



Neutral Citation: [2024] UKFTT 00781 (TC)

Case Number: TC09271

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Location: Taylor House, London

Appeal reference: TC/2022/13099

LATE APPEAL – appeal in relation to discovery assessments of corporation tax, compulsory registration for VAT and assessments of VAT - application for permission to make late appeal – application to strike out appeal against VAT assessments

Heard on: 20 June 2024

Judgment date: 29 August 2024

Before

**TRIBUNAL JUDGE GREG SINFIELD
TRIBUNAL MEMBER JULIAN SIMS**

Between

HEAVEN DRY CLEANERS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Dhiren Doshi of Doshi Accountants Limited

For the Respondents: Ian Greenall and Esther Hickey, litigators of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. On 9 August 2022, the Appellant, Heaven Dry Cleaners Limited ('HDCL'), submitted a Notice of Appeal to the First-tier Tribunal ('FTT') against two decisions by the Respondents ('HMRC'). The Notice of Appeal stated that it concerned Corporation Tax ('CT'), Value Added Tax ('VAT') and penalties related to both CT and VAT which together meant that HMRC were claiming that HDCL owed £491,962.04 in tax and penalties. The disputed decisions are contained in a CT review conclusion letter dated 16 December 2019 and a VAT review conclusion letter dated 26 August 2021. There were no VAT penalties. The CT review conclusion letter did not consider the CT penalties and they remain under consideration by HMRC.

2. In the Notice of Appeal, HDCL said "I am not sure" in answer to the question "Are you in time to appeal to the tax tribunal?". In the same Notice, HDCL applied for permission to make a late appeal in relation to each disputed decision. HMRC opposed that application save in relation to the appeal against the CT penalties (see [44] below).

3. HMRC applied for that part of the appeal relating the CT penalties to be stayed pending completion of a review of those penalties by HMRC. The application was not opposed by HDCL and so we grant it. HDCL's appeal against the CT penalties will proceed once the stay is lifted. Of course, if HMRC conclude on review that the CT penalties should not stand then the appeal against them will fall away.

4. If we refuse to grant permission for HDCL to make a late appeal in relation to CT and/or VAT then rule 20(4) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 ('the FTT Rules') provides that we must not admit the appeal and/or that part of it.

5. If we decide to admit the appeal against the VAT review conclusion letter, we must consider HMRC's application for the part of the appeal which relates solely to the quantum of the VAT assessment to be struck out. HMRC contended that there is no right of appeal against an assessment in the circumstances of this case because HDCL had never made a VAT return for the period assessed and, accordingly, the FTT does not have jurisdiction.

LEGISLATIVE FRAMEWORK – TIME LIMITS FOR APPEALING

6. Paragraph 48 of the Finance Act 1998 ('FA98') provides that a company may bring an appeal against any assessment to tax (other than a self-assessment but including a penalty assessment) by giving notice in writing to the HMRC officer who notified the assessment to the company. The time limit for giving notice of the appeal to HMRC is 30 days after the notice of assessment was issued.

7. Section 49A of the Taxes Management Act 1970 ('TMA70') provides that where a taxpayer has given notice of appeal to HMRC and HMRC has offered to review the matter in question then section 49C applies.

8. Section 49C(2) – (6) TMA70 apply where HMRC have offered a review. The material provisions for this decision are:

“(2) When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC's view of the matter in question.

(3) If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with section 49E.”

9. Section 49E(6) provides that HMRC must notify the appellant of the conclusions of the review and their reasoning within 45 days of (in this case) the day when HMRC received notification that the appellant has accepted their offer of a review or such later date as may be agreed. Section 49E(8) and (9) provide:

“(8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the time period specified in subsection (6), the review is to be treated as having concluded that HMRC’s view of the matter in question (see sections 49B(2) and 49C(2)) is upheld.

(9) If subsection (8) applies, HMRC must notify the appellant of the conclusion which the review is treated as having reached.”

10. Section 49G TMA70 makes provision for notifying an appeal to the FTT after a review has concluded:

“(1) This section applies if-

(a) HMRC have given notice of the conclusions of a review in accordance with section 49E, or

(b) the period specified in section 49E(6) has ended and HMRC have not given notice of the conclusions of the review.

(2) The appellant may notify the appeal to the tribunal within the post-review period.

(3) If the post-review period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.

(4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.

(5) In this section ‘post-review period’ means--

(a) in a case falling within subsection (1)(a), the period of 30 days beginning with the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(6), or

(b) in a case falling within subsection (1)(b), the period that--

(i) begins with the day following the last day of the period specified in section 49E(6), and

(ii) ends 30 days after the date of the document in which HMRC give notice of the conclusions of the review in accordance with section 49E(9).”

11. In relation to VAT, section 83 VATA94 relevantly provides as follows:

“(1) Subject to sections 83G and 84, an appeal shall lie to the tribunal with respect to any of the following matters—

(a) the registration or cancellation of registration of any person under this Act;

...

(p) an assessment—

(i) under section 73(1) or (2) in respect of a period for which the appellant has made a return under this Act; or

...

or the amount of such an assessment;

...”

12. Section 83A VATA94 is headed “Offer of review” and provides that HMRC must offer a person a review of a decision that has been notified to that person if an appeal lies under section 83 in respect of the decision. Section 83C provides that HMRC must review a decision if they have offered to do so in accordance with section 83A and the person accepts the offer within 30 days (and has not already appealed to the FTT).

13. Section 83G VATA94 is headed “Bringing of appeals” and, in so far as material, provides as follows:

“(1) An appeal under section 83 is to be made to the tribunal before —

(a) the end of the period of 30 days beginning with—

(i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates, or

...

