Neutral Citation Number [2025] UKUT 00050 (TCC

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

Applicant: Arshad Mahmood	**Tribunal Ref: UT/2024/000075**
Respondents: The Commissioners for His Majesty's Revenue and Customs	

APPLICATION FOR PERMISSION TO APPEAL

ORAL RECONSIDERATION

DECISION NOTICE

JUDGE JONATHAN CANNAN

Introduction

1. The Applicant, Mr Mahmood seeks permission to appeal a decision of the First-tier Tribunal (Tax Chamber) ("the FTT") released on 25 January 2024 ("the Decision"). The FTT refused permission to appeal in a decision notice released on 16 May 2024. Mr Mahmood renewed his application to the Upper Tribunal and I refused permission on paper in a decision released on 3 October 2024. This decision follows an oral reconsideration on 10 January 2024 which took place in Manchester. Mr Mahmood appeared in person and Mr Paul Marks appeared for HMRC.

2. *Section 11(1) Tribunals, Courts and Enforcement Act 2007* provides for a right of appeal to the Upper Tribunal "… on any point of law arising from a decision made by the First-tier Tribunal…". I should only grant permission to appeal on a particular ground if I am satisfied that it is arguable, with a realistic prospect of success, that there is a material error of law in the Decision.

3. The appeal before the FTT concerned an assessment to capital gains tax ("CGT") and an associated penalty in connection with the disposal of certain properties by Mr Mahmood to Rajay Khan Properties Limited ("RKP"). Mr Mahmood was the sole director of RKP and the entire share capital was owned by Mr Mahmood's wife. The assessment and the penalty were made following the closure of an enquiry into Mr Mahmood's tax return for 2016-17 which had not included any entries to reflect the disposals. Mr Mahmood had considered that no CGT was payable on the disposals because the properties were transferred at cost and also because he believed that the spouse exemption in section 58 Taxation of Chargeable Gains Act 1992 ("TCGA 1992") would have been available because his wife owned all the shares in RKP. By the time of the FTT hearing, Mr Mahmood accepted that neither proposition was correct. However, he challenged the assessment and the penalty on two grounds:

(1) The transfers of the properties were void because they had been entered into pursuant to a common mistake that no CGT was payable on the disposals. As such, the transfers should be treated as never having taken place and there was no disposal for CGT purposes.

(2) Following the closure of the enquiry into his tax return for 2016-17, HMRC had not amended his tax return. As such, no tax liability could arise.

4. The FTT dismissed both grounds of appeal. As to the first ground, the FTT referred to *Bell v Lever Brothers Limited* [1932] AC 161 and held that for a contract to be void for mistake, the mistake must affect the subject matter of the contract or the way in which the contract was to be performed. In this case, a mistake as to the tax consequences of the transaction had no effect on the terms or the subject matter of the contract or on the way in which the contract was to be performed. The contract was therefore not void.

5. As to the second ground, the FTT held that in the circumstances all that was needed to establish a tax liability was for a closure notice to be issued stating the officer's conclusions, setting out the amendments to be made to the tax return and stating the amount of tax due as a result of the amendments. The FTT found that the closure notice issued to Mr Mahmood satisfied these requirements and had the effect of amending the return.

6. Mr Mahmood originally sought permission to challenge both these conclusions. However, at the oral reconsideration he limited his challenge to the FTT's conclusion on the second ground.

7. The FTT also went on to make certain findings of fact as to whether any officer did in fact amend Mr Mahmood's return separately to the issue of the closure notice. There was conflicting documentary evidence as to whether the return had been amended. The FTT made a finding of fact that the return was amended on 1 April 2020 based on the evidence before it. In doing so, the FTT recognised at [79] that it was not strictly necessary to make that finding given its conclusion that the closure notice itself had the effect of amending the return.

8. In making a finding that the return had been amended on 1 April 2020, the FTT described the principal evidence on which it relied at [79] to [84]. It then went on to address various other points raised by Mr Mahmood so that he would not think those points had been ignored. The

FTT stated why those points did not affect its factual conclusion that the return had been amended on 1 April 2020.

