



Neutral Citation: [2022] UKFTT 344 (TC)

Case Number: TC008600

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2020/03621

Income tax – strike out – appealable decision – PAYE full payment submissions made by appellant and not amended

Heard on: 7 September 2022

Judgment date: 20 September 2022

Before

TRIBUNAL JUDGE MCGREGOR

Between

SUMANGKALY SIVA

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

The Appellant was not represented.

For the Respondents: Rose Grainger, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION ON PRELIMINARY ISSUE

INTRODUCTION

1. This decision concerns HMRC's application to strike out the Appellant's appeal. The Appellant has appealed against HMRC's letters pursuing payment of unpaid income tax and national insurance under a PAYE scheme.

ATTENDANCE

2. Neither the Appellant nor their representatives appeared at the hearing. They had expressed, well in advance, that they did not intend to attend the hearing. Their reasoning for so doing was that they had presented the documents and evidence with explanations numerous times and that the Tribunal should read the correspondence and make a decision.

3. Given those clear intentions of the Appellant, I decided that it was in accordance with the overriding objective of the Tribunal rules to proceed with the hearing in their absence.

BACKGROUND

4. While this was not a full hearing of the substantive issues, I have set out the facts as I found them from the bundle of documents and correspondence from the Appellant's representative to the Tribunal because it will aid understanding of this decision.

5. The Appellant operated a shop in Coventry. The Appellant employed staff in that shop and ran a PAYE system for making payments of income tax and NICs.

6. The business was transferred in February 2018.

7. PAYE returns continued to be made on the Appellant's PAYE reference until 5 December 2019.

8. The new owner of the business (who had been an employee of the Appellant) received their PAYE reference on 5 December 2019 and started submitting their PAYE full payment submissions (FPS) from that date, including submitting FPS dating back to 5 June 2019.

9. After 5 December 2019, HMRC started to raise assessments for PAYE and NICs on the Appellant on the basis that the business was continuing for the Appellant.

10. HMRC sent letters demanding payment for amounts of PAYE and NICs for the period from February 2018 to 5 December 2019 based on the FPS submitted by the Appellant's representative on her PAYE reference.

11. The Appellant appealed to the Tribunal. The Notice of Appeal stated that the Appellant was appealing against penalties for PAYE and against the fact that PAYE and NICs had already been paid (by the new business owner) and that therefore HMRC was pursuing the same money twice.

12. HMRC sought to clarify the position with the Appellant after the appeal was made. HMRC confirmed that no penalties had been issued to the Appellant.

13. All of the post 5 December 2019 assessments were cancelled by HMRC once the Appellant informed HMRC that her business had ceased.

14. HMRC and the Appellant were not able to resolve matters between them.

PARTIES ARGUMENTS

15. HMRC submits that this Tribunal does not have jurisdiction to hear Mrs Siva's appeal because there is no appealable decision.

16. HMRC submits that a full payment submission (FPS) made under a PAYE system is a return completed by a taxpayer, or their representative, to inform the Respondents as to the

payments made to their employees, which gives rise automatically to their tax and National Insurance position. As the resulting charges are wholly based on the figures submitted by the taxpayer, the Respondents submit that FPS returns do not carry a right of appeal within legislation.

17. HMRC submit that FPS returns were made:

- (1) Up until 5 December 2019 under the Appellant's PAYE reference; and
- (2) From the month ending 5 June 2019 under the new owner's PAYE reference.

18. HMRC submit that they have pursued the income tax and NICs due in accordance with the FPS made until 5 December 2019 in accordance with the returns made by the Appellant through their representative.

19. Despite encouragement to do so, the Appellant has not amended the FPS returns in respect of the period from February 2018 to December 2019 and therefore the amounts being chased by HMRC continue to show on the PAYE record as outstanding.

20. HMRC submit that there is no appealable decision and that therefore the Tribunal should exercise its discretion to strike out the case under Rule 8(2) of the Tribunal Rules.

21. In the alternative, if the Tribunal concludes there has been an appealable decision, the Appellant would have little reasonable prospect of success with this appeal and that the matter should be struck out on this basis under Rule 8(3) of the Tribunal Rules

Appellant's arguments

22. As noted above, the Appellant did not attend the hearing, nor did they respond to requests for documents or reasons in response to HMRC's application for strike out.

23. The Appellant's representative sent a letter dated 2 December 2021 in which they stated (in summary) that:

- (1) They could not solve the issues reasonably and amicably with HMRC so they applied to the Tribunal to solve this issue with HMRC.
- (2) That the Tribunal had sent a letter explaining that HMRC wished to strike off the case and that they agreed to "close the case" as long as HMRC don't "harass" Mrs Siva;
- (3) The Tribunal should go through the letters sent, understand the complaint and make a decision; and
- (4) Requesting advice for the next step to close the case once and for all.

24. The Appellant argues that HMRC are pursuing two parties to collect the same amounts of tax.

25. The Appellant also argues that:

- (1) the Appellant's PAYE reference was used (by their agents, who were acting for both parties) to submit FPS for the new owner's business because they had not received notification of the new PAYE reference in time;
- (2) once the new PAYE reference was available, the original FPS returns made on the wrong PAYE reference were corrected; but
- (3) HMRC continues to pursue both.