(2) But that is subject to subsections (3) to (5).

(3) In a case where HMRC are required to undertake a review under section 83C—

(a) an appeal may not be made until the conclusion date, and

(b) any appeal is to be made within the period of 30 days beginning with the conclusion date.

...

(6) An appeal may be made after the end of the period specified in subsection (1), (3)(b) ... if the tribunal gives permission to do so.

(7) In this section ‘conclusion date’ means the date of the document notifying the conclusions of the review.”

14. Where a tax statute says that an appeal may be made out of time with the permission of the FTT, rule 20(4) of the FTT Rules applies:

“(4) If the notice of appeal is provided after the end of any period specified in an enactment referred to in paragraph (1) but the enactment provides that an appeal may be made or notified after that period with the permission of the Tribunal-

(a) the notice of appeal must include a request for such permission and the reason why the notice of appeal was not provided in time; and

(b) unless the Tribunal gives such permission, the Tribunal must not admit the appeal.”

CASE LAW ON PERMISSION FOR LATE APPEALS

15. The Upper Tribunal has given guidance on the correct test to be applied when considering an application for permission to make a late appeal in *Martland v HMRC* [2018] UKUT 178 (TCC) (*‘Martland’*) at [23] – [47], the essence of which is summarised at [44]:

“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 v TH White Ltd* [2014] EWCA Civ 906, [2014] 1 WLR 3926]:

(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.”

16. The Upper Tribunal observed at [45] that the balancing exercise in stage three of the *Denton v TH White Ltd* process 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.

EVIDENCE

17. We were provided with an electronic hearing bundle of 410 pages and two witness statements of Mr Hamidreza Nikoukarmojarad, the sole director of HDCL. Mr Nikoukarmojarad gave evidence on oath and was cross-examined by Mr Greenall. HMRC did not provide any witness evidence. On the basis of the written and oral evidence, we make the following findings of fact.

FINDINGS OF FACT

18. Heaven Dry Cleaners Limited (‘HDCL’) was incorporated on 29 September 2008 with a registered office at 112a Camden Road, London NW1 which was also its trading address.

19. On 16 September 2009, Mr Hamidreza Nikourkarmojarad was appointed as a director of HDCL and the previous director resigned shortly thereafter.

20. On 11 August 2015, the registered office was changed from 112a Camden Road to Westmoreland House, London NW10 which was the address of the office of HDCL’s accountants, Capital Accountants Limited (‘Capital Accountants’).

21. On 7 June 2016, HMRC Tax Inspector Ms Marie Evans wrote to Capital Accountants to say that she was checking HDCL’s return for the period ended 30 September 2014 under paragraph 24(1) Schedule 18 of the FA98. At the same time, Ms Evans wrote to HDCL at Westmoreland House.

22. On 2 June 2017 and 1 December 2017, Ms Evans wrote similar letters to Capital Accountants and HDCL to say that she would be carrying out a compliance check in relation to HDCL’s returns for the periods ended 30 September 2015 and 30 September 2016.

23. On 26 January 2018, Ms Evans wrote to Mr Nikourkarmojarad, notifying him that a compliance check in relation to HDCL had been closed and that he would shortly receive documentation showing the following tax and penalties were due:

Additional Tax on company profits 174,060.57

S 455 tax due 206,373.59

Total additional tax 380,434.16

Penalty at 40.25% 153,124.75

24. The letter also stated that Mr Nikourkarmojarad could appeal if he did not agree with the decision. It explained that, if he appealed, he could ask for the decision to be reviewed by an HMRC officer not previously involved in the matter, or send the appeal to an independent tribunal. Ms Evans copied the letter to Capital Accountants.

25. On 1 February 2018, HMRC issued discovery assessments for accounting periods ended 30 September 2009 to 30 September 2014 and closure notices for the accounting periods ended 30 September 2015 and 30 September 2016 to HDCL. Together the discovery assessments and closure notices charged CT of £174,060.57 and charges of £206,373.59 under section 455 of the Corporation Tax Act 2010.

26. On 9 February 2018, HMRC issued assessments to HDCL for penalties in relation to CT in accordance with Schedule 24 Finance Act 2007. The penalties amounted to £153,124.73 and related to the same tax periods as the assessments and closure notices specified above. The penalty assessments were issued to HDCL at its registered address at Westmoreland House and also copied to Capital Accountants at the same address.

27. On 27 June 2018, a winding up petition in respect of £574,345.34 CT and penalties said to be owed by HDCL was issued by the High Court.

28. In July 2018, HMRC issued a VAT 9 ‘Advice of VAT registration’ to HDCL at 112 (not 112a) Camden Road stating that HDCL had been registered for VAT from 1 May 2009 and was required to charge and account for VAT on taxable supplies from that date. The letter said that HDCL could ask for the decision to register it for VAT to be reviewed by HMRC or could appeal to an independent tribunal. HMRC said that the letter was dated 3 July 2018 but the copy in the hearing bundle was undated and appeared to be a file copy. Mr Nikourkarmojarad told us that he remembered receiving the letter about VAT registration but said that, at that time, HDCL was not trading. We think that Mr Nikourkarmojarad must have been confused about the date that the letter was received as the VAT registration was clearly notified in July 2018 (see next paragraph) and HDCL did not cease trading until 31 October 2019 (see [42] below). We find that the ‘Advice of VAT registration’ letter was sent by HMRC and received by Mr Nikourkarmojarad at some point in July 2018.

