



Neutral Citation: [2024] UKFTT 00789 (TC)

Case Number: TC09279

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

TAYLOR HOUSE, LONDON

Appeal reference: TC/2023/08495

CORONAVIRUS SUPPORT PAYMENTS – self-employed income support scheme – whether appellant carrying on a trade which was adversely affected by the pandemic – no – appeal dismissed

Heard on: 20 May 2024

Judgment date: 22 August 2024

Before

**TRIBUNAL JUDGE ANNE FAIRPO
TRIBUNAL MEMBER MOHAMMED FAROOQ**

Between

ALI SADIQ JAAFAR

Appellant

and

**THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS
Respondents**

Representation:

For the Appellant: Mr Ali, accountant

For the Respondents: Ms Webber, litigator of HM Revenue and Customs’ Solicitor’s Office

DECISION

Introduction

1. This is an appeal against an assessment issued by HMRC on 2 December 2022 under paragraph 9, Schedule 16, Finance Act (FA) 2020. The assessment, for £7,136, was made to recover three claims in respect of Coronavirus Support Payments under the Self-Employed Income Support Scheme (SEISS). HMRC contend that the appellant (Mr Jaafar) was not entitled to the payments.

Relevant law

2. A Treasury Direction was published on 30 April 2020 which provided the statutory scheme for HMRC to administer the SEISS. This Direction applied to the first claim; the second and third claims were made under extensions to this Direction.

3. The Direction states (applicable to all claims under appeal) that a qualifying person must (as relevant to this appeal):

“(a) carry on a trade the business of which has been adversely affected by reason of circumstances arising as a result of coronavirus or coronavirus disease,

(b) have delivered a tax return for a relevant tax year on or before 23 April 2020,

(c) have carried on a trade in the tax years 2018-19 and 2019-20,

(d) intend to continue to carry on a trade in the tax year 2020-21,

...

(f) be an individual, and

(g) meet the profits condition”.

4. The Direction also states that “‘trade’ means a trade, profession or vocation the profits of which are chargeable to income tax under Part 2 of ITTOIA 2005 (trading income) and in this definition “trade” has the same meaning as in section 989 of ITA 2007.”

5. Para 8(1) Schedule 16 FA 2020 provides that a recipient of Coronavirus Support Payments is liable to income tax if they were not entitled to a Support Payment that they received in accordance with the scheme under which the payment was made. The amount which is subject to income tax is the amount of the Support Payment and the amount is chargeable at the date the Support Payment was received (para 8(4)). The power to raise an assessment in those circumstances is given by para 9(1) of Schedule 16.

Background

6. Mr Jaafar was self-employed as a minicab driver for a number of years. On 12 September 2018 he became the sole director and shareholder of a newly incorporated company, Fly Services Limited. The company filed dormant company accounts for the year to 30 September 2019. It has filed micro company accounts for accounting periods thereafter.

7. Mr Jaafar applied for Support Payments and received payments on or around 16 June 2020, 2 September 2020 and 29 December 2020.

8. Mr Jaafar’s agent contacted HMRC’s Self-Assessment helpline twice regarding Mr Jaafar in February 2021:

(1) on 11 February 2021, to request that Mr Jaafar be removed from the self-assessment regime; then again

- (2) on 12 February 2021, to confirm that Mr Jaafar did not meet the self-assessment criteria for the 2019/20 tax year.
9. On 15 February 2021, in response to these notifications, HMRC wrote to Mr Jaafar to confirm that he was not required to complete a self-assessment tax return for the 2019/20 tax year.
10. On 4 March 2021, Mr Jaafar's agent contacted the helpline a third time, advising that Mr Jaafar in fact needed to complete a self-assessment tax return for the 2019/20 tax year as he had been self-employed until 30 September 2019.
11. On 10 March 2021 Mr Jaafar filed a self-assessment tax return for the tax year ended 5 April 2020 in which he stated that he had ceased trading as a minicab driver on 30 September 2019.
12. In April 2021, Mr Jaafar and his agent contacted HMRC on a number of occasions to ask whether he was eligible for a fourth Support Payment claim.
13. On 10 May 2021, HMRC wrote to Mr Jaafar stating that he was not eligible for the fourth Support Payment claim.
14. On 4 June 2021 Mr Jaafar and his agent called HMRC to discuss the refusal. They confirmed that Mr Jaafar had been self-employed for the first half of the 2019/20 tax year and that he had been a director for the second half of that tax year. This was confirmed in writing by Mr Jaafar's agent on the same day, and then again on 26 July 2021, when the agent also stated that Mr Jaafar had changed his working status from self-employment to employment since 1 October 2019.
15. On 15 June 2022 HMRC wrote to Mr Jaafar and his agent to open a check into the three Support Payments claims which had been paid. Mr Jaafar was advised that he needed to provide evidence of self-employment after 30 September 2019.
16. On 21 October 2022, Mr Jaafar's agent provided various documents to HMRC. These documents are discussed further below.
17. Following further correspondence, HMRC raised the assessment.
18. On 5 January 2023, Mr Jaafar's agent provided further documents (also discussed further below). HMRC advised that the information did not show that the appellant had self-employed work separate from the work undertaken as employee of his company.
19. Mr Jaafar appealed to HMRC on 10 February 2023, providing copy bank statements for April 2020 to April 2021. HMRC's view of the matter letter, sent on 14 February 2023, confirmed that there was no change to the decision. An independent review was requested on 17 February 2023. The review conclusion letter issued on 16 May 2023 upheld the decision.
20. Mr Jaafar appealed to this Tribunal on 9 June 2023.