9. Mr Mahmood made no separate challenge to the penalty and the FTT confirmed that a penalty was due.

10. HMRC acknowledged that the assessment and the penalty fell to be reduced considerably in order to correct various assumptions made at the time of the closure notice. The FTT reduced the assessment and the penalty accordingly. Hence, the CGT payable was reduced from £303,476 to £36,316 and the penalty was reduced from £81,938 to £9,805. The reductions reflected various matters described by the FTT at [9]. Mr Mahmood did not challenge the adjustments, but he maintained his challenge to the reduced liability.

Grounds of appeal

11. Mr Mahmood's application for permission to appeal identified three points of appeal. In considering those points I take into account Mr Mahmood's application for permission to appeal, his written request for an oral reconsideration, his skeleton argument served on the morning of the hearing and his oral submissions at the hearing.

Point 1

12. Point 1 raised various challenges relating solely to the first ground of appeal before the FTT. Mr Mahmood did not pursue Point 1 in his application for an oral hearing, or at the oral hearing itself. In the circumstances I need say no more about Point 1.

Point 2

13. Point 2 raises various challenges to the Decision, most of which Mr Mahmood restated at the oral hearing:

(1) HMRC had failed to establish when Mr Mahmood's self-assessment return was amended.

(2) The closure notice was based on an informal valuation by the Valuation Office Agency dated 20 December 2019. A closure notice requires a more formal and accurate valuation and the closure notice in this case was therefore invalid.

(3) A tax calculation dated 1 April 2020 was not an official tax calculation because it did not include Mr Mahmood's Unique Tax Reference. Mr Mahmood goes so far as to say that this was a "false document" prepared by the case worker.

(4) Entries on Mr Mahmood's self-assessment statements of account appear to have been back dated and falsified to take into account the effect of the closure notice. They were not created by the closure notice. There has been a breach of section 28A(3) TMA 1970. As the Court of Appeal stated in *HM Revenue & Customs v Bristol & West Plc* [2016] EWCA Civ 397 at [33]:

> The Notice takes effect when it is issued, neither earlier nor later

(5) The FTT wrongly relied on speculative evidence of the HMRC officers to explain his statements of account in finding that the return was actually amended, and wrongly ignored the documentary evidence produced by Mr Mahmood, including his online statement of account and his tax calculation summary, Form SA110.

(6) Mr Mahmood questions why it took so long for HMRC to produce a third version of his tax return indicating an amendment on 1 April 2020. The FTT should not have relied on that evidence given its late production and the absence of a valid time stamp in breach of the Electronic Communications Act 2000.

(7) Mr Mahmood received a penalty notice charging a penalty of £81,938 in February 2021 which did not appear on his online self-assessment account. He states that this indicates that the amendment to his self-assessment return and the penalty are "false".

14. Using the same sub-paragraph numbering, I am not satisfied that Mr Mahmood has identified any arguable error of law in the Decision:

(1) The FTT was right to find on the basis of section 28A(2)(b) TMA 1970 and the Court of Appeal decision in *R (otao Archer) v HM Revenue & Customs* [2017] EWCA (Civ) 1962 that Mr Mahmood's return was amended by the closure notice itself. In *Archer*, Lewison LJ stated at [22] and [27] as follows:

> 22. …Section 28A (2) (b) requires the amendment of the return to be made by the closure notice itself; not merely by an officer of HMRC. So, unless incorporated by reference, Mrs Cook's amendment of the on-line return cannot itself satisfy the words of the sub-section.
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> 27. I do not consider that HMRC's case gains support from the previous iteration of section 28A. Under that regime what was envisaged was a two-stage process. The first stage was the completion of the officer's enquiries (which included his conclusions as to the amount of tax due). The second stage, which took place *after* the conclusion of those enquiries was the amendment of the self-assessment, either by the taxpayer (under section 28A (3)) or by HMRC (under section 28A (4)). Under the current version there is only a single step which is that the closure notice itself must amend the return. The two-stage process was that which this court considered in *Bristol & West plc v HMRC* [2016] EWCA Civ 397, [2016] STC 1491, so it does not bear directly on our case…

The FTT and the Upper Tribunal are bound by the decision in *Archer*. Further, the FTT's finding that the Closure Notice itself effected the amendment was determinative of the second ground of Mr Mahmood's appeal to the FTT.