29. On 25 July 2018, Ms Harsha Patel, VAT Specialist of HMRC, sent a letter to HDCL at 112 Camden Road which was headed “[HDCL] – Failure to Notify VAT Registration” and, under the subheading “VAT Registration” stated as follows:

“As the company has failed to notify HMRC of its liability to be registered as per VAT Act 1994, Schedule 1, I have registered the company under the VAT Act 1994, Schedule 5, Paragraph 2. The calculations below are based on the additional sales identified during an enquiry into your Corporation Tax Return under Finance Act 1998, Schedule 18, Paragraph 24(1).

...

I have calculated the VAT due by the company from the effective date of registration to 30 June 2018. You must account for VAT from 1 July 2018. The table below outlines the company’s first VAT return.”

30. At the end of the letter, HMRC set out a summary of the position and what HDCL should do if it disagreed as follows:

“Summary

The total VAT due is £153,817. HMRC will issue separate correspondence regarding how to pay the assessment, penalties and interest due. A copy of this letter has been sent to your registered office.

What to do if you disagree

If you disagree with our decision, you need to write to us within 30 days of the date of this letter, telling us why you think our decision was wrong and we will look at it again. If you prefer, we will arrange for a review by an HMRC officer not previously involved in the matter. You will then have the right to appeal to an independent tribunal. Alternatively you can appeal direct to the tribunal within 30 days of this letter.”

31. The letter of 25 July set out the amount which HMRC had calculated HDCL was required to account for in its first VAT return, which covered the period from 1 May 2009 to 30 June 2018, but it was not an assessment for VAT. The letter was not a demand for payment but stated that HDCL would receive separate correspondence regarding how to pay the assessment. That was issued on 8 August 2018 (see [34] below).

32. A copy of the letter was sent to Westmoreland House on the same day.

33. In his witness statement, Mr Nikourkarmojarad said that he instructed a firm of solicitors, Sookias & Sookias, to act for him and appeal in relation to the CT and VAT demands.

34. On 8 August 2018, Ms Harsha Patel of HMRC issued a Notice of Assessment for VAT, to both 112 Camden Road and Westmoreland House, for the period of 1 May 2009 to 30 June 2018 inclusive. The Notice was headed “VAT Notice of assessment of tax”. The amount of VAT assessed was £153,817. The Notice did not offer a review by an HMRC officer not previously involved in the matter or refer to the right to appeal to an independent tribunal because HMRC considered that the assessment was not appealable matter as HDCL had not made a return for the period assessed.

35. On the same day, Sookias and Sookias wrote to HMRC’s insolvency solicitor and requested permission to make a late appeal against the CT shown as due in the winding up petition. The letter included the following:

“Our client had been advised by their accountant to allow the Company to be wound up: however, upon advice from Counsel, our client would like to request that you accept late notice of appeal against the sum of £574,345.34 assessed due for Corporation Tax.

We look forward to hearing from you at your earliest convenience, and would request that you reply by email to: [email addresses provided]

However, if we do not hear from you by close of business tomorrow, 09 August 2018, due to the urgency of timing, we will have to apply to the Tribunal for permission to appeal.”

36. On 9 August 2018, Sookias & Sookias emailed a copy of the letter to Ms Marie Evans, the HMRC officer who had issued the CT assessments and closure notices.

37. On 16 August 2018, Ms Evans accepted the late appeal relating to CT notified on 8 August and wrote to HDCL at Westmoreland House to confirm her view of the matter and offer a review. That offer was accepted by HDCL later the same day.

38. On the same day, Sookias & Sookias sent Ms Harsha Patel of HMRC an email saying:

“Further to your letter of 25 July 2018 to my client Heaven Dry Cleaners Limited (‘Heaven’), and our telephone conversation on 14 August 2018, my client would like to appeal the VAT assessment via an HMRC independent review.

This is written confirmation of a request to appeal, to ensure that we are within the time limit you have given of 30 days to respond. However, as you have calculated the VAT due based on the additional sales identified during

an enquiry into Heaven’s Corporation Tax Return under Finance Act 1998, we would like to request that you conduct the VAT independent review after the appeal regarding Corporation Tax has been concluded, as the outcome of the appeal for Corporation Tax will affect your VAT assessment.

If this is agreeable to you, can you also confirm that any penalties that would normally be incurred for the delay in paying any VAT due, whilst we await the outcome of the Corporation Tax appeal, would be waived?”

39. At the hearing and in response to questions from the panel, HMRC submitted that the email from Sookias & Sookias only requested a review by an independent HMRC officer in relation to the VAT assessment. In our opinion, there are several problems with that view of the email. First, it refers specifically to Ms Patel’s letter of 25 July 2018 which was headed “Failure to Notify VAT Registration”. Secondly, the letter was not a VAT assessment as that was issued on 8 August and was clearly headed “VAT Notice of assessment of tax”. Thirdly, the email refers to HDCL wanting to “appeal the VAT assessment via an HMRC independent review” but those things were only offered in the letter containing the decision to register HDCL for VAT. The Notice of Assessment did not offer a review by an HMRC officer not previously involved in the matter or refer to the right to appeal to an independent tribunal. That wording was only found in the letter of 25 July. On balance, we consider that the letter was a request for an HMRC independent review of both the decision to register HDCL for VAT and the amount of VAT assessed. We do not criticise Ms Patel or HMRC for failing to ‘read between the lines’ as the email was not as clear as it should have been. It is, however, unfortunate that Ms Patel did not respond to the email to clarify the scope of the request for a review or deal with it subsequently in the VAT review conclusion letter of 26 August 2021 (see [57] – [59] below). In conclusion, we find that the email of 16 August from Sookias & Sookias was a request by HDCL for a review of the decision to register HDCL for VAT and this review was never carried out.