Appellant submissions and evidence

21. References to Mr Jaafar's contentions below are contentions made directly by Mr Jaafar and also to contentions made by his representative, Mr Ali, on his behalf.
22. Mr Jaafar contended that his cessation of self-employment on 30 September 2019, and his directorship of Fly Services Ltd, did not mean that he could not resume self-employment. An individual was free to choose the way in which they worked. Any resumption of self-employment did not need to be formally notified to HMRC provided that a tax return was submitted.

23. Mr Jaafar explained that he had ceased trading in order to avoid having to complete a self-assessment tax return for 2020/21, and he had intended to employ drivers and have a fleet. He had not managed to achieve that to date, and so the company had had no employees.

24. He contended that his self-employment in 2019/20 was supported by income received into his bank account. He considered that it was not realistic to expect a minicab driver to keep and provide invoices for every journey, especially during the pandemic. Further, MOT and insurance evidence in Mr Jaafar's name had been provided; the company trading activities required a separate policy in its own right.

25. Mr Jaafar considered that HMRC's contention that there was no intention to trade in 2020/21 was not supported by any evidence and the decision should be based on an individual's actions and not an intention which could change daily, depending on circumstances. He also contended that there was nothing in the online check for eligibility for the Support Payments which asked about intentions. In correspondence, his agent argued that the self-employment pages had been omitted from Mr Jaafar's 2020/21 tax return by mistake, as his net profit from self-employment had been below the personal allowance and so had been overlooked. In the hearing, it was suggested that this had not been included because Mr Jaafar had made a loss.

HMRC submissions

26. HMRC contended, in summary, that Mr Jaafar did not meet the requirement for the Support Payments which were that he must have:

- (1) carried on a trade, the business of which had been adversely affected by Coronavirus; and
- (2) intended to continue to carry on a trade in the tax year 2020/21.

27. As Mr Jaafar's agent had confirmed on multiple occasions that Mr Jaafar had ceased trading on 30 September 2019, HMRC contended that he had not been carrying on a trade which was capable of being adversely affected by Coronavirus.

28. In addition, at the time of the claim in June 2020, Mr Jaafar could not have intended to carry on a trade in the tax year 2020/21 as his trade had ceased, as confirmed above. With regard to Mr Jaafar's contention that the online check did not ask any questions about eligibility, HMRC contended that the online check stated that the available guidance needed to be consulted when answering questions and that the guidance had set out the eligibility requirements.

29. HMRC agreed that being a director of a limited company did not prohibit Mr Jaafar from resuming self-employment but contended that he had not provided any evidence that he actually did resume self-employment in 2019/20 or later years.

30. HMRC submitted that the evidence as to insurance did not demonstrate a trade separate to employment by the company. Further, no self-employment income was declared on Mr Jaafar's tax return for 2019/20 for the period after 30 September 2019. No self-employment was initially reported on Mr Jaafar's tax return for 2020/21, although it was subsequently amended to include self-employment. However, that self-employment had no income other than the Support Payments and unspecified expenses of £1,536. No self-employment was reported in his tax return for 2021/22.

Discussion

31. The dispute between the parties was solely as to whether or not Mr Jaafar was eligible for the Support Payments received.

32. The burden of proof in this appeal is on Mr Jaafar to show that he was eligible for those Support Payments. The standard of proof is the civil standard of the balance of probabilities.

33. We agree that being a director of a company does not preclude a person from also being self-employed, but the mere fact of being a director does not mean that a person *must* also have a separate self-employment trade. Given the burden of proof set out above, Mr Jaafar must show that he met the conditions for the Support Payments received, including evidence of any relevant self-employment.

