document and, unless the contrary intention is proved, to have been effected at the time at which the letter was delivered in the ordinary course of post."

Section 7 provides for a universal method of serving documents which, if followed, will deem a document to have been duly delivered unless it can be proved either that the legislation requires a different process or that the document was not in fact delivered.

56. There is no provision in either Schedule 18 FA 1998, or sections 114 or 115 TMA which indicates that service by post is not permitted. And the evidence is that the notice of enquiry was received at the registered office of the company, and the process that the Appellant expected to take place did take place. I consider including "C/O Cardens", did not prevent the notice of enquiry from being properly addressed to the Appellant. All it did was to recognise the notice was to be delivered to the office of Cardens, the Appellant's registered office.

DECISION

57. I consider the closure notice is valid because the notice of enquiry was validly served. I dismiss the appeal.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

58. 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.

HEATHER GETHING
TRIBUNAL JUDGE-

RELEASE DATE: 14 MAY 2021