40. On 1 February 2019, Ms Evans of HMRC sent a letter to Sookias & Sookias in response to their letter of 23 January 2019 (which was not provided to us) following an exchange of information. The letter set out reductions in the amounts of CT assessed as follows:

	Original assessments	Revised assessments
CT	174,060.57	120,176.84
Section 455 Tax	206,373.59	137,986.40
Penalty	153,124.75	103,910.70

41. On 1 March 2019, Sookias & Sookias wrote to Ms Evans to request a review of the CT decision including the associated penalties. On 8 March 2019, Ms Evans acknowledged the request for a review by email and confirmed that the matter had been referred to the Review Team. HMRC were required by section 49E(6) TMA70 to notify HDCL of the conclusions of the review and their reasoning within 45 days of the date on which HMRC received notification of HDCL’s acceptance of the offer of a review. HMRC received HDCL’s acceptance of their offer on 1 March 2019. Accordingly, HMRC were required to give the conclusions of their review to HDCL by 14 April 2019. That did not happen in this case. We do not know if a longer period was agreed for the provision of the conclusions and reasons but no evidence of such agreement was presented to us.

42. On 31 October 2019, HDCL ceased trading and closed for business. Mr Nikourkarmojard said that HDCL's accountants, Capital Accountants, stopped acting for HDCL after it ceased trading and they changed its registered office without his knowledge with effect from 5 December 2019. From that date, HDCL's registered office, which had been at the offices of Capital Accountants at Westmoreland House, reverted to being its former trading address at 112a Camden Road.

43. On 16 December 2019, HMRC issued the CT review conclusion letter to HDCL at the previous registered office address at Westmoreland House. The letter was copied to Sookias & Sookias. The conclusion of the review was that the CT assessments, penalties, and section 455 charges, as varied by Ms Evans on 1 February 2019, were upheld. This letter explained that if HDCL did not agree with the review decision, it could appeal to an independent tribunal but must do so within 30 days of the date of the letter.

44. Due to an oversight, the review did not consider the CT penalties. As the review in relation to the penalties was never concluded, it was deemed by section 49E(8) TMA70 to have concluded that HMRC's view of the matter in question, ie the penalties, was upheld. Section 49E(9) provides that where subsection (8) applies, HMRC must notify the appellant of the conclusion which the review is treated as having reached. Section 49G provides that, where the 45 day review period has ended and HMRC have not given notice of the conclusions of the review, an appellant may file a notice of appeal with the FTT at any time from the last day of the 45 day period until 30 days after the date of the review conclusion letter. As HMRC have never issued a review conclusion letter in respect of the CT penalties, the time to appeal is still running. It follows (and HMRC accepted) that HDCL's appeal of 9 August 2022 was not late in respect of the CT tax penalties.

45. In his evidence, Mr Nikourkarmojard said that Capital Accountants did not forward HMRC's letter of 16 December 2019 to him and that Sookias & Sookias did not forward the letter to him either.

46. As stated above, the registered office address had been changed from Westmoreland House to 112a Camden Road on 5 December. Once HMRC realised that there had been a change, they sent a copy of the review conclusion letter to HDCL at 112a Camden Road. That copy letter was issued by Ms Evans on 18 December 2019.

47. Mr Nikourkarmojard agreed that he received the letter dated 18 December 2019 but his evidence was that it did not include a copy of the letter of 16 December. By way of reference to the letter of 16 December, the letter of 18 December simply stated:

“Please find enclosed a copy of a letter which was sent to the company at your previous agents address. This may explain why you may not have received it before now.”

48. Mr Nikourkarmojard said that he did not contact HMRC to ask for an update on where the review letter was because he had a solicitor. He thought that they should be dealing with it and HMRC should deal with them. Mr Nikourkarmojard said that these things were outside his knowledge.

49. HMRC say that, in any event, a copy of the letter of 16 December was also sent to Sookias & Sookias. HMRC submitted that the letter was properly addressed, pre-paid, and posted and that, as the letter was not returned, it should therefore be deemed as duly served and delivered in accordance with section 7 of the Interpretation Act 1978. That submission overstates the position under section 7. The section only creates a rebuttable presumption that a properly addressed, pre-paid, and posted letter was delivered in the ordinary course of

post and thus constituted effective service. This is shown by the words “unless the contrary is proved” in section 7.

50. In any event, as stated at [17] above, HMRC did not provide any witness evidence and a statement in HMRC’s summary of arguments document that their letter dated 16 December to Sookias & Sookias was properly addressed, pre-paid, and posted is not evidence of the fact. In the absence of such evidence, section 7 of the Interpretation Act 1978 is not engaged.

51. Mr Doshi submitted that Sookias & Sookias had not responded to HMRC’s letter of 16 December in any way. They had not forwarded it to Mr Nikourkarmojard or replied to HMRC. He submitted that would have been a most unusual for a firm of solicitors to do neither of those things if they had received the letter. He invited us to find that Sookias & Sookias had not received the letter and Mr Nikourkarmojard did not receive it either.

52. We are not able to make any finding on whether Sookias & Sookias received the letter (and did nothing with it) or did not receive it because we simply do not have any evidence on the point and, for reasons explained above, section 7 of the Interpretation Act 1978 cannot assist HMRC in this case. Mr Doshi asks us to infer that the letter was never received because, if it had been Sookias & Sookias, as a firm of solicitors, would have been bound to respond. In our view, such a conclusion on the basis of mere inference would be unsafe. However, we found Mr Nikourkarmojard to be a credible witness and we accept that he did not receive the original letter of 16 December or the copy of it which was meant to have been but was not included in the letter of 18 December which he accepted he had received.

