



TC04517

Appeal numbers: TC/2014/05729

Income tax – assessments and penalties – Appellant’s application for permission to appeal out of time and HMRC’s cross application to strike out both withdrawn following settlement in separate bankruptcy proceedings in the High Court

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

CHRISTOPHER CLEEVELY

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY’S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE MICHAEL CONNELL
MEMBER SUSAN HEWETT**

Sitting in public at Fox Court, Grays Inn Road London on 10 March 2015

Mr Guy Bridger for the Appellant

Mr Neil Nagle, Officer of HM Revenue and Customs, for the Respondents

DECISION

The Applications

1. This is an application by Christopher Cleevely (“the Appellant”), for an extension of time in which to lodge an appeal against a closure notice and a penalty determination in respect of the year ending 5 April 2007 issued by HMRC on 11 May 2011 and subsequently revised on 4th February 2015, outside the time limits as set down by s 31A Taxes Management Act 1970 (“TMA”).

2. HMRC oppose the application because under Rule 20 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, the Appellant is required to bring his appeal within the time limits provided for under s 31A TMA 1970. HMRC contend that the Appellant has failed to prosecute his appeal with reasonable diligence in that the appeal is brought over three years out of time. HMRC apply to have the substantive appeal struck out.

Background

3. The Appellant’s original application was for late appeals to be admitted against the closure notice for 2006-07 and also assessments for the years 2001-02 to 2005-06 and penalty determinations for the years 2001-02 to 2006-07 inclusive.

4. HMRC had concerns about the validity of the assessments for the years 2001-02 to 2005-06 as the assessments had been authorised and issued in accordance with s 36 TMA 1970, whereas for assessments raised from April 2010, HMRC’s power to raise assessments falls under legislation at Schedule 39 of the Finance Act 2008.

5. In view of this, HMRC reduced the assessments and penalty determinations issued on 11 May 2011 for the years 2001-02 to 2005-06 to nil in order that amended further assessments and amended penalty determination for 2001-2002 to 2005-2006, could be raised. These were raised on 4 February 2015 and issued on 5 February 2015.

6. This effectively gave the Appellant fresh rights of appeal regarding the 2001-02 to 2005-06 assessment and the only matters before the Tribunal were the applications referred to in paragraphs 1 and 2 above.

7. At the hearing Mr Bridger for the Appellant said that he was not clear whether the late appeal application remained necessary as the Appellant had attended the High Court on the 20 January 2015, when he agreed to accept the tax assessment and penalty determination for 2006-07.

8. Mr Bridger explained that at the High Court hearing, HMRC stated that they were withdrawing assessments and penalty determinations for years 2001-02 to 2005-06 and that this had been confirmed in a letter from Mr Nagle, issued on 15 January 2015 which Mr Cleevely received a day or so after the hearing.

9. Mr Bridger said that HMRC further stated that they would not be pursuing a bankruptcy order under those circumstances and implied that Mr Cleevely would have to agree to accept the position as put to him on the day of the hearing, which he did. Mr Cleevely was asked by the Judge if he was happy with the outcome and he said he would be happy to pay the 2006-07 assessment - an amount in the region of £9,600 and the corresponding penalty assessment which was 50% of the tax. Mr Cleevely left the Court believing that he had agreed to pay the

2006-07 assessment, albeit under pressure from HMRC but to conclude matters and on the basis that HMRC would reduce all earlier years' assessments to nil.

10. The bundle of papers included a letter from Mr Nagle to HM Courts and Tribunal Service which said:

5 “Appellant: Mr C Cleevely, Hearing date: 10th March 2015 at Fox Court,
London WC1X 8HN

10 In connection with the Appellant's late appeal to the Tribunal dated 1st June
2014 in respect of the decisions made by HMRC on 11th May 2011 you will
be aware that HMRC objected to the late appeal being accepted on 6th
November 2014.

15 The decisions for which the Appellant has applied for an appeal to be heard out
of time are assessments for the years 2001-02 to 2005-06, a penalty
determination for the years 2001-02 to 2006-07 and the closure notice in
relation to the enquiry for the year ending 5th April 2007.

20 HMRC wish to inform the Tribunal that the matters in respect of the
assessments for the years 2001-02 to 2005-06 and also the matter in respect of
the penalty determination also for the years 2001-02 to 2005-06 are matters
that are no longer before the Tribunal.

25 HMRC are withdrawing from the above appeals and are arranging for the
decisions to be cancelled.

30 The only matters before the Tribunal at the hearing on 10th March 2015 will
be the application to appeal out of time in respect of closure notice and penalty
determination for the year ending 5th April 2007. I can also confirm that I have
sent a copy of this letter to both the Appellant and his advisors.”

35 11. As can be seen, there is no mention in Mr Nagle's letter that HMRC intended to issue
amended further assessments and amended penalty determinations for 2001-2002 to 2005-
2006. This therefore lends considerable credence to the Appellant's assertions as set out
above.

40 12. Mr Nagle, who is based at HMRC Local Compliance and Reviews, Euston Road,
London, said that he was totally unaware of the High Court proceedings or any agreement
that HMRC would waive the assessments and penalty determinations for 2001-02 to 2005-
06. He had not dealt with the High Court Proceedings. He agreed however that it was
unfortunate his letter had not made it clear that revised assessments and penalty
determinations were to be issued. That decision was made by another officer, Mrs Morris of
HMRC's Glasgow office.

45 13. It was therefore apparent to the parties that there was no need for a late appeal application
or HMRC's cross application to strike out, the matter having been determined and settled by
agreement at the High Court on 20 January 2015.

50 14. Mr Bridger was however concerned that his client had been misled by HMRC in the
proceedings at the High Court. In his skeleton arguments he said:

 “We have asked the High Court to provide confirmation of what was agreed at
the hearing.

 It is a concern of Mr Cleevely that he was encouraged to accept the 2006-07
assessment because HMRC were not seeking earlier years assessments or
penalties. HMRC appear to have gone back on their word.

Mr Cleevely accepted the offer in good faith in the presence of the High Court Judge. It was a surprise for him as he had not known the intentions of HMRC. He had attended the hearing without a representative.

5 Had Mr Cleevely known that HMRC could go back on their offer and raise fresh assessments he would not have accepted the offer at the High Court to pay the assessment for 2006-07 and the penalty.”

Conclusion

15 15. The Appellant’s appeal and HMRC’s application are withdrawn. The Appellant may of course lodge an application with the High Court to have the Order made on 20 January 2015 set aside, but that is a matter for him and the Court. The Tribunal has no jurisdiction to question or set aside a decision or Order of the High Court. He retains his rights of appeal in respect of the new assessments and penalties issued by HMRC on 5 February 2015.

MICHAEL S CONNELL

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**TRIBUNAL JUDGE
RELEASE DATE: 9 July 2015**