(2) Mr Mahmood did not pursue the second aspect of Point 2 at the oral reconsideration. HMRC are entitled to exercise their judgment on the material available to them in closing an enquiry. There is no rule of law that HMRC must use a formal and accurate valuation in setting out its conclusions in a closure notice.

Mr Marks very fairly drew my attention in this respect to the fact that the closure notice amended Box 6 of the capital gains pages on Mr Mahmood's tax return to show the total gain in the tax year. There were no entries in boxes 4 and 5 which would state the

disposal proceeds and allowable costs. Mr Mahmood did not take the point, but in any event I do not consider that it is arguable that this omission means that the closure notice did not amend Mr Mahmood's return. The closure notice clearly intended to amend the return and a reasonable reader of the closure notice would realise that the return was being amended to charge the total capital gain.

(3) There is no right of appeal against a tax calculation. The right of appeal pursuant to section 31 TMA 1970 is against "any conclusion stated or amendment made by a closure notice". I do not consider that the FTT made any error of law in upholding the closure notice.

(4) Similarly, there is no right of appeal against a self assessment statement of account. The Court of Appeal in *Bristol & West Plc* was considering the question of whether HMRC had power to suspend the effect of a closure notice which had been issued to the taxpayer. It quoted the equivalent to section 28A(3) TMA 1970 in relation to enquiries into company tax returns which provided that a closure notice takes effect when it is issued. On that basis it held that there was no power to suspend a closure notice. That issue does not arise on the present appeal and the case does not assist Mr Mahmood.

(5) For the reasons given above, evidence as to Mr Mahmood's statements of account, his tax calculation summary and whether the return was actually amended apart from the closure notice was not relevant to the issues the FTT had to determine. The FTT had already found, as it was bound to do, that the closure notice had the effect of amending Mr Mahmood's return.

(6) For the same reason, evidence as to the third version of Mr Mahmood's tax return indicating an amendment on 1 April 2020 and the absence of a valid time stamp on that document was not relevant to the issues before the FTT.

(7) It is not arguable that the fact the penalty notice did not appear on Mr Mahmood's online self assessment account has the effect of invalidating the penalty notice or the amendment to his tax return.

15. I do not consider that Point 2 raises any arguable ground of appeal.

Point 3

16. Point 3 raised the following challenges to the Decision:

(1) The FTT failed to take into account the full content of the bundle and all Mr Mahmood's submissions. The bundle contained further evidence which demonstrated that his return was never amended.

(2) Case workers prepared false statements of account to show tax arising as a result of the alleged amendment to his tax return.

17. Mr Mahmood took me to various documents in the FTT bundle which he said the FTT failed to take into account. In particular, various tax calculations issued by HMRC and pages

from his online statement of account which appeared to be inconsistent with the amendments referred to in the closure notice.

18. As stated above, the appeal was against the conclusions stated in the closure notice and the amendment made by the closure notice. Those conclusions and the amendment were not affected by the tax calculations or the statement of account. Even if the FTT failed to take these matters into account, and I am far from satisfied that it did, there would still be no error of law in the Decision. It is not necessary for the FTT to refer in its decision to every piece of evidence and every submission of a party (see the principles described by the Court of Appeal in *Volpi v Volpi* [2022] EWCA Civ 464 at [2]). In any event, it is clear that the FTT had good reason not to deal with the documents relied on by Mr Mahmood because they were relevant only to the question of whether Mr Mahmood's tax return had been amended apart from the closure notice. The FTT had already found that the closure notice itself effected the amendment.

19. Throughout the application for permission to appeal Mr Mahmood alleges that HMRC officers falsified documents following the issue of the closure notice. I understand this was put to the officers during cross-examination and denied. The FTT does not refer to these allegations in the Decision but it did find as a fact at [18], having heard their evidence, that the officers had been honestly trying to answer questions put to them as best they could. There is no basis for the Upper Tribunal to interfere with that finding on appeal, even if it were relevant to whether Mr Mahmood's return had been amended.

20. I do not consider that Point 3 raises any arguable ground of appeal.

Conclusion

21. For the reasons given above, I am not satisfied that it is arguable that there was any material error of law in the Decision, and I refuse permission to appeal.

Signed: Jonathan Cannan **Upper Tribunal Judge**
Issued to the parties on: 17 January 2025