53. On 3 August 2020, HMRC’s Debt Management and Banking division (‘DMB’) made a courtesy call to Mr Nikourkarmojard. The DMB note of that call, which refers to Mr Nikourkarmojard as “the director”, is as follows:

“Curtesy [sic] call to director, security passed. He stated that he has not appealed the investigation outcome and wishes HMRC to close the company because he cannot pay the debt and can't afford CVL [Creditors’ Voluntary Liquidation]. Advised EIS [Enforcement and Insolvency Services] are unable to take action due to C19 [Covid 19] he asked that we do it when HMRC are able to.”

54. Mr Doshi submitted that this was another hurdle. HMRC observed that there is no mention that HDCL is awaiting a response to a review request. HMRC submitted that this showed that Mr Nikourkarmojard was aware of the assessment and had decided not to appeal. Mr Nikourkarmojard told us that he could not remember the call but if he did have call, he would not have said that. In any event, he said that he had not appealed but it was his solicitor, Sookias & Sookias, who had appealed to HMRC. As Mr Nikourkarmojard could not remember the call and there is no reason to doubt the accuracy of the DMB note of the call, we find that, at some time prior to 3 August 2020, Mr Nikourkarmojard became aware of the conclusion of the CT review and had decided that HDCL would not appeal against it.

55. On 29 September 2020, another DMB note shows that an ‘IDMS 99’ letter was issued. An IDMS 99 letter is an advice of the total debt outstanding and it would have been sent to the registered office of the company at 112a Camden Road.

56. Ms Marie Evans, retired in December 2020 but the exact date in December is unknown.

57. On 26 August 2021, HMRC sent the VAT review conclusion letter to HDCL at 112 Camden Road. The letter stated:

“On 16 August 2018 your agent asked me to review the VAT assessment raised based on the outcome of the Corporation Tax review. On 16

December 2019, this review was concluded, and the Corporation Tax assessment was amended as per Marie Evan's letter dated 1 February 2019.

I apologies [sic] for the delay in amending the VAT assessment. VAT due for the period ending September 2018 has been reduced from £153,817 to £111,915.

You will receive separate correspondence on how to pay this amount.”

58. The letter was signed by “Harsha Kerai, Tax Specialist”. Although the last name had changed, it is clear from the reference in the first line to HDCL's agent's request on 16 August 2018 for the writer to review the VAT assessment that the writer of the letter was the same person as Ms Harsha Patel. Mr Nikourkarmojarad accepted that he had received the letter dated 26 August 2021 but not until around 11 July 2022 which we accept (see [68] below).

59. The VAT review conclusion made no mention of the decision to register HDCL for VAT and did not contain any reference to any right to appeal to the FTT. HMRC explained that this letter did not set out any rights of appeal because HDCL had no right of appeal in relation to the VAT assessment as it had never made any VAT returns. We return to this at [87] below.

60. On 7 February 2022, a DMB note shows that another IDMS 99 letter was issued to 112a Camden Road.

61. On 28 February 2022, the DMB note shows that a further IDMS 99 letter was issued to 112a Camden Road.

62. On 31 March 2022, a DMB note indicates that HMRC telephoned the director, Mr Nikourkarmojarad. He was, understandably, initially suspicious and did not believe that the caller was from HMRC. The note records that Mr Nikourkarmojarad had broken English. He said that he had already been in contact with a person called Maria regarding the VAT assessments and had a letter confirming this. When the caller tried to give an email address so that Mr Nikourkarmojarad could send the letter to HMRC, he terminated the call. Although Mr Nikourkarmojarad referred to ‘Maria’ and VAT during the call, we consider that he was confusing Ms Marie Evans, who had been dealing with HDCL's CT position, and Ms Harsha Kerai who had issued the VAT assessments. It seems to us that this call and the confusion about the name of the relevant HMRC officer supports our view formed while Mr Nikourkarmojarad gave evidence that his grasp of the English language is limited.

63. On 26 April 2022, a DMB note indicates that HMRC called Mr Nikourkarmojarad again. He stated that the company had closed three years ago, he was unemployed and could not pay the monies due. He was advised that Companies House showed that HDCL was still active. The note then states that Mr Nikourkarmojarad said that “he has been in contact with VAT 3 months ago and they have not replied”.

64. On 13 June 2022, the DMB note shows that an ‘IDMS 3’ letter was issued to 112a Camden Road. An IDMS 3 letter is a 7-day demand letter.

65. On 29 June 2022, a DMB note shows that the director (Mr Nikourkarmojarad) advised that he would like a call back because he had been in contact with VAT officers regarding VAT assessments. However, there is no record of this on HMRC systems.

66. On 4 July 2022, the DMB note states that a phone call was received from Mr Nikourkarmojarad in which he said that the VAT assessments were incorrect. HMRC provided a telephone number for a VAT specific debt management telephone line.

67. On 8 July 2022, Mr Nikourkarmojarad telephoned HMRC. The note of the call records the following:

“Director advised that he has spoken to the VAT department and they agreed to adjust VAT and this will take 2 weeks, said that was ok. He than [sic] said he had received petition with HD [Hearing Date] 17/8/22 and wanted this dismissed, advised of outstanding CT, long conversation then about when Marie Evans - ISBC C£A G6 T&S visit back in Oct 19 and that she took the company books and never returned them, advised that I spoke to company’s agent back in Dec 2019 ... who stated company had not received a reply from Mrs Evan [sic], I advised that Mrs Evans stated on 16/12/19 ‘The review officer has sent a copy of her letter to the taxpayer and agent and has put todays date 16/12/19 on it so the company can have a further 30 days to consider it’ and that EIS [Enforcement and Insolvency Services] delay for a further 40 days to await an appeal. No appeal was received. Also advised that when I spoke with you the director on 3/8/20 you stated unable to pay and happy for HMRC to UCO [Usual Compulsory Order] company. Advised that if he doesn't want the company UCO'd need to address CT debt, he asked if I could do it for him advised the responsibilities for tax debts lies with director, he is going to speak with accountant and arrange for him to contact me on 18/07/22.”