DISCUSSION

26. As a preliminary note, it appeared from the correspondence from the Appellant's representative that there was a misunderstanding of the concept of a 'strike out'. Therefore I will seek to explain what the nature of the application is so that there is no confusion.
27. Under Rule 8 of the Tribunal Procedure Rules, the Tribunal has powers and obligations to strike out a person's case in certain specified circumstances.
28. When a case has been struck out, the proceedings, or part of them, cease to exist in the Tribunal (unless an application is made to reinstate the appeal). This means that the tax position is at it stands prior to the appeal having been raised.
29. Under Tribunal Procedure Rule 8(2)(a), the Tribunal must strike out the proceedings, or part of them, if it does not have jurisdiction in relation to the proceedings, or part of them, and does not exercise its power to transfer the proceedings, or part of them, to another court or tribunal.
30. The Tribunal must give the Appellant an opportunity to make representations about the application to strike out before making a decision. I find that the Tribunal has given the Appellant and their representative ample opportunity to make such representations and I have summarised the comments made above. I will consider them in my discussion below.
31. If I find that I do not have jurisdiction to hear this appeal, I have no choice but to strike out the appeal, since the rules regarding the power to transfer proceedings do not apply here.
32. This Tribunal is a creature of the statute that created it. I do not have wide-ranging general powers to find a solution to any dispute involving tax. I must consider whether there is any appealable matter in accordance with the law on full payment submissions that would allow the Tribunal to consider the appeal.
33. Under regulation 67B of the Income Tax (pay as you earn) Regulations 2003, SI 2003/2682 (the "PAYE Regs"), an employer is obliged, on or before making a payment of earnings (or other relevant payments but for these purposes earnings is sufficient to understand the point) to an employee, to deliver to HMRC the information that is specified in Schedule A1 of the PAYE Regs.
34. The information specific in Schedule A1 includes information about:
- (1) The employer, including the PAYE reference;
 - (2) The employee. Including name, National Insurance number and the number used to identify the employee;
 - (3) The payments made to the employee, including the tax year, the value of payments and the total net tax deducted in relation to the total payments to date in that employment; and
 - (4) Where relevant, information on commencement and cessation of employment.
35. The obligation for an employer to pay over amounts to HMRC comes from Regulation 67G of the PAYE Regs. Under Regulation 67G(1), the employer has an obligation to pay to HMRC (or recover where there is an amount due back from HMRC) the amount derived by applying the formula in Regulation 67G(4).
36. Regulations 67G(4) provides the formula A-B, where
- (1) A means the sum total of the relevant amounts for each of the employer's employees; and
 - (2) B means the amount A for the previous tax period in the tax year, if any.

37. The 'relevant amount' is the amount reported on the submission made by the employer to HMRC under Regulations 67B, pursuant to paragraph 17 of Schedule A1. This amount is the total net tax deducted in relation to the total payments to date in that employment.

38. Pursuant to Regulation 69(1), the employer must pay the amount due under regulation 67G within 17 days of the end of the tax period if they are paying electronically, or within 14 days otherwise.

39. We can see from the way that the legislation works that there is no intervention from HMRC in this process. The employer makes a submission to HMRC which records the amount of pay paid to the employee and the amount of tax deducted. There is then an automatic obligation on the employer to make the necessary payments of the amount of tax deducted.

40. In this case, we find that Mrs Siva, acting through her agent, made PAYE submissions to HMRC under Regulation 67B and therefore the payment obligation under Regulation 67G arises automatically.

41. There are circumstances where HMRC does go on to intervene, for example by issuing a regulation 80 determination. However, this has not happened in this case. HMRC's action has only been to pursue the amounts of tax that have been reported on the returns submitted by Mrs Siva through her agent.

42. HMRC have on numerous occasions pointed out that it is within Mrs Siva's power to amend the returns that were submitted, under Regulation 67E on the basis that they contained an inaccuracy. These amendments can be made outside of the relevant year, pursuant to Regulation 67E(6).

43. Mrs Siva's agent has stated on a number of occasions that they have "fixed it on the computer". HMRC have sought to clarify what they meant since their records do not show any such amendment. The evidence presented in the bundle of documents by HMRC (being print outs of their records) do not show any amendments of this nature. Mrs Siva did not submit evidence of how this had been fixed on the computer and so we find that it had not been so fixed by the time of the hearing.

44. My conclusion is that HMRC have not made a decision regarding the payment of PAYE which can be appealed.

45. Since there is no appealable decision, I must strike out the appellant's appeal.

46. This means that the tax due in accordance with the returns submitted by Mrs Siva remains due, unless and until, amendments are made to those returns which would alter the calculation of the amount due.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

47. This document contains full findings of fact and reasons for the preliminary decision. Any party dissatisfied with this preliminary 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.

**ABIGAIL MCGREGOR
TRIBUNAL JUDGE**

Release date: 20th SEPTEMBER 2022