34. Having considered the evidence before us, we find that Mr Jaafar ceased his self-employment trade on 30 September 2019. This was clearly stated his tax return and had been confirmed to HMRC by Mr Jaafar's agent on a number of occasions by telephone and in writing in a letter of 26 July 2021 (as below)

35. We note that in a telephone call on 4 June 2021 to HMRC, Mr Jaafar's agent stated that Mr Jaafar had been self-employed until February 2021, although he also stated that Mr Jaafar had been self-employed for only half of the year. We do not consider that this is reliable evidence as the agent subsequently advised HMRC in writing on 26 July 2021 that Mr Jaafar had been "self-employed up to 30th September 2019". This letter also states that Mr Jaafar "changed his working status from self-employment to employment since 01st October 2019 (sic)".

36. In support of his contentions as to self-employment, Mr Jaafar provided copies of his TfL private hire driver's licences with expiry dates 8 December 2020 and 17 January 2024, and the V5C and MOT certificates for a Mercedes Benz car in his name.

37. We do not consider that these are sufficient to show that Mr Jaafar was self-employed in the period in question; he would have required the licence in order to drive as an employee. The fact that he had owned the car in his own name, rather than transferring it to the company, also does not mean that he must have been self-employed.

38. We were also provided with a certificate of motor insurance for the above Mercedes car for the period to 19 July 2021. Mr Jaafar contended that this had been issued by a company which deals only with taxis and therefore related to his self-employment as it was in his name. However, the insurance policy states that the car may only be used for social, domestic and pleasure purposes. As such, we do not consider that this is evidence that Mr Jaafar was self-employed during any part of the period covered by this insurance.

39. Mr Jaafar's evidence as to his income was also inconsistent. In the hearing he said that he did not receive any income from the self-employment because his work was principally for VIP clients who only came to the UK in the summer; he had been ready to receive income but had not received any income as there were no visitors to the UK. However, he also contended that entries in his bank statement showed income from self-employment.

40. We considered the bank statements provided to us. Although those statements do show some small payments from "Overtime Chauffeurs", we have no supporting documentation to show in what capacity these payments were received. We consider that, in the absence of such documentation and considering the other evidence before us, it is equally possible that Mr Jaafar was receiving these payments into his bank account on behalf of the company. Other payments which were stated to be self-employment income were described on the statement variously as gifts, refunds, transfers, personal, shopping or a loan. We consider that these are clearly not self-employment income. Other payments in without a narrative were not identifiable as being self-employment income.

41. We therefore conclude that Mr Jaafar there was no clear evidence that Mr Jaafar was paid directly (as opposed on behalf of his company) for any work thereafter prior to the start of the pandemic.

42. In the hearing, Mr Jaafar also contended for the first time that he had a second car which he used for his self-employment business and further that he had an operator licence with TfL. We took into account this rather belated evidence but find that, when considered with the other evidence, it does not establish that Mr Jaafar was self-employed between 30 September 2019 and 5 April 2020.

43. It was established that Mr Jaafar's company, Fly Services Limited, had applied for and been granted a pandemic business bounce back loan. The terms of this loan required that the company had to be trading as a limited company, which was not consistent with Mr Jaafar's contention that he had continued self-employment and had not traded through the company.

44. Mr Jaafar contended that this loan was given to all companies and that the company had only been 'nearly' dormant. We take judicial note that the maximum loan available to a business through this scheme was the lower of £50,000 and 25% of the self-certified turnover of the business and also required that the business confirm that its trade had been adversely affected by the pandemic. The loans were also available to self-employed individuals, not only companies. We find it difficult to reconcile Mr Jaafar's evidence with the claim made by the company for this loan; we consider that the loan is more likely to be indicative of Mr Jaafar having traded only through his company after 30 September 2019.

45. Considering all of the evidence before us, we find that Mr Jaafar ceased self-employment on 30 September 2019 and did not recommence self-employment between 30 September 2019 and 5 April 2020. Accordingly, we find that Mr Jaafar was not carrying on a trade which was adversely affected by reason of circumstances arising as a result of the pandemic. We therefore also conclude that he did not have an intention to "continue to carry on" a self-employment trade in the 2020/21 tax year. The word "continue" in that test requires that the self-employment trade be in existence prior to the start of the tax year.

Conclusion

46. Given our findings above, we conclude that Mr Jaafar was not entitled to the Support Payments received and so find that the assessment was properly raised. The appeal is dismissed.

Right to apply for permission to appeal

47. 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.

**ANNE FAIRPO
TRIBUNAL JUDGE**

Release date: 22nd AUGUST 2024