68. Mr Nikourkarmojarad’s evidence was that he received a phone call from Mr Kamal of Camden Tandoori, which was next door to at 112a Camden Road, around 11 July 2022, to tell him that there was a notice stuck on the shutters of HDCL’s premises and he should come and collect it. Mr Nikourkarmojarad said that he went to the premises and found a notice of a winding up petition. The amount of the demand was £491,962.04 and the hearing date was 17 August 2022. Mr Nikourkarmojarad’s evidence was that HDCL’s sales turnover never exceeded the VAT threshold to be VAT registered.

69. Mr Nikourkarmojarad’s evidence was that it was at the time of his visit to HDCL’s premises that he saw the VAT review conclusion letter of 26 August 2021. We accept this evidence because it is consistent with the fact that, on 13 July 2022, Mr Nikourkarmojarad emailed Ms Harsha Kerai and said that he would like to speak with her regarding the VAT assessment and asking her to give him a call. Mr Doshi acknowledged that Mr Nikourkarmojarad must explain why HDCL did not react to the information in the VAT review conclusion letter of 26 August 2021 that the CT review had concluded on 16 December 2019 and the assessment had been amended.

70. On 27 July 2022, a DMB note states that a bankruptcy petition was served at the registered office by placing it in a clear waterproof sleeve and securely affixing to the shutter of the property. On the same day, a DMB note indicates that Mr Nikourkarmojarad called and said “he had spoken with VAT department” but there was nothing on HMRC systems to indicate this contact had been made. HMRC advised Mr Nikourkarmojarad of the bankruptcy hearing date.

71. On 9 August 2022, HDCL submitted its Notice of Appeal to the FTT.

NOTICE OF APPEAL

72. In answering the question “Are you in time to appeal to the tax tribunal?”, HDCL ticked the box saying “I am not sure”. By way of explanation, HDCL stated:

“I refer to letter from HMRC to my Solicitors at the time, Sookies & Sookies [sic] dated 1 Feb 2019

My Solicitors forwarded to me this letter and I asked for a review by an independent HMRC Officer.

On this letter, the assessments were

Corporation Tax £120176.84

S455 Tax £137986.40

Penalty £103910.70

Total: £362072

I have never received any correspondence thereafter from HMRC.

I closed the business, the shop, on 31 October 2019.

It was only when the winding up petition was stuck on the shutters around 18 July 2022, did I find out that HMRC are asking the business to pay £491962.04

VAT of £166,000 has been added to the other assessment.

If I add £166,000 to £362,072, this becomes £528,072 therefore it looks like the review officer may have reduced the original assessments of 1 February 2019.

I have never received any VAT assessments.

I am applying to the Tribunal within 28 days of me becoming aware of the sum HMRC have finalised as their assessments”

73. The Notice also set out HDCL’s grounds of appeal as follows:

“Mty [sic] grounds of appeal are

1: Heaven Dry Cleaners Ltd had a maximum sales gross turnover of £60,000 a year

Average nearer £55,000 a year gross

It therefore did not need to be VAT Registered

Therefore there cannot be any VAT assessments

2: It never made any profits.

Therefore there can be no Corporation Tax to pay

3: There were no Directors Loans overdrawn.

Therefore there can be no S455 Tax to pay

4: Given there was no VAT, Corporation Tax or S455 Tax payable, there can be no penalties or surcharges for late payment”

DISCUSSION

74. As mentioned at [44] above, HDCL’s appeal of 9 August 2022 in respect of the CT penalties was in time and we do not consider that part of the appeal further. That leaves the following issues to be decided:

(1) Was the appeal to the FTT in relation to the CT assessments and section 455 charges made in time and, if not should we give permission for HDCL to make a late appeal?

(2) Was the appeal to the FTT in relation to the VAT registration decision and the VAT assessment made in time and, if not should we give permission for HDCL to make a late appeal?

(3) If we give permission for HDCL to make a late appeal in relation to the VAT assessment, should we grant HMRC's application for that part of the appeal to be struck out?

75. We will first consider whether to grant permission for HDCL to make a late appeal in relation to the CT review conclusion letter. If we refuse permission then rule 20(4) of the FTT Rules provides that we must not admit the appeal.

76. In this case, the CT assessments, penalties, and section 455 charges, as varied by Ms Evans on 1 February 2019, were confirmed in the CT review conclusion letter dated 16 December 2019. The time limit for giving notice of the appeal to HMRC is 30 days which was 15 January 2020. The Notice of Appeal was filed on 9 August 2022. HMRC submitted that the CT appeals were, therefore, two years, six months and 26 days late. However, we have found (at [52] above) that Mr Nikourkarmojarad did not receive the letter of 16 December 2019 or a copy of it as it was not included in the letter of 18 December which he accepted he had received.

77. We have also found (at [54] above) that, at some time prior to 3 August 2020, Mr Nikourkarmojarad became aware of the conclusion of the CT review and decided that HDCL would not appeal against it. This might explain why he did not attempt to contact Ms Evans, who had by then retired, or anyone else at HMRC about the CT review in July 2022 when he found the the VAT conclusion letter of 26 August 2021 at HDCL's former premises (see [68] above). Mr Nikourkarmojarad emailed Ms Kerai of HMRC on 13 July to discuss the VAT position. The VAT conclusion letter clearly stated that the CT review had concluded on 16 December 2019, however, he did not attempt to contact HMRC about HDCL's CT liabilities. We infer that was because he had decided not to appeal before 3 August 2020 and had told HMRC so in the telephone call on that date.

78. Having established the relevant facts, we now consider whether to grant HDCL permission to appeal against the decisions (other than in relation to the CT penalties) in the CT review conclusion letter. In deciding whether to give permission, we apply the three-stage approach in *Martland* (see [15] above).

79. The first stage is to consider the length of the delay in notifying the appeals. The relevant time limit is 30 days from the date of the disputed decision. The purpose of the time limit is to promote the efficient disposal of proceedings and provide some finality to litigation before the tribunals. In this case, even if we assume, in Mr Nikourkarmojarad's favour, that he only became aware of the conclusion of the CT review immediately before 3 August 2020, the appeal lodged with the FTT on 9 August 2022 would have been almost two years late. In the context of a 30 day time limit, we consider that such a delay cannot be described as anything other than serious and significant and, to his credit, Mr Dhoshi did not contend to the contrary.

80. The second stage is to consider the reason or reasons for the delay in appealing to the FTT. In this case, Mr Nikourkarmojarad has stated that the reason why HDCL did not appeal within the time limit is that he did not receive the CT review conclusion letter and was not aware of it until he saw the winding up petition in July 2022. We have not accepted that version of events and have found that Mr Nikourkarmojarad was aware of the conclusion of the CT review before 3 August and he offered no explanation or excuse for the delay in filing an appeal with the FTT. We believe that the explanation is found in the DMB note of the telephone call on that day, namely that Mr Nikourkarmojarad had decided not to appeal because HDCL could not the amount of CT owed to HMRC and could not afford the fees associated with entering into a Creditors Voluntary Liquidation.

81. The third stage is to consider all the circumstances of the case, balancing 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. The balancing exercise in this case clearly points towards not giving permission for a late appeal. The delay in this case is at the extreme end of serious and significant and there was no good reason why HDCL did not appeal to the FTT against the CT review conclusion letter until 9 August 2022. We accept, of course, that HDCL will be prejudiced if we refuse to grant it permission to notify this appeal late because it will be unable to put forward its case in an appeal and must pay the amount of CT and section 455 charges. Against that prejudice to HDCL, I balance the prejudice to HMRC and the public interest. This appeal has been seriously delayed and the HMRC officer who had conduct of the matter and wrote the CT review conclusion letter has long since retired. That would make it more difficult for HMRC to obtain and provide the necessary evidence which would prejudice HMRC. However, the balance of prejudice between the parties is not the only issue. There is a public interest in ensuring that time limits set by Parliament in legislation are observed and are not extended without good reason. As explained above, there was no good reason for the failure to notify appeal in relation to the CT review conclusion letter within the time limit and to allow HDCL to make a late appeal now would be to ignore the clear time limits in the relevant legislation and possibly encourage others to do the same. The decision of the Upper Tribunal in *Katib v HMRC* [2019] UKUT 189 (TCC) at [17] shows that, as a matter of principle, the need for statutory time limits to be respected is a matter of particular importance to the exercise by the FTT of its discretion to admit a late appeal. In all the circumstances, we do not consider that this is a case where it would be appropriate to give permission for HDCL to make a late appeal in relation to the CT review conclusion letter.

82. For completeness, we should say that we were not addressed on the merits or otherwise of HDCL's case in relation to the CT assessments and section 455 charges. It is not clear to us whether HDCL's case is hopeless or has merits which are overwhelmingly in its favour (see *Martland* at [46]). We have assumed, in HDCL's favour that its case has a good chance of success but that is not sufficient, in our opinion, to change our decision.

83. We now consider whether to grant permission for HDCL to make a late appeal in relation to the VAT registration decision of 25 July 2018 and the VAT assessment which was confirmed in the VAT review conclusion letter of 26 August 2021. If we decide to admit the appeal against the VAT assessment, we must consider HMRC's application for that part of the appeal to be struck out. The right to appeal against a decision in relation to VAT registration is found in section 83(1)(a) VATA94. Under section 83G(1) VATA94, the time limit for bringing an appeal under section 83(1)(a) is 30 days from the date of the document notifying the decision or, if later, the end of any extended relevant review period. HMRC contended that the relevant decision letter in relation to an appeal with respect to registration under section 83(1)(a) was the letter dated 25 July 2018 and that HDCL had never requested an independent review of the decision to register it for VAT or sought to appeal that decision to the FTT at all. HMRC submitted that the time limit expired 30 days after 25 July on 24 August 2018. It followed that the notice of appeal in relation to VAT registration lodged on 9 August 2022 was filed 4 years and 15 days late. For reasons given at [39] above, we have concluded that the request for a review made by Sookias & Sookias on 16 August 2018 was a request for a review of the decision to register HDCL for VAT and this was not addressed by HMRC in the letter dated 26 August 2021 or at any point.

84. Section 83A VATA94 is headed "Offer of review" and provides that HMRC must offer a person a review of a decision that has been notified to that person if an appeal lies under section 83 in respect of the decision. In this case, HMRC notified HDCL that it was liable to be registered for VAT in their letter dated 25 July 2018 and at the same time offered a

review. HDCL could have appealed to the FTT against the decision to register it under section 83(1)(a) but did not do so. Section 83C provides that HMRC must review a decision if they have offered to do so in accordance with section 83A and the person accepts the offer within 30 days (and has not already appealed to the FTT). Sookias & Sookias, acting on HDCL's behalf, notified HMRC on 18 August that they accepted HMRC's offer of a review. HMRC were therefore required by section 83C to review the decision to register HDCL.

85. Where HMRC are required by section 83C to undertake a review, no appeal can be made to the FTT until the 'conclusion date' and then must be made within 30 days of that date (or later, if the FTT gives permission). The 'conclusion date' is the date of the document notifying the conclusions of the review, ie the letter dated 26 August 2021. That letter referred only to a review of the VAT assessment for the period ending September 2018. It was not a notification of the conclusions of a review of the decision to register HDCL. HMRC do not appear to have carried out a review of their decision to register HDCL or notified the conclusions of such a review at any point and, therefore, no conclusion date has occurred in relation to that decision. It follows that the 30 day period to appeal against HMRC's decision of 25 July 2018 to register HDCL for VAT has not yet started to run.

86. Accordingly, HDCL is not out of time to appeal against that decision but, under section 83G(3)(a) VATA94, it cannot do so until the conclusion date, ie when it receives a document notifying the conclusions of the review. This means that this appeal must be struck out as far as it relates to the VAT registration decision because the appeal was impermissible by virtue of section 83G(3)(a). However, once HMRC provide a notification of the conclusions of a review of the decision, HDCL will have 30 days in which to lodge an appeal.

87. That leaves the matter of HDCL's appeal under section 83(1)(p) VATA94 against the assessment dated 8 August 2018 or the amount of that assessment as reduced by Ms Kerai's letter dated 26 August 2021. HMRC object to that part of the appeal on two grounds.

88. First, they submitted that the appeal was notified late. We reject that submission. We have found that Mr Nikourkarmojarad only became aware of the VAT review conclusion letter of 26 August 2021 on or around 11 July 2022 when he found it at HDCL's former premises (see [68] above). Applying the three-stage approach in *Martland*, we conclude that the delay of just under one year was serious but there was a good reason for the failure to appeal within the time limit and HDCL acted reasonably promptly to obtain advice and lodge an appeal once Mr Nikourkarmojarad became aware of the VAT review conclusion letter. In all the circumstances, and balancing the prejudice to each party, we consider that it is appropriate to give HDCL permission to make a late appeal in this case.

89. Secondly, HMRC submitted that the right to appeal against a VAT assessment under section 83(1)(p) VATA94 only applies to an assessment in respect of a period for which the appellant has made a return. HDCL had (and still has) never made any VAT returns and thus could not appeal against the assessment. HMRC contend that if there is no right of appeal, the FTT has no jurisdiction in the matter and the part of the appeal that relates to the VAT assessment should be struck out. We accept this submission. It is clear from the words of section 83(1)(p) that a person can only appeal against an assessment under section 73(1) or (2) VATA94 "in respect of a period for which the appellant has made a return under this Act". It follows that HDCL's appeal in relation to the VAT assessment or the amounts assessed must be struck out as it is not a matter within section 83(1) and the FTT does not have any jurisdiction to deal with it. However, that does not mean that HDCL does not have a route to challenge the assessment but it must do so by challenging the decision to register it for VAT.

90. This was made clear by counsel for HMRC in the Upper Tribunal in *Khan and another v HMRC* [2012] UKUT 224 (TCC) (*'Khan'*) at [15]

“[Counsel for the taxpayers] also criticises the FTT for making an irrelevant reference to section 83(1)(p)(i) of the Act. At the hearing of this appeal, [counsel for HMRC] said that HMRC were not seeking to rely on this provision. He said that it was not appropriate to rely on it in an appeal against a decision to register a person and assess them. In such cases, there would not have been any returns and the effect would be to deny a person, who may wish to argue that no liability to register arose, the right to appeal.”

91. The Upper Tribunal in *Khan* did not comment on HMRC’s statement that it is not appropriate to rely on section 83(1)(p)(i) VATA94 where there is an appeal against a decision to register a person and assess them because it was not necessary to do so in that case. We, however, endorse that statement. It would, in our view, clearly be oppressive and unfair to enforce an assessment against which a person has no right to appeal while that person was pursuing an appeal against the decision to register that underpinned the assessment.

DECISION

92. For the reasons set out above, we decide as follows:

- (1) HDCL’s application for permission to make a late appeal in respect of the CT review conclusion letter dated 16 December 2019 is refused;
- (2) HDCL’s appeal against the VAT registration decision must be struck out because, under section 83G(3)(a) VATA94, HDCL cannot appeal until HMRC provide it with a document notifying the conclusion of their review of the decision which they have never done;
- (3) HDCL’s appeal in relation to the VAT assessment or the amount assessed must be struck out as it is not a matter within section 83(1)(p) VATA94 and the FTT does not have any jurisdiction to deal with it; and
- (4) HDCL’s appeal in relation to the decision to impose the CT penalties is stayed until 56 days after the date of a letter notifying HDCL of HMRC’s conclusion on completion of the review of the CT penalties and their conclusion on completion of the review of the VAT registration decision, whichever is later.

93. We hope that the parties will use the time until the expiry of the stay to enter into discussions, whether under the ADR procedure or otherwise, to resolve the VAT registration and CT penalties matters or, at least, narrow the issues in dispute.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

94. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision in so far as it relates to the application for a closure notice 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.

**JUDGE GREG SINFIELD
CHAMBER PRESIDENT**

Release date: 29th